SATHYABAMA
INSTITUTE OF SCIENCE AND TECHNOLOGY
(DEEMED TO BE UNIVERSITY)
Accredited "A" Grade by NAAC | 12B Status by UGC | Approved by AICTE
www.sathyabama.ac.in

SCHOOL OF MANAGEMENT STUDIES

UNIT – I– BUSINESS LAW - SBAA1206

1. INDIAN CONTRACT ACT 1872: GENERAL PRINCIPLES OF CONTRACT

Contract Act - Definition, Classification - Essentials of a Contract - Offer and Acceptance - Consideration - Contractual Capacity - Free Consent - Legality of Object- Void agreements - Performance of Contract - Modes of Discharge of Contract - Remedies for Breach of Contract.

INTRODUCTION ABOUT LAW

The rule of conduct imposed by a Govt. to maintain order and fairness is called law; laws are exacted and backed by authority and power of the state.

THE INDIAN CONTRACT ACT, 1872

The law of contract of India is contains in the Indian Contract Act 1872.This act is based mainly an English common law. It extends to the whole of India (Except the state of Jammu & Kashmir) and came into force on the first day of September 1872.

The Act is not exhaustive because, it does not deal with all the Branches of the law of contract. There are separate set which deal with contracts relating to negotiable instruments, transfer of properly, state of goods, partnerships, Insurance etc.

Scheme of the Act:

1. General principles of the law of the contract(sec1-75)
2. Specific kinds ofcontracts
   a) Contracts of indemnity and guarantee(124-147)
   b) Contracts of Bailment & Pledge (sec148-181)
   c) Contracts of Agency (sec 182-238)

Definition of contract:

According to sec 2(h) of the Indian Contract Act, An Agreement enforceable by law is a contract". So, it is clear that a contract is an agreement made between two or more parties which the law will enforce.

There are two elements in the above definition such as

1. An agreement between twoparties
2. Enforceability

Agreement and two parties:

As per sect 2(e): "Every promise and every set of promises, forming consideration for each other, is an agreement." Thus, it is clear that the 'promises' is an agreement.

As per sec 2(b): "A proposal, if it is accepted becomes a promise", this means that an agreement is an accepted proposal. So, an agreement comes into existence only when one party makes a proposal (or offer) to the other party and the other gives his acceptance there to.

Agreement= offer+ Acceptance

Enforceability:

An agreement, to become a contract, should create legal obligation or duty. If an agreement is incapable of creating legal duty, it is not a contract.So, agreement of moral, religious or social nature are not contracts, because they do not create legal obligations between the parties.

For eg: inviting a friend to dinner, a father promise to his son for a gift etc. are of social obligations. As these agreements cannot create legal duties, they cannot become contracts. But in business agreements, it is assumed that the parties concerned create legal duties, hence they arecontracts.

So, it is clear that an agreement is a wider term than a contract. "All contracts are agreements but all agreement are not contracts". To sum up:

Contract = Agreement+ Enforceability

Consensus ad-idem:

The essence of an agreement is the meeting the minds of the parties in all this means that the parties to the agreement must have agreed about the subject-matter of the agreement in the same sense and the same time, in other word, there should be consensus ad=idem between the mind of the parties. Unless there is consensus ad-idem, there should be no contract.

ESSENTIAL ELEMENT OF VALID CONTRACT:

1. Offer andAcceptance:

There must be a lawful offer and a lawful acceptance of the offer. So, there must be two parties to an agreement. i.e., one party making the offer and the other party accepting it. The terms of the offer should be definite and acceptance should be absolute.

2. Intention to create legalrelationship:

Where the two parties, enter into agreement, their intention must be to create legal relationship between them. If there is no such an intention, there is no contract between them. Agreements of social, religious or domestic nature cannot make the legal relationship between the parties.

In case of law of balfour vs. balfour (1919) insisted this point. **Balfour vs. balfour 1919:**The husband promised to pay his wife a household allowance of £30 every month. Later, the husband failed to pay the amount. The wife sued for the allowance. Held, she could not recover the amount as the agreement did not create any legal relationship; hence, there was no contract at all.

But, in business agreements it is assumed that parties concerned create a legal relationship. Thus, an agreement to buy and sell goods intends to create legal relationship, there is a contract. But, if the parties have expressly declared their intention not creates any legal relationship even in the business agreement, such type of agreement cannot become a contract. The case of Rose & Frank co vs. Corruption Bros, in a good illustration on thepoint.

3. Lawfulconsideration:

The term “consideration” means an advantages or benefits moving from one party to the other. It means “something in return”. The agreement between lawful only when party gives something to theother party and receives something from the other party. Consideration need not necessarily be in cash on hand. It may be an act or forbearance not doing something or promise to do or not to do something. But it must be real and lawful.

4. Capacity of parties:

The parties entering into a contract must have certain capacity. They must be legally competent to enter into a valid contract. They should not suffer from any incapacity either on account of status like forgiveness of an account of mutual deficiency like minors, lunatics or any ground if the parties have no capacity, the contract entered into by them as void of initio.

5. Free and genuineconsent:

It is essential that the parties must be on the same mind and on the same subject. There should consensus ad-idem between the parties to the contract. The parties should have a free and genuine willingness in making the contract. The consent should have to been obtained by force or any other by force or any other coercive methods. The consent is said to be free of it is not obtainedby,

A. coercion

B. undueinfluence

C. fraud

D. mistakeand

E. misrepresentation

6. Lawfulobject:

The act of a contract and consideration should be lawful an object. Lawful if it is not prohibited by law. An agreement is lawful when it is not.

a) illegal
b) immoral
c) oppose to publicpolicy

7. Certainty and Possibility of Performance:

The terms of meaning of the agreement must be certain and definite, otherwise the agreement will not be enforceable. **For example**, if A agrees to sell to B ten tone of oil; no

contract is there because it is not clear what kind of oil is intended to be sold.

An agreement to do an impossible act is not valid. For example, an agreement between A and B to construct a house in one day cannot become a valid contract, because, the act of the agreement is not possible.

8. Agreement not declaredValid:

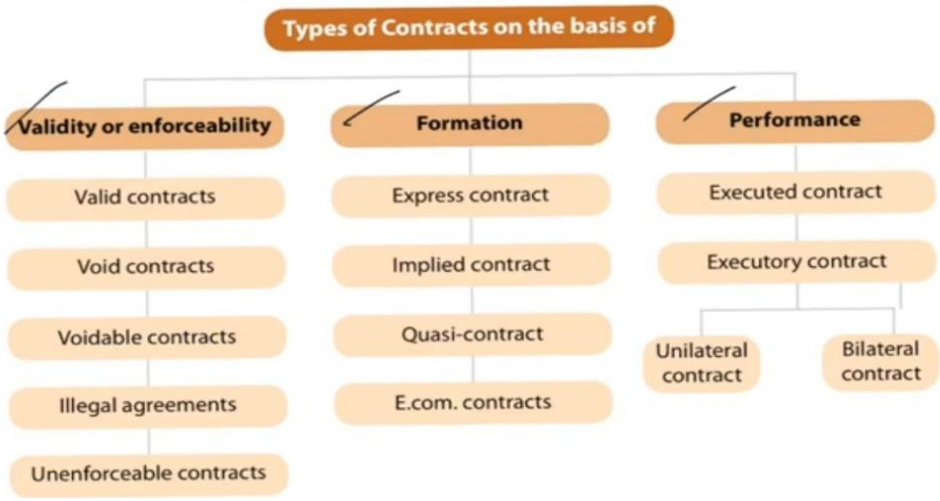
The agreement should not have been expressly declared void by any law, providing in the country.

9. LegalFormalities:

The agreement may be in oral or written form. It is in writing, it must comply with the prescribed legal formalities in regard to writing, registration and attestation. There are some legal formalities also in order to make an agreement legally enforceable. In some cases the document in which the contract has been written, should be stamped and registered. Thus the legal formalities should be complied with. Then only a contract can be enforced in a court of law.

CLASSIFICATION OF CONTRACTS:

Contracts can be classified according to:



1. On the basis ofValidity:

a) ValidContract:

The contract which is enforceable by law is known as valid contract.Sec.10 of the

Indian Contract act, 1872 explains various legal requirements for a valid contract; they are: offer and acceptance, capacity of parties, lawful consideration, lawful agreements, free consent, etc. in short a valid contract is one which posses all the requirements of legal enforceability.

b) Void Contract and Void Agreement:

It is a contract which has no legal effect. It is unenforceable by law. It is not enforceable at the option of either party. The void contract is not void ab initio. It is valid at the time of making it, but it becomes invalid in future. This void contract cannot be enforced by law.

A valid contract becomes void contract due to the following reasons:

i) Due to impossibility – A valid contract becomes void be impossibility of performance after the formation of the contract. Illustration: A and B contract to marry each other. But before the date A goes mad. The contract becomesvoid.

ii) Due to subsequent illegality – A contract also becomes void be subsequent illegality. **Illustration:** A agrees to sell 100 bottles of wine to B for Rs.1000 within 15 days. But before delivery, the govt. may prohibit the purchase and sells of wine, if it happens the contract becomesvoid.

c. Voidable Contract:

An agreement which is enforceable by law at a option of one or more of the parties thereto, but not at the option of the others, is voidable contract. In short, a voidable contract is one which is enforceable by law at the option of one of the parties. Until it is avoided or cancelled by one of the parties, it is a validcontract.

Example: A promises to sell his car to B for Rs.1, 00,000. But his consent has obtained by use of force. Now the contract is voidable at the option of A. he may cancel it or acceptsit.

Circumstances under which a contract becomes voidable:

a) When the consent of one of the parties to the contract is obtained by coercion, undue influence, misrepresentation orfraud.
b) When one party prevents the other party from perform his duty, and then the contract becomes voidable at the option of the party soprevented.

Example: A contract with B that A shall white wash B house for Rs.100. A

isreally and willing to execute the work accordingly. But B does not entrust his house for whitewash.

c) When one party fails to carryout promise within the specified period, then the contract becomes voidable at the option of the promise.

Example: X accepts to sell and deliver 50 days of rice to Y for Rs.10, 000 within one week. But X does not supply the 50 bags of rice within the specified period. Here, the contract becomes voidable at the option of Y.

d) Illegal or unlawfulagreement:

An agreement is illegal and void if its object or consideration is prohibited by law or is of fraudulent or it's against to public policy or morality. An illegal agreement is void ab initio.

e) Unenforceable Contract:

An unenforceable contract is one which cannot be enforced in a court of law because of some technical defect such as absence of writing or lapse of time, etc.

2. On the basis offormation:

a) Express Contract: If the terms of a contract are expressly agreed upon (whether by words, spoken or written) at the time of formation of the contracts, it is called as express contract. **Example:** A tells B on telephone that he offers to sell his car for Rs.1,00,000 and B in reply informs A that he accepts the offer. There is an expresscontract.

b) Implied Contract: the contract which is not expressed in written or spoken words, but is tobe inferred from the conduct of the parties is called as impliedcontract.

Example: There is an implied contract if a person;

i) gets into a publicbus
ii) takes a cup of coffee in ahotel
iii) permits a porter to liftluggage

c) Quasi Contract: A quasi contract is one which resembles a contract but not possess all the essentials for a valid contract. But quasi contract is valid contract. It is created by law and it resembles a contract, such a contract does not arise by virtue of any agreement, express or implied, between the parties but the law infers or recognizes a contract under certain specialcircumstances.

For example: 1) Obligation of finder of last goods to return them to true owner

2) Liability of a person to whom money is paid under mistake, to repay it back

In the above cases, there are no offer, acceptance, agreement etc. but in the eyes of law these are considered as quasi contracts. The quasi contract is known as "constructive contracts".

d) E-Commerce contract:

An E-Commerce contract is one which is entered into between two parties via internet.

3. On the basis ofperformance:

On the basis of performance, the contract can be classified as follows:

1) **Executed contract**: an executed contract is one, in which both the parties have fulfilled their obligations and which are completely carriedout.
2) **Executory contracts:** an executory contract is one in which both the parties do not fulfill their obligations. **Example:** if A makes a contract with B regarding the sales ofhisscooter. As per the terms and conditions. A will deliver his scooter to B within a specified time; B will pay the price offer one month. Here, at the time of making the contract, both the parties have to fulfill the obligation henceforth. This is executory contract.
3) **Unilateral contract**: if one party has to be fulfilling his obligation and the other has already fulfilled his obligation, it is known as unilateralcontract.
4) **Bilateral contract:** if both the parties have fulfilled their obligation hence, it is known as bilateralcontract.

OFFER AND ACCEPTANCE

OFFER is the first and foremost requirement to make an agreement. An offer is a proposal by one party to another to enter into a legally binding agreement with him. By means of an offer, a person signifies his willingness to do some acts in order to get consent from the other party. By making an offer, a person shows his willingness to enter into an agreement with other.

Ex: 'A' says to 'B' will you purchase my house for Rs.2, 00,000. 'A' in this case, is making an offer to 'B' as he signifies to 'B' his willingness to sell his house to 'B' for

Rs.2,00,000 in order to get 'B's acceptance to buy the house.

The person making the offer is known as the "Offeror", "Proposer", "Promisor" and the person to whom it is made is called the "Offeree", "Proposee". If the offeree accepts the offer he is called the "acceptor" or "Promisee".The term "offer" is used in English law and it is known is "proposal" in Indian law.

Types of Offer:

1. ExpressOffer:

An offer, which is express by words, spoken, or written is called an "Express Offer". Ex: "M" says or writes to "N" like, "I am ready to sell my house to you for Rs.1, 00,000" This is an offer.

2. ImpliedOffer:

If the offer is made by the conduct of the parties, it is called as "Implied Offer".

Illustration: If a transport company runs buses on a particular route, there is an implied offer by the transport company to carry passengers for a certain fare.

3. SpecificOffer:

Where an offer is made to a definite person it is called a specific offer. It can be accepted only by the person to whom it is made.

4. GeneralOffer:

A general offer is one which is made to be world at large or public in general and not to any specific person. Advertisement for tracing a missing person or thing, seeking valuable. Information relating to a missing person or thing etc., are the best examples for the general offer. Here the offer can be accepted by anybody if interested in the offer.

The general offer binds the offeror, the leading case on the subject of general offer is that of **Mrs.Carlill vs.** carbolic smoke ball co.

Case law: The carbolic smoke ball company issued an advertisement in which the company offered to pay of $100 to any person who contracts influenza, after having used their smoke balls three times daily for two weeks, as per the printed directions. Mrs.Carlill, on the faith of the advertisement, bought and used the balls according to the direction, but she contracted influenza. She sued the company for the promised reward. Held, she could recover the amount as by using the smoke balls she had accepted theoffer.

5. Standing Offer orTender:

A tender (in response to the advertisement) is an offer. It may be either a "definite offer" or a "Standing offer".

If a person a tender to supply specified goods or to tender specified services to the person, who invites the tender, such tender is called as a "definiteoffer".

Ex: ABC Company invites tender for the supply of 100 tables. For this reason, it means an advertisement (this advertisement inviting tender, is not the offer) JK and TIRESsubmit the tenders are definite offer. If the company accepts the J's offer.It is meant that is a binding contract between ABC co andC.

If the goods or services are required over a certain period, a person may invite tenders. Such type of tender to supply goods or to tender services over a certain period, the tender are called as "Standing Offers".

6. CounterOffer:

When some changes are made by the offeree in the original made by the offeror, it is called the "Counter Offer". Here the offeree does not accept the terms and conditions of the original offer as laid down by the offeror. He wants to make some changes in the original offer. This counter offer will not become a contract unless the conditions given by the offeree are accepted by the offeror.

Ex: "A" offers to sell his cycle to "B" for Rs.2000. This is the original offer. "B" makes a reply offering to purchase it for Rs.1,500. In this case B's reply is not acceptance, but it is only a counteroffer.

7. CrossOffer:

If two parties makes an identical offer for the same subject matter to each other, it is called cross offer. None of them is aware of the fact that the other party is also making the offer for the same thing. In the case of cross offers they shall not(Institute acceptance of one's offer by the other).

Illustration:

"A" writes to "B", agreeing to sell his car for Rs.1,50,000 on the sameday, without knowing this "B" writes to "A", agreeing to buy A's car for Rs.1,50,000. Both the parties are unaware of the letters written by one to the other. This is not regarded as a contract, because it is meant that both the parties make offers simultaneously; but there is not acceptance at all

moreover there is no consensus add idem.

LEGAL RULES OF A VALID OFFER OR ESSENTIALS:

A valid offer should be in confirming with the following rules:

1. An offer must be capable of creating legalrelationship:

A social invitation, even if it is accepted, does not create legal relationship because it is not so intended. An offer therefore, must be such as would results in a valid contract when it is accepted.

2. An offer must contain definite terms andconditions:

Terms of contract must be definite and not lose or vague. If the terms of an offer are vague or indefinite, it acceptance cannot create any contractual relationship.

3. An offer must be communicated:

An offer to be complete must be communicated to the person to whom it is made.

4. An offer must be made in order to get assent of the other:

An offer must be made with a view to obtain the assent the offer to do something must be made with a view to obtain the assent of other party addresser and merely with a view to disclosing the intention of making an offer.

5. A statement of price is not anoffer:

A mere statement of price is not an offer to sell some goods or things.

ACCEPTANCE

Acceptance refers to an act of giving consent by the offeree. If the offer is considered as the starting point in a contract, acceptance is the concluding point.

Who can accept?

When an offer is made to a particular person, it can be accepted by him alone. If it is accepted by any other person, it is not a valid acceptance.

In the case of equal offer, any person can accept it. This was incurred in the case law of Mr.carlill vs. carbolic smoke ball company.

Essentials/legal rules for a valid acceptance:

The acceptance of an offer must satisfy the following conditions.

1. Acceptance should be absolute andunqualified:

It should be given by the offeree without making any variation or addition to the original. Offeree, even if there is a slight variation effected by the offeree to the original offer; it will not be a valid acceptance. If any alteration is made to the original offer unless the counter offer is accepted by the offered is total, it will not become a valid acceptance.

2. Acceptance should becommunicated:

Acceptance should be communicated to the offers in due course. Mere acceptance by the offeree without communicating to it the offeror cannot become a valid acceptance.

In the case of general offer, it is not necessary to communicate the acceptance to the offered. Mere complying with terms and conditions of the offer will amount to a valid acceptance this was confirmed in the case law of carlill vs. carbolic smoke ballco.

3. It must be given within a reasonabletime

4. It must be in the prescribedmode

5. It must be made by theofferee

6. It must show to fulfill hispromise

7. It cannot precede anoffer

8. It must be made before the lapse or revocation of an offer

9. It must be aware of the proposal at the time of theoffer

10. Silence does not implyacceptance

11. Acceptance must be in contractualintention

Communication of Offer and Acceptance and Revocation of Offer

The two very important aspects of a contract are the offer and the acceptance of the offer. However, in the practical world of business and economics, the communication of the offer and the acceptance and the timings of these are also very important factors.

Communication of Offer and Acceptance

Now we have seen previously that an offer cannot be revoked after the offeror has communicated it to the offeree. Then the offer becomes binding, it creates legal relations between the two parties.

So when is the communication complete? Effective communication of the offer and a clear understanding of it is important to avoid misunderstanding between all the parties.

If the parties are talking face-to-face this is not a problem. The communication happens in real time and the offer and acceptance will be communicated on the spot, creating no confusion.

But often times in business the communication occurs via letters and emails etc. So, in this case, the timeline of communication is important.

Communication of Offer

Section 4 of the Indian Contract Act 1872 says that the communication of the offer is complete when it comes to the knowledge of the person it has been made to. So when the offeree (in case of a specific offer) or any member of the public (in case of a general offer) becomes aware of the offer, the communication of the offer is said to be complete.

So when two people are talking, face-to-face or via telephone, etc the communication will be complete as soon as the offer is made. Example if A tells B he will fix his roof for five thousand rupees, the communication is complete as soon as the words are spoken.

Let us take the same example. A writes to B offering to fix his roof for five thousand rupees. He posts the letter on 2nd July. The letter reaches B on 4th July. So the communication is said to complete on 4th July.

Communication of Acceptance

According to sec.4 of the Indian Contract Act, the Communication of acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

Mode of Acceptance

In case of communication of acceptance, there are two factors to consider, the mode of acceptance and then the timing of it. Acceptance can be done in two ways, namely

A. Communication of Acceptance by an Act: This would include communication via words, whether oral or written. So this will include communication via telephone calls, letters, e-mails, telegraphs, etc.
B. Communication of Acceptance by Conduct: The offeree can also convey his acceptance of the offer through some action of his, or by his conduct. So say when you board a bus, you are accepting to pay the bus fare via your conduct.

Timing of Acceptance

The communication of acceptance has two parts. Let us take a look

A. **As against the Offeror**: For the proposer, the communication of the acceptance is complete when he puts such acceptance in the course of transmission. After this it is out

of his hand to revoke such acceptance, so his communication will be completed then. So, for example, A accepts the offer of B via a letter. He posts the letter on 10th July and the letter reaches B on 14th For B (the proposer) the communication of the acceptance is completed on 10th July itself.

B. **As against the Acceptor:** The communication in case of the acceptor is complete when the proposer acquires knowledge of such acceptance. So in the above example, A's communication will be complete on 14th July, when B learns of the acceptance.

REVOCATION OF OFFER

The revocation means, "Taking back" or "withdrawal" By means of revocation of an offer, the offers is withdrawn or cancels by the offeror. The offer can be revoked at any time, before the offeree posts the letters of acceptance once the letters of acceptance is posted by offeree, even if it does not reach the offer, the acceptance is over then the offer cannot be revoked.

Let us take the same example of before. A accepts the offer and posts the letter on 10th July. B gets the letter on 14th July. But for B (the proposer) the acceptance has been communicated on 10th July itself. So the revocation of offer can only happen before the 10th of July.

Circumstances in which the offer is revoked:

In the following circumstances the offer comes to an end either by revocation or laps of time.

1. Revocation by givingnotice:

The offeror can revoke his offer before it is being accepted by the offeree. Mere posting of letters of acceptance is considered as the time of acceptance and revocation should be pursued before passing the letter of acceptance and not after words. More over the revocation must be communicated to the offeree.

2. Lapse oftime:

If the offeror has fined any time within which the offeree has to give his acceptance, the offeree must act so, if he fails to give his acceptance within the time limit the offer is invoked by the expiry of the time limit.

3. Non-fulfillment ofconditions:

If the offeror has laid down any condition for accepting the offer, the offeree must fulfill them. If not the after stands revoked.

4. Death orInsanity:

If offeror dies or becomes in same the offer is revoked. But, if the offeror without having the knowledge of the death or insanity of the offeror gives his acceptance, the executes of the deceased offered is bound to execute the contract.

5. CounterOffer:

If the offeror makes some changes to the original made by the offeror, it is known as counter offer. Unless the changes are accepted by the offeror the offer stands revoked.

6. Not following the mode prescribed by theofferor.

If the offeror has prescribed any mode to the offeror to communicate the acceptance the offered is bound to comply with it. On the contrary, if the offeror chooses a different mode, the offer is considered as revoked, if the offeror has not prescribed any mode the offeror must follow the usual or reasonable mode.

Revocation of Acceptance

Section 5 also states that acceptance can be revoked until the communication of the acceptance is completed against the acceptor. No revocation of acceptance can happen after such date.

Again from the above example, the communication of the acceptance is complete against A (acceptor) on 14th July. So till that date, A can revoke his/her acceptance, but not after such date. So technically between 10th and 14th July, A can decide to revoke the acceptance.

CONSIDERATION

Consideration is a technical term and it means “something in return”. When a party of an agreement to do something. They must get something in return. This “something in return” is known as consideration. Ex: ‘A’ wants to sell his car to B for Rs.50, 000. Car is the consideration for B and the price is the consideration for A.

Sec 2(d) defines consideration as “when at the desire of the promisor, the promise 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.”

Lawful consideration

Consideration is one of the essential elements of a valid contract. An agreement without consideration is null and void; such an agreement is not enforceable by law (However sec 25 of the Indian contract act lays down certain exceptions where there is no necessary for the consideration even for a valid contract a gratuitous promise will not create any legal obligation. A promise without consideration cannot be enforced bylaw.

The "something in return" may be in the form of cash, any goods or services. In short, the consideration refers to:

a) An act(or).
b) A returnpromise(or)
c) Some benefit to thepromises.
d) Some detriment or loss, or damage to the promisee.

LEGAL RULES AND ESSENTIALS OF A VALID CONSIDERATION:

1. It is required both for formation and discharge of an agreement orcontract.
2. It must belawful
3. It need not beadequate
4. It must be real and notillusory
5. It must move at the desire of the offeror
6. It must be of some value in the eyes oflaw
7. It may be past, present or future
8. It may be either positive ornegative
9. It may be furnished by the promisee or any other person

Exceptions to the rule "No consideration No contracts" or "A contract without consideration is void" – Discuss:

1. Love andaffection:

If any agreement is made, which is expressed in writing and is made out of natural love and affection between the parties, standing in near relation to each other without consideration is void.

In short.

i) The contracting parties should be near relatives for eachother.

ii) The agreement should be made out of natural love and affection between oneparty.

iii) The agreement should be in written form and it should be registered under the law for the time being inforce.

Ex: "A" out of his love and affection, promises to give his daughter "B" Rs.15, 000 this promise is made in writing and registered. This is a valid contract though there is no consideration.

2. Compensation for voluntaryservices:

If there is an agreement to compensate wholly or partly for the voluntary acts done by another for the promisor, the agreement is valid even the consideration is absent.**Ex:**

i. "A" finds B's purse and gives it to him. "B" promises to give "A" Rs.50. This is a contract.

ii. "A" supports "B" infant son. "B" promises to pay A's expenses in so doing. This is a contract. It is an important point that the past consideration is not at all a consideration in English law and it should be either present or future consideration. Under Indian law the past consideration is a validconsideration.

3. Promise to pay a time-barreddebt

A promise by a debtor to pay a time-barred debt is enforceable provided it is made in writing and is signed by the debtor or by his agent generally or specially authorized in that behalf. A debt is barred by limitation if it remains unpaid or unclaimed for a period of three years. Such a debt becomes legallyirrecoverable.

Ex: D owes C Rs.1,000 but the debt is barred by the Limitation Act. D signs a written promise to pay C Rs.500 on account of the debt. This is a contract.

4. CompletedGift

The rule "No consideration, no contract" does not apply to completed gifts.

5. Agency

No consideration is necessary to create an agency.

6. CharitableSubscription

Where the promisee on the strength of the promise makes commitments, i.e., changes his position to his detriment.

Doctrine of Privity of Contract

The Indian Contract Act clearly states that there cannot be a stranger to a contract. This is explained through the Doctrine of Privity of a Contract.

Doctrine of Privity of Contract or Stranger to Contract

It is a general rule of law that only parties to a contract may sue and be sued on that contract. This rule is known as the doctrine of privity of contract. Privity of Contract means relationship subsisting between the parties who have entered into contractual obligations.

The Indian Contract Act. 1872, allows the 'Consideration' for an agreement to proceed from a third-party. However, a stranger (third-party) to consideration is different from a stranger to a contract. The law does not allow a stranger to file a suit on the contract. This right is available only to a person who is a party to the contract and is called Doctrine of Privity of Contract. Ex. Peter has borrowed some money from John. Peter owns a property and decides to sell it to Arjun.Arjun promises to pay John on behalf of Peter.However, if Arjun fails to pay, then John cannot sue since Arjun is a stranger to the contract. It is important to note that the Doctrine of Privity has exceptions which allow a stranger to enforce a claim as given below.

Exceptions to the Doctrine of Privity of Contract

A stranger or a person who is not a party to a contract can sue on a contract in the following cases:

1. Trust
2. Family Settlement
3. Assignment of a Contract
4. Acknowledgement or Estoppel
5. A covenant running with the land
6. Contract through an agent

Trust

If a contract is made between the trustee of a trust and another party, then the beneficiary of the trust can sue by enforcing his right under the trust, even if he is a stranger to the contract.

Arjun's father had an illegitimate son, Ravi. Before he died, he put Arjun in possession of his estate with a condition that Arjun would pay Ravi an amount of Rs 500,000 and transfer half of the estate in Ravi's name, once he becomes 21 years old.

After attaining that age when Ravi didn't receive the money and asked Arjun about it, he denied giving him his share. Ravi filed a suit for recovery. The Court held that a trust was formed with Ravi as the beneficiary for a certain amount and share of the estate. Hence, Ravi had the right to sue upon the contract between Arjun and his father, even though he was not a party to it.

Family Settlement, Partition or other family arrangements

If a contract is made under a family arrangement to benefit a stranger (person not a party to the contract), then the stranger can sue in his own right as a beneficiary of the contract.

Peter promised Nancy's father that he would marry Nancy else would pay Rs 50,000 as damages. Eventually, he married someone else, thereby breaching the contract. Nancy filed a case against Peter which was held by the Court since the contract was a family arrangement with Nancy as the beneficiary.

Ritika was living in a Hindu Undivided Family (HUF). The family had made a provision for her marriage. Eventually, the family went through a partition and Ritika filed a suit to claim her marriage expenses. The Court held the case because Ritika was the beneficiary of the provision despite being a stranger to the contract.

Assignment of a Contract

If a contract is made for the benefit of a person, then he can sue upon the contract even though he is not a party to the agreement. It is important to note here that nominees of a life insurance policy do not have this right.

Acknowledgment or Estoppel

If a contract requires that a party pays a certain amount to a third-party and he/she acknowledges it, then it becomes a binding obligation for the party to pay the third-party. The acknowledgment can also be implied.

Peter gives Rs. 1,000 to John to pay Arjun. John acknowledges the receipt of funds to be paid to Arjun. However, he fails to pay him. Arjun can sue John for recovery of the amount.

Rita sold her house to Seema. A real estate broker, Pankaj, facilitated the deal. Out of the sale price, Pankaj was to be paid Rs. 25,000 as his professional charges. Seema promised to pay Pankaj the amount before taking possession of the property. She made three payments of Rs. 5,000 each and then stopped paying him. Pankaj filed a suit against Seema which was held by the Court because Seema had acknowledged her liability by conduct.

A Covenant Running with the Land

When a person purchases a piece of land with the notice that the owner of the land will be bound by all duties and liabilities affecting the land, then he can sue upon a contract between the previous land-owner and a settler even if he was not a party to the contract.

Peter owned a piece of land which he sold to John under a covenant that a certain part of the land will be maintained as a public park. John abided by the covenant and eventually sold the land to Arjun. Though Arjun was aware of the covenant, he built a house in the specific plot. When Peter came to know of it, he filed a suit against Arjun. Although Arjun denied liability since he was not a party to the contract, the Court held him responsible for violating the covenant.

Contract through an Agent

If a person enters into a contract through an agent, where the agent acts within the scope of his authority and in the name of the person (principal).

CONTRACTUAL CAPACITY

The parties who enter into a contract must have the capacity to do so. All persons cannot make a valid contract.

Eligible persons:

A person who is of the age of majority, is of sound mind is not disqualified from contracting by any law, a make a valid contract.

So, the following persons are not competent to contract 1) minor 2) persons of unsound mind 3) other persons, disqualified by law.

MINOR:

According to sec 3 of the Indian Majority Act, 1875, 'A minor is a person, who has not completed 18 years of age'. In the following two situations, he attains majority offer 21 years of age.

i. If there is any guardian, appointed by the court(or).
ii. If the properties of minor are in superintendence of the court.

Minor's agreement: The law regarding minor agreement is as follow

1) An agreement with or by a minor is void andinoperative:

Generally the agreements entered into by a minor are void and the other party cannot enforce the claim in a court of law. A party who has advanced money or obtainer mortgage on the properties of a minor cannot recover the amount and the mortage is void. (Mohiribibi Vs Dharmados Ghose).

In this case, a minor executed a mortage deed for Rs.20,000 but received only 8,000…later, he filed a case to cancel the agreement and the creditor (the money lender) claimed the refund of Rs.8000. Held, the agreement is void and the amount cannot be recovered.

2) Minor can be beneficiary or a promisee or apayee:

In some cases, contracts entered into a minor are voidable and they are enforceable at the option of the minor and not at time option of the other party. Ex., if a person has advanced money to a minor it cannot be recovered and the contract is void. On this contrary, if a minor has advanced any loan to a party, this contract is enforceable at the option of the minor and the other party cannot refuse to repay the amount. Thus the contract is voidable. Ex. M aged 17 agreed to buy a second-hand bike for Rs.5,000 from S. He paid Rs.200 as advance and agreed to pay the balance the next day and collect the bike. When he came with money the next day, S told M that he had changed his mind and offered to return the advance. S cannot avoid the contract though M may, if he likes.

3) Valid contract in the case ofnecessaries:

Some contracts made by the minor are perfectly valid and they can find the minor, if they are for their "necessaries". If a person supplies necessaries to a minor or lends money to the minor to purchase necessary things, or to meet his educational of medical expenses, such an amount can be recovered. Hence, the contracts by minor with minor for necessary goods or necessarily services to mine become valid absolutely. His properties can be held for this purpose, but he is not personally liable for this case.

4) Notification:

Notification means the act of confirming, or make as valid. The minor cannot satisfy his agreement after attaining the agreement of majority. For eg: A minor borrows Rs.5000 from"A" and executes a promissory note in favor of "A". After attaining the age of majority, he executes another promissory note in settlement of the first note. The secondary promissory note is void.

5) Norestitution:

The minor cannot be ordered to make compensation for a benefit obtained under a void agreement. In other words, if he has received only benefit under a void agreement, he need not return back the benefit; he need not give any compensation for it.

6) He can always pleadminority:

If a minor by misrepresenting this age, makes a contract with another person, he cannot be sued.**Eg**: "J" a minor, by fraudulently representing himself to be full age, induced to "L" sends him for the money. Held, the contract was void and "s" was not liable to repay the amount.

Hence the principle of estoppels is not applicable tominor.

7) No specific performance:

Specific performance means the actual carrying out of the contract as agreed. Since an agreement by a minor is void, the court will never direct "specific performance" of such an agreement but a contract entered into by his guardian or his manager of the estates. (Behalf of the minor) can find the minor, if the following conditions are fulfilled.

a. The contract should be within the authority of the guardian ormanager.
b. It should be for the benefits of theminor.

8) Minor as a partner:

Generally a minor cannot become a partner in a partnership firm. But, he may be admitted to the benefits of an existing partnership firm as a partner, with the consent of the entire partner. But, his liability is limited.

9) **The minor can acts as an agent.**

The acts done by the minor as the agent are binding the principal if they are done within the scope of authority given tohim.

10) **The minor cannot be declared asinsolvent**.

a) The partner or guardian, are not capable for agreement. Made by the minor on though the agreement is fornecessaries.
b) The minor is not liable, if he is a surety in a contract ofguarantee.

INCAPACITY OF CONTRACT

Thus incapacity makes contracts in valid, and incapacity may be broadly classified into two:

a) Incapacity arising from status.
b) Incapacity arising from mental deficiency.

Incapacity arising from status:

Person is disqualified to make a valid contract because of this position/status, they are as follows:

I) Foreign Ambassador:

This person enjoys special status. They are competent to enter into a valid contract. But they can be sued only if they submit themselves to the judicious of the court. Further contract gouts permissions are also essentials to suit them.

II) Alienenemy:

An alien is a person who is not a subject of the Republic of India. He may be (i) an alien friend or (ii) an alien enemy

During normal time, trade can be takes place between trades of two different nations, but if war breaks out, the enemy countries is regarded as alien enemy, and no contract can be entered into during the time of war with it. Contracts made before the war may either be suspended or dissolved.

III) Convicts:

Persons who are undergoing imprisonment cannot make a contract during the convictionsperiod.

IV) Insolvent:

Persons who are adjudicated as insolvents or bankrupt cannot there after enter into a contract and all the contracts entered previously by them also comes to anend.

V) Company:

A company cannot enter into a contract which requires physical capacity or physical entry. The contract entered into by a company will be valid only if its contractual capacity permits in objects clause of Memorandum of Association.

VI) Marriedwomen:

Married women are having capacity to make valid contract, they can their husbands for their basic committees. A married woman may sue or be sued in her own name in respect of her separate property.

INCAPACITY ARISING FROM MENTAL DEFICIENCY:

Person who is mentally deficient cannot make a valid contract. The following persons are having mental deficiency and they are disqualified from making contracts.

i) Minor:

Minor is a person who has not obtained the age of majority as per 20 c (3) of the Indian Majority Act 1875. The persons who are below the age of 18 years. A minor is mentally not matured and he is incompetent to make a valid contract.

ii) Idiots:

A person who has completely lost his mental powers and who is incapable of forming a rational judgment is called an idiot. Idiocy is a permanent one. An idiot or a natural food is a

person who has no understanding power. All agreement, other than those for necessaries of life with idiots is absolutelyvoid.

iii) Lunatics:

A person, whose mental powers are due to some mental strain, is called as a lunatic. It is not armament as in the case of idiocy. The lunatic will suffer from intervals of sanity and insanity. In other words, lunatics in some intervals will be of sound mind and the said intervals are called lucid intervals and in some intervals, they will be of unsound mind. They can enter into a contract during the lucid intervals.

Persons of unsound mind:

One of the essential conditions of competency of parties to a contract is that they should be sound mind. According to the contract act, the term soundness refers to.

a) Capacity of understanding the contents of agreement (at the time of making anagreement).
b) Ability to make a national decision regarding the contract at the time of making anagreement.

If a person is capable of both, he suffers from unsound mind. A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract, when he is of sound mind.A person, who is usually of sound mind, but occasionally of unsound mind.Cannot make a contract, when he is of unsound mind.

FREE CONSENT

Meaning of "consent" and "free consent":-

Consent, it means acquiescence or act of assenting to an offer. "Two or more persons are said to consent when they agree upon the same thing in the same sense."(Sec-13).

Free consent, Consent is said to be free when it is not caused by-

1. Coercion as defined in sec, 15,or
2. Undue influence as defined in Sec. 16or
3. Fraud as defined in sec 17 ,or
4. Misrepresentation as defined in sec 18or
5. Mistake, subject to the provision of sec-20,21,22

Coercion

When a person is compelled to enter into a contract by the use of force by the other party or under a threat, "coercion" is said to be employed.

Coercion includes fear, physical compulsion and menace to goods.

Example: - A threatens to kill B if he does not lend Rs. 1000 to C. B agrees to lend the amount to C. The agreement is entered into under coercion.

Undue influence

Sometimes a party is compelled to enter into an agreement against his will as a result of unfair persuasion by the other party. This happens when a special kinds of relationship exists between the parties such that one party is in a position to exercise undue influence over the other.

Difference between coercion and undue influence: -

Coercion	**Undue influence**
The consent is given under the threat of an offence (i.e., committing or threatening to commit an act forbidden by the Indian penal code or detaining or threatening to detain property unlawfully.)	The consent is given by a person who is so situated in relation to another that the other person is in a position to dominate his will. In other words, consent is given under moral influence.
Coercion is mainly of a physical character. It involving mostly use of physical or violent force.	Undue influence is of moral character< It involves use of moral force or mental pressure.
There must be intention of causing anyperson to enter into an agreement.	Here the influencing party uses its positionto obtain an unfair advantage over the otherparty.
It involves a criminal act.	No criminal act is involved.

Misrepresentation and fraud

A representation, when wrongly made, either innocently or intentionally, is a misrepresentation. Misrepresentation may be-

1. An innocent or unintentional misrepresentation,or
2. An intentional, deliberate or willful misrepresentation with intent to deceive or

defraud the other party.

The former is called “misrepresentation” and the latter “fraud”.

MISREPRESENTATION

Misrepresentation is a false statement which the person making it honestly believes to be true or which he does not know to be false. It also includes non-disclosure of a material fact or facts without any intent to deceive the other party.

Example: - A while selling his mare to B, tells him that the mare is thoroughly sound. A genuinely believes the mare to be sound although he has no sufficient ground for the belief. Later on B finds the mare to be unsound. The representation made by A is a misrepresentation.

FRAUD

According to Sec.17”fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance (intentional active or passive acquiescence), or by his agent with intent to deceive or to induce a person to enter into a contract:

1. The suggestion that a fact is true when it is not true and the person making the suggestion do not believe it to betrue.
2. The active concealment of a fact by a person having knowledge or belief of thefact:
3. A promise made without any intention of performingit;
4. Any other act fitted todeceive;
5. Any such act or omission as the law specially declares to befraudulent.

Example: - A sells, by auction, to B a horse which A knows to be unsound. A says nothing to b about horse’s unsoundness. This is not fraud in A.

MISTAKE

Mistake may be defined as erroneous belief about something. It may be a mistake of law or a mistake of fact.

1. Mistake of law of the country: - example: - A and B enter into a contract on the erroneous belief that a particular bet is barred by the Indian Law of Limitation. This contact is notvoidable.
2. Mistake of law of a foreign country. Such a mistake is treated as mistake of fact and the agreement in such a case is void.(Sce-21)

MISTAKE OF FACT

1. BILATERALMISTAKE:

When both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake.

A) Mistake as to the subject–matter:

Where both the parties to an agreement are working under a mistake relating to the subject matter, the agreement is void. Mistake as to the subject-matter covers the following cases:

i. Mistake as to the existence of the subject-matter:-

If both the parties believe the subject matter of the contract to be in existence, which in fact at the time of the contract is non-existent, the contract is void. **Example: -** A agrees to buyfrom B a certain house. It turns out that the house was dead at the time of the bargain, though, neither party was aware of the fact. The agreement is void.

ii. Mistake as to the identity of the subject-matter:-

It usually arises where one party intends to deal in one thing and the other intends to deal in another. **Example: -** W agreed to buy from R cargo of cotton "to arrive ex-peerless from Bombay". There were two ships of that name sailing. From Bombay". There were two ships of that name sailing. From Bombay, one sailing in October and the other in December. W meant the former ship but R meant the later. Held. There was a mutual or a bilateral mistake and there was no contract.

iii. Mistakes as to the quality of thesubject-matter:

If the subject-matter is something essentially different from what the parties thought it to be, the agreement is void. **Example: -** table napkins were sold at an auction by a description "with the crest of Charles I and the authentic property of that monarch". In fact, the napkins were Georgian. Held, the agreement was void as there was a mistake as to the quality of the subject- matter.

iv. Mistake as to the quantity of the subject-matter:-

If both the parties are working under a mistake as to the quantity of the subject-matter, the agreement is void. **Example: -** A silver bar was sold under a mistake as to its weight; There was a difference in value between the weight of the bar as it was and as it was supposed to be. Held, the agreement wasvoid.

v. Mistake as to the title to the subject-matter:-

Example: - a person took a lease of fishery which, unknown to either party, already belonged to him. Held, the lease was void.

vi. Mistake as to the price of thesubject-matter:

Example: - C wrote to W offering to sell certain property for $ 1250. He earlier declines an offer from w to buy the same property for $ 2000. W who knew that this offer of $ 1250 was a mistake for 2250, immediately accepted the offer. Held, W knew perfectly well that the offer was made by mistake hence the contract could not be enforced.

vii. Mistake as to the possibility of performing the contract:-

Consent is nullified if both the parties believe that an agreement is capable of being performed when in fact his is not the case (sec-56, para 1). The agreement, in such a case, is void on the ground of impossibility.

Impossibility maybe—

a. Physical impossibility: -**Example:-** A contract for the hire of a room for witnessing the coronation procession of Edward VII was held to be void because, unknown to the parties, the procession of Edward VII was held to be void because, unknown to the parties, the procession had already been cancelled.

b. Legal impossibility. A contract is void if it provides that something shall be done which cannot, as a matter of law, bedone.

II. UNILATERALMISTAKE:-

When in a contract only one of the parties is mistaken regarding the subject-matter or in expressing or understanding the terms or the legal effect of the agreement, the mistake is a unilateral mistake.

Example: - A buys an article thinking that it is worth Rs.1000 when it is worth only Rs50. A cannot subsequently avoid thecontract.

LAWFUL OBJECT AND CONSIDERATION

If an agreement is to be enforced in a court of law, both consideration and object of the agreement must be lawful. When one of consideration or object is unlawful, the contract is void.

In order to constitute a valid contract, both consideration as well as object must be lawful; otherwise would be void.

According to section 23 “The consideration or object of an agreement is lawful unless it is forbidden by law; or is of such a nature that if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the court regards it as immoral, or opposed to public policy. In each of these cases, the.consideration or object of an agreement is unlawful is void”.

Section 2(d) of the Indian Contract Act defines consideration as when at the desire of the promisor, the promise 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 described a consideration for the promise. Example: A agrees to sell his home to B for Rs.10,00,000. Here B's promise to pay Rs.10,00,000 is the consideration for A's promise to sell the home and A's to sell the home is the consideration for B’s promise to pay Rs.10,00,000.

When Consideration or Object is Unlawful

1. If it is forbidden by law:

Law forbids an act for various reasons. If the consideration or the object of an agreement is doing of such an act which is forbidden by law, the agreement is void. Example: A promises B to drop a prosecution which he has instituted against B for robbery, & B promise to restore the value of the things taken. The agreement is void, as its object is unlawful.

2. If it is of such a nature that, if permitted, it would defeat the provisions of law:

It refers to cases where, there being no express statutory prohibition against a particular type of contract, the nature of the contract is such that it would be against the spirit of a particular law, whether enacted or otherwise. Examples: (a) An agreement between husband and wife to live separately is invalid as being opposed to Hindu Law. (b) An agreement by the debtor not to raise

3. If it is fraudulent:

It refers to contract which are entered into between parties with an object which is fraudulent or with a purpose which will in effect promote fraud.

Examples: (a) A, promises to pay Rs 200 to B, if B would commit fraud on C. B agrees. B's agreeing to defraud is unlawful consideration for A's promise to pay. Hence the agreement is illegal and void.

(b) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

4. If it involves or implies injury to the person or property of another:

If the object of an agreement is to cause injury to the persons or property of another, it is unlawful. Injury means criminal or wrongful harm. An agreement to commit an assault is void.

Examples: (a) An agreement by which a debtor, who borrowed Rs 100, promised to do manual labour without pay for the creditor, so long as the debt was not repaid in full has been held to be void, as it involved injury to the person of the debtor.

(b) An agreement between some persons to purchase shares in a company, and thus by fraud & deceit to induce other persons to believe that there is a bonafide market for the shares, is void.

5. If the court regards it as immoral:

Agreement which are contrary to good morals are illegal and void. If the consideration for the agreement is an act of sexual immorality the agreement is illegal. Examples: An agreement for future marriage, after death of first wife is against good morale.

6. Where the court regards it as opposed to public policy:

If the court regards it as opposed to public policy, the agreement is void. Public policy means the policy of the law at a stated time.

VOID AGREEMENTS

A void agreement is one which is not enforceable by law (Sec. 2g). Such an agreement does not give rise to any legal consequences and is void *abinitio*.

The following agreements have been expressly declared to be void by the Contract Act;

1. Agreements by incompetent parties (Sec. 11)
2. Agreements made under a mutual mistake offact (Sec. 20)
3. Agreements the consideration or object of which is unlawful (Sec. 23)
4. Agreements the consideration or object of which is unlawful inpart (Sec. 24)
5. Agreements made withoutconsideration ((Sec. 25)
6. Agreements is restraint ofmarriage (Sec. 26)

7. Agreements in restraint of trade (Sec. 27)
8. Agreements in restraint of legal proceedings (Sec. 28)
9. Agreements the meaning of which isuncertain (Sec. 29)
10. Agreements by way ofwager (Sec. 30)
11. Agreements contingent on impossibleevents (Sec. 36)
12. Agreements to do impossibleacts (Sec. 56)
13. In case of reciprocal promises to do things legal and also other things illegal, the second set of reciprocal promises is a voidagreement. (Sec. 57)

WAGERING AGREEMENTS OR WAGER

A wager is an agreement between two parties by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party's promise to pay if the event does not happen.Ex.A and B enters into an agreement that A shall pay Rs.100 to B, if it rains on Monday.

Essentials of a wagering agreement

1. **Promise to pay money or money'sworth**

   The wagering agreement must contain a promise to pay money or money's worth.

2. **Uncertainevent**

   The promise must be conditional on an event happening or not happening. A wager generally contemplates a future event, but it may also relate to a past event provided the parties are not aware of its result or the time of its happening.

3. **Each party must stand to win orlose**

   Upon the determination of the contemplated event, each party should stand to win or lose. An agreement is not a wager if either of the parties may win but cannot lose or may lose but cannot win.

4. **No control over theevent**

   Neither party should have control over the happening of the event one way or the other. If one of the parties has the event in his own hands, the transactions lacks an essential ingredient of a wager.

5. **No other interest in theevent**

   Lastly, neither partly should have any interest in the happening or non-happening of the event other than the sum or stake he will win or lose.

The following transactions are, however, not wagers

1. A crossword competition involving a good measure of skill for its successfulsolution.
2. Games ofskill
3. A subscription or contribution or an agreement to subscribe or contribute towards any plate, prize or sum or money of thevalue
4. Share market transactions in which delivery of stocks and shares is intended to be given and taken
5. A contract of insurance.

Difference between Contract of Insurance and Wagering Agreement

Sl. No.	Contract of Insurance	Wagering Agreement
1.	The assured has an insurable interest in the subject matter	There is no such interest
2.	Both the parties are interested inthe protection of the subject-matter	It is only one of the parties who is interested in its protection
3.	Except life insurance, it is a contract of indemnity	The amount is fixed
4.	It is beneficial to the public	It do not serve any useful purpose
5.	It is based on scientific and actuarial calculation of risks.	It is just a gamble

PERFORMANCE OF CONTRACT

Performance of contract takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. Sec 37 lays down that the parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused.

Offer to Perform

Sometimes it so happens that the promiser offers his obligation under the contract at the proper time and place but the promisee does not accept the performance. This known as “attempted performance” or “tender”. Sec. 38 sums up the position in this regard thus: where the promisor has made an offer of performance to the promisee, and the offer has not been

accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Requisites of a valid tender / attempted performance

- It must be unconditional. Ex. D a debtor offers to pay to C, his creditor, the amount due to him on the condition that C sells to him certain shares at cost. This is not a valid tender.
- It must be of the whole quantity contracted for or of the wholeobligation. Ex. D a debtor offers to pay to C, his creditor, the amount due in instalments and tenders the first instalment. The tender is not of the whole amount due and hence it is not a valid tender.
- It must be by a person who is in a position and is willing to perform thepromise.
- It must be made at the proper time andplace. Ex. D owes Rs.1000 C on 1st of August with interest. He offers to pay on 1st July the amount and interest upto 1st July. This is not a valid tender.
- It must be made to the proper person. i.e. to the promisee or his agent.
- It may be made to one of the several jointpromisees
- It must give the reasonable opportunity to the promisee for the inspection ofgoods.

CONTRACTS WHICH NEED NOT BE PERFORMED?

A Contract need not be performed—

1. When its performance becomes impossible(sec-56)
2. When the parties to it agree to substitute a new contract for it or to rescind or alter it(sec-62).
3. When the promise dispenses with or remits, wholly or in part, the performance of the promise made to him extends the time for such performance or accepts any satisfaction for it(sec-63)
4. When the person at whose option it is voidable, rescinds it(sec-64)
5. When the promise neglects or refuses to afford the promisor reasonable facilities for the performance of his promise
6. When it isillegal.

BY WHOM MUST CONTRACT BEPERFORMED

1. Promisorhimself
2. Agent

3. Legalrepresentative
4. Third person
5. Joint person

WHO CAN DEMAND PREFORMANCNCE?

It is only the**promisee** who can demand performance of the promise under a contract. It makes no difference whether the promise is for the benefit of the promisee or for the benefit of any otherperson.**Example:-**A promises B to pay C a sum of Rs. 500. A does not pay the amount to c. C cannot take any action against A. It is only B who can enforce this promise against A.

Death of promisee, In case of death of promise, his legal representatives can demand performance.

DISCHARGE OF CONTRACT

Discharge of contract means termination of the contractual relationship between the parties. A contract is said to be discharged when it ceases to operate, i.e., when the rights and obligations created by it come to an end. A contract may be discharged:

1. Byperformance.
2. By agreement orconsent
3. Byimpossibility of performance
4. By lapse oftime
5. By operation oflaw
6. By breach ofcontract

I. DISCHARGE BY PERFORMANCE

Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed.

a) Actual performance: When both the parties perform their promises, the contract is discharged. Performance should be complete, precise and according to the terms of the agreement, most of the contracts are discharged by performance in thismanner.

b) Attempted performance or **tender.** Tender is not actual performance but is only an offer to perform the obligation, under thecontract. When the promisor offers to perform his obligation but promisee refuses to accept the performance.

II. DISCHARGE BY AGREEMENT ORCONSENT

As it is the agreement of the parties which binds them, so by their further agreement or consent the contract may be terminated. This means a contractual obligation may be discharged by agreement which may be express or implied.

Example: - A sells a car to B on approval with the condition that it should be returned within seven days if it is found wanting in efficient functioning. B may return the car within seven days if it is found wanting. Consent to return the car is given to B at the time of the formation of the contract.

The various cases of discharge of a contract by mutual agreement are dealt within (Secs-62):

a) Novation takes place when a new contract is substituted for an existing one between the same parties, or a contract between two parties is rescinded in consideration of a new contract between thirdparty. **Example: -** A owes money to B under a contract. It is agreed between A, B and C that B shall henceforth accept C as his debtor, instead of A. The old debt of A to B is an end, and a new debt form C to B has beencontracted.

b) Rescission (sec-62): Rescission of a contract takes place when all or some of the terms of the contract are cancelled. It mayoccur

i. By mutual consent of the parties,or
ii. Where one party fails in the performance of hisobligation.

Example: - A promises to supply certain goods to B six months after date. By that time, the goods go out of fashion. A and B may rescind the contract.

c) Alternation (sec-62) Alteration of a contract may take place when one or more of the terms of the contract is/are altered by the mutual consent of the parties to the contract. In such case, the old contract is discharged. **Example: -** A enters into a contract with B for the supply of 100 bales of cotton at his godown No.1 by the first of the next month. A andB may alter the terms of the contract by mutualconsent.

d) Remission (sec-63) Remission means acceptance of a lesser fulfillment of the promise made. **Example :-**A owes B Rs. 5000 A pays to B and B accepts, in satisfaction of the whole debt for Rs.2,000paid at the time and place at which Rs.5000 were payable. The whole debt isdischarged.

e) Waiver: Waiver takes place when the parties to a contract agree that they shall no longer be bound by the contract. Consideration is not necessary forwaiver.

f) Merger: Merger takes place when an inferior right accruing to a party under a contract

merges into a superior right accruing to the same party under the same or some other contract.**Example:**

- P holds a property under a lease. He later buys the property. His rights as a lessee merge into his rights as an owner.

III. DISHARGE BY IMPOSIBILITY OFPERFORMANCE

If an agreement contains an undertaking to perform an impossibility. It is void.According toSec-56, impossibility of performance may fail into either of the following categories.

1. Impossibility existing at the time of agreement, the first paragraphs of sec 56 lays down that "an agreement to do an act impossible in itself ifvoid.
2. Impossibility arising subsequent to the formation of contract. Impossibility which arises subsequent to the formation of a contract is called post-contractual or supervening impossibility.

I) DISCHARGE BY SUPERVENING IMPOSSIBILITY:-

1. **Destruction of subject-matter ofcontract**.

   When the subject-matter of a contract, subject-matter of contract, subsequent to its formation, is destroyed without any fault of the parties to the contract, the contract is discharged. **Example: -** C let a music hall to T for a series of concerts for certain days. The hall was accidentally burnt down before the date of the first concert. Held, the contract was void.A contracted to sell a specified quantity of potatoes to be grown on his farms. The crop largely failed. Held, the contract wasdischarged.

2. **Non-existence or non-occurrence of a particular state of things**. Sometimes, a contract is entered into between two parties on the basis of a continued existence or occurrence of a particular state of things. **Example: -** Aand B contract to marry each other, before the time fixed for the marriage, A goes mad. The contract becomesvoid.

3. **Death or incapacity for personal service: -** Where the performance of a contract depends on the personal skill or qualification of a party, the contract is discharged on the illness or incapacity or death of the party. Example:- An artist undertook to perform at a concert for a certain price. Before she could do so, she was taken seriously ill. Held, she was discharged due toillness.

4. **Change of law or stepping in of a person with statutory authority:-** When

subsequent to the formation of a contract, change of law takes place or the government takes some power under some ordinance or special Act, as for example, the Defence of India Act, So that the performance of the contract becomes impossible, the contract isdischarged.

Example: - D enters into a contract with P on 1st March for the supply of certain imported goods in the month of September of the same year. In June by act of Parliament, the import of such goods is banned. The contract isdischarged.

5. **Out break of war:-**A contract entered into with an alien enemy during is unlawful and therefore impossible ofperformance.**Example: -** A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which, the port is situated. The contract becomes void when war is declared.

Impossibility of performance –not an excuse:-

Impossibility of performance is, as a rule, not and excuse for non-performance." In the following cases, a contract is not discharged on ground of supervening impossibility:

a. Difficulty ofperformance:

A contract is not discharged by the mere fact that it has become more difficult of performance due to some uncontemplated events or delays.

Examples: - A sold a certain quantity of Finland timber to B to be supplied between July and September. Before any timber was supplied, was broke out in the month of August and transport was disorganized so that a could not bring any timber form Finland. Held, the difficulty in getting the timber form Finland did not discharge A fromperformance.

b. Commercial impossibility:-

A contract is not discharged merely because expectation of higher profits is not realized, or the necessary raw material is available at higher profits is not realized, or the necessary raw material is available at a higher price because of the out break of war, or there is a sudden depreciation of currency.

Example: - A promised to send certain goods from Bombay to Antwerpin September, before the foods were sent, war broke out and there was a sharp increase in shipping rates, held, the contract was notdischarged.

c. Impossibility due to failure of a third person: -

Where a contract could not be performed because of the default by a third person on whose work the promisor relied, it is not discharged.

Example: - A, a wholesaler, entered into a contract with B for the sale ofa certain type of cloth to be produced by C, a manufacturer of that cloth. C did not manufacture that cloth. Held, A was liable to B fordamages.

d. Strikes, lock out and civil disturbances.

Events such as these do not discharge a contract unless the parties have specifically agreed in this regard at the time of formation of thecontract.

Example: - A agreed to supply to B certain goods to be procured from Algeria. The goods could not be produced due to riots and civil disturbances in the county, held, there was no excuse for non performance of thecontract.

e. Failure of one of the objects.

When a contract is entered into for several objects, the failure of one of them does not discharge thecontract.

Example: - H & B agreed to let out a boat to H fro viewing a naval review on the occasion of the coronation of Edward VII, and to sail round the fleet. Owing to the king's illness the naval review was abandoned but the fleet was assembled. The boat, therefore, could be used to sail round the fleet. Held the contract was not discharged.

IV. DISCHARGE BY LAPSE OFTIME

The Limitation Act, 1963 lays down that a contract should be performed within a specified period, called period of limitation, if it not performed, and if no action is taken by the promise within the period of limitation, he is deprived of his remedy at law. In other words, we may say that that the contract is terminated.

V. DISCHARGE BY OPERATION OFLAW

A contract may be discharged independently of the wishes of the parties, i.e., by operation of law. This includesdischarge:

By death

By merge

By insolvency

By unauthorized alteration of the terms of a written agreement.

By right and liabilities becoming vested in the same person

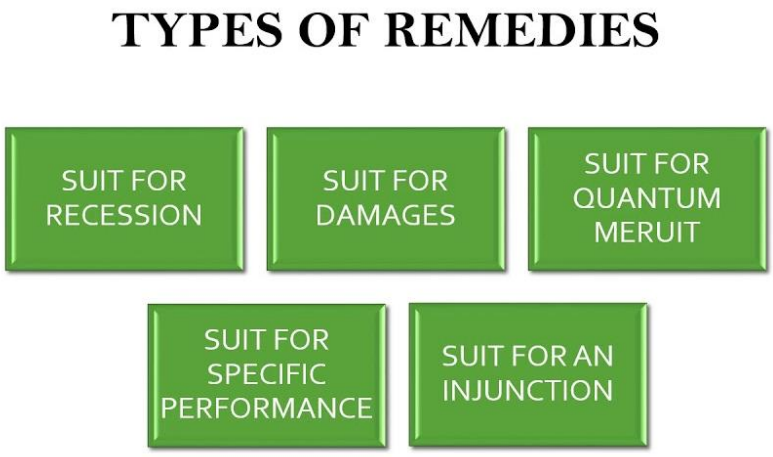
VI. DISCHARGE BY BREACH OFCONTRACT

Breach of contract means a breaking of the obligation which a contract imposes; it occurs when a party to the contract without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. It confers a right of action for damages on the injureparty.Breach of contract may be:-

1. Actual breach of contract,or
2. Anticipatory or constructive breach ofcontract.

REMEDIES FOR BREACH OF CONTRACT

When a contract is broken, the injured party (i.e., the party who is not in breach) has one or more of the following remedies:



1. RESCISSION

When a contract is broken by one party, the other may sue to treat the contract as rescinded and refuse further performance. In such a case, he is absolved of all his obligations under the contract

Example: - A promises B to supply 10 bags of cement on a certain day. B agrees to pay the

price after the receipt of the goods. A does not supply the goods. B is discharged form liability to pay price.

2. DAMAGES

Damages are a monetary compensation allowed to the injured party is the court for the loss or injury suffered by him by the breach of a contract.

a) Damage arising naturally- ordinary damages:-

When a contract has been broken, the injured party can be recovering form the other party such damages as naturally arose in the usual course of things from thebreach.

Example: - A contracts to sell and deliver 50 quintals of Farm wheat to B at Rs. 475 per quintal, the price to be paid at the time of delivery. The price of wheat rise to Rs 500 per quintal and a refuses to sell the wheat. B claim damages at the rate Rs. 23 per quintal.

b) Damages in contemplation of the parties specialdamages;

Damage other than those arising form the breach of contract may be recovered if such damages may reasonable be supposed to have been in the contemplation of both the parties as the breach of the contract. Such damages, known as special damages, cannot be claimed as a matter of right.

Example: - P brought from L some copra cake. He sold it to B who sold it to various dealers, and they in turn sold it to farmers, who used it for feeding cattle. The copra cake was poisonous and the cattle fed on it died. Claimed against L the damages and costs he had to pay to B. Cake were to be used for feeding cattle P could claimcompensation.

c) Vindictive or exemplarydamages:-

Damages for the beach of a contract are given by way of compensation for loss suffered, and not by way of punishment for wrong inflicted. Hence, vindictive or exemplary damages have no place in the law of contract because they are punitive (involving punishment) by nature. Butincaseofbreachofpromisetomarry,anddishonorofachequebyabankerwrongfully when he possesses sufficient funds to the credit of the customer, the court may award exemplary damages.

d) Nominal damages:- Where the injured party has not in fact suffered any loss by reason of the breach of a contract, the damage recoverable by him are nominal, i.e., very small, for example arupee.These damages merely acknowledge that the plaintiff has case and won.

Example: - A firm consisting of four partners employed B for a period of two years. After six

months two partners retired, the business being carried on by the other two. B declined to be employed damages as he had suffered no loss.

e) Damages for loss of reputation: Damages for loss of reputation in case of breach or contract are generally not recoverable. An exception to this rule exists in the case of a banker who wrongfully refuses to honour a customer's cheque. If the customer happens to be a tradesman, he can recover damages in respect of any loss to his trade reputation by thebreach.

f) Damages for inconvenience anddiscomfort: Damage can be recovered for physical inconvenience and discomfort. The general rule in this connection is that the measure of damages is not affected by the motive or the manner of the breach.Example: - A was wrongfully dismissed in a harsh and humiliating manner by G from his employment. Held. A could recover a sum representing his employment. Held, a could recover a sum presenting his wages for the period of notice and the commission which he would have earned during the period; but he could not recover anything for his injured feelings or for the loss sustained from the fact that his dismissal made it more difficult for him to-obtain employment.

g) Mitigation ofdamages: It is the duty of the injured party to take all reasonable steps to mitigate the loss caused by the breach he cannot claim to be compensated by the party in default for loss which he ought reasonable to have avoided that is he cannot claim compensation for loss which is really due not to the breach but due to his own neglect to mitigate the loss after the breach.

h) Difficulty of assessment: - Although damages which are incapable of assessment cannot be recovered, the fact that they are difficult to assess with certainty or precision does not prevent they aggrieved party from recoveringthem,

i) Cost of decree: The aggrieved party is entitled, in addition to damages to get the cost of getting the decree for damages. The cost of suit for damages is in the discretion of thecourt.

3) QUANTUM MERUIT

The phrase quantum merit literally means as much as earned. A right to sue on a quantum merit arises where a contract, partly performed by one party, has become discharged by the breach of contract by the other party. The right is founded not on the original contract which is discharged or is void but on an implied promise by the other party to pay for what has been done.

4) SPECIFICPERFORMACNE

In certain cases of breach of contract, damages are not an adequate remedy. The court may, in such cases, direct the party in breach to carry out his promise according to the terms of the contract. This is a direction by the court for specific performance of the contract at the suit of the party not in breach.

5) INJUNCTION

Were a party is in breach of a negative term of contact (i.e., where he is doing something which he promised not to do), the court may, by issuing an order, restrain him from doing what he promised not to do. Such an order of the Court is known as aninjunction".

Example: - W agreed to sing at L's theatre and, during a certain period to sign nowhere else. Afterwards W made contract with Z to sign at another theatre and refused to perform the contract with L. Held W could be restrained by injunction from singing for Z.

References

1. Goel, P.K., Business Law for Managers, Wiley, 2006.
2. Kapoor, N.D., Elements of Mercantile Law, Sultan Chand & Co. Ltd, 37th Edition, 2015.
3. Shukla, V.N., Constitution of India, Eastern Book Company, 13th Edition, 2017
4. Kuchhal, M.C., Vivek Kuchhal, Business law, Vikas Publication, 7th Edition, 2018.
5. Sheth, T, Business Law, Pearson, 2nd Edition, 2017.

Question Bank

PART A

Sno.	Questions	CO	Blooms Level
1.	"Offer + Acceptance = Contract" – Is it true. Comment on your answer.	CO1	L5
2.	"No Consideration No Contract" – Do you agree this statement.	CO1	L5
3.	State any four essential elements of a Contract.	CO1	L2
4.	List any four types of Contract.	CO1	L2
5.	'Mere silence does not amount to fraud' – Examine.	CO1	L4
6.	Compare and contrast Misrepresentation and Fraud.	CO1	L2

7.	"Minor is liable to pay for the necessaries supplied to him" – Justify this statement.	CO1	L5
8.	Write short note on Coercion and Undue Influence.	CO1	L3
9.	List out the modes in which a contract may be discharged.	CO1	L2
10.	State any four ways in which a Contract may get discharged.	CO1	L2
11.	Explain Quantum Merit.	CO1	L2
12.	Illustrate Remission.	CO1	L2

PART- B

Sno.	**Questions**	**CO**	**Blooms Level**
1.	"An agreement enforceable by law is contract" – Justify this statement.	CO1	L5
2.	Illustrate the various classifications of Contract.	CO1	L3
3.	"All agreements are not contracts but all contracts are agreements" – Do you agree this statement. Explain with suitable examples.	CO1	L5
4.	Illustrate in detail, the legal rules relating to Offer.	CO1	L3
5.	Explain the legal rules relating to Acceptance.	CO1	L2
6.	"No Consideration No Contract" – Evaluate the exceptions to this rule.	CO1	L5
7.	If a consent is not obtained freely, do the parties in the contract are having rights to repudiate? Give your comment.	CO1	L5
8.	Critically examine "whether a minor can enter into a contract".	CO1	L4
9.	Differentiate Coercion and Undue influence.	CO1	L4
10.	Describe in brief about the contractual capacity of the parties to enter in a contract.	CO1	L2
11.	Explain the different modes of discharge of a Contract.	CO1	L2
12.	Describe in detail how the contract is performed.	CO1	L2

13.	Examine the remedies available for an injured party when there is a breach of contract.	CO1	L4

SATHYABAMA
INSTITUTE OF SCIENCE AND TECHNOLOGY
(DEEMED TO BE UNIVERSITY)
Accredited "A" Grade by NAAC | 12B Status by UGC | Approved by AICTE
www.sathyabama.ac.in

SCHOOL OF MANAGEMENT STUDIES

UNIT – II– BUSINESS LAW - SBAA1206

II. INDIAN CONTRACT ACT, 1872: SPECIFIC CONTRACTS

Contract of Indemnity and Guarantee - Contract of Bailment and Pledge - Contract of Agency

---

CONTRACT OF INDEMNITY

A Contract of indemnity is a direct engagement between two parties whereby one promises to save another from harm. A contract of indemnity means, "a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person."

DEFINITION: - As provisions made in **section 124** of the Indian Contract Act-1872 says that, "whenever one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called a Contract of Indemnity."

Ex. A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of Rs.200. This is a contract of indemnity.

A and B goes into a shop. B says to the shopkeeper, "let him (A) have the goods, I will see you paid". This is a contract of indemnity.

ESSENTIAL ELEMENTS:-A contract of indemnity is a species of the general contract. As such it must have all the essential elements of a valid contract. The following are the essentials specific to the Contract of Indemnity:-

1. There must be a loss.
2. The loss must be caused either by the promisor or by any other person.
3. Indemnifier is liable only for the loss.

Thus it is clear that this contract is contingent in nature and is enforceable only when the loss occurs. A contract of indemnity may be express or implied.

RIGHTS OF INDEMNITY HOLDER WHEN SUED

The promisee in a contract of indemnity acting within the scope of his authority is entitled to recover from the promisor so under **Section 125** of the Act defines the rights of an indemnity holder which are as under:-

1. **Right of recovering Damages**: - All the damages that he is compelled to pay in a suit in respect of any matter to which the promise of indemnity applies.
2. **Right of recovering Costs**: - All the costs that he is compelled to pay in such suit if in bringing or defending it he did not contravene the orders of the promisor and has acted as it would have been prudent for him to act in the absence of the contract of indemnity or if the promisor authorised him in bringing or defending the suit.
3. **Right of recovering sums**:- All the sums which he may have paid under the terms of a compromise in any such suite if the compromise was not contrary to the orders of the promisor and was one which would have been prudent for the promisee to make in the absence of the contract of indemnity.

In another case of Mohit Kumar saha v/s New India Assurance Co.-1997 It was held that the indemnifier must pay the full amount of the value of the vehicle lost to theft as given by the Surveyor. Any settlement at the lesser value is arbitrary and unfair and violates art.14 of the constitution.

CONTRACT OF GUARANTEE

The contract of guarantee may be an ordinary or some different type of guarantee which is different from an ordinary guarantee. Guarantee may be either oral or written. Basically it means that a contract to perform the promise or discharge the liability of third person in case of his default and such type of contracts are formed mainly to facilitate borrowing and lending money.

DEFINITION: - "A contract of guarantee is a contract to perform the promise or to discharge the liabilities of a third person in case of his default.

i) The person who gives the guarantee is "Surety".
ii) The person in respect of whose default the guarantee is given is "Principal debtor"
iii) The person to whom the guarantee is given is "Creditor".

Ex. S promises to a shopkeeper C that S will pay for the items being bought by P if P does not pay this is a contract of guarantee. In case if P fails to pay, C can sue S to recover the balance. (**Birkmyr v/s Darnell-1704).**

ESSENTIALS: - The following are the essential elements of Guarantee:-

1. **Existence of Creditor, Surety, and Principal debtor: -** Existence of all the three parties are required.
2. **Concurrence:-** A contract of guarantee requires the concurrence of all the three parties viz. the principal debtor, the creditor and the surety.
3. **Distinct Promise of Surety: -** There must be distinct promise by the surety to be answerable for the liability of the Principal debtor.
4. **Liability must be legally enforceable: -** Only if the liability of the principal debtor is legally enforceable, the surety can be made liable. For example a surety cannot be made liable for a debt barred by Statute of Limitation.
5. **Essentials of a valid contract:-** A contract of guarantee must have all the essential elements of a valid contract. But

   i) All the parties must be capable of entering into a valid contract, though the principal debtor may be a person suffering from incapacity to contract. In such a case, the surety is regarded as the principal debtor and is liable to pay personally even though the principal debtor (ex., a minor) is not liable to pay

   ii) Consideration received by the principal debtor is sufficient for the surety, and it is not necessary that it must necessarily result in some benefit to the surety himself. The consideration in such contract is nothing but anything done or the promise to do something for the benefit of the principal debtor. The section 127 of the Act clarify as under :-

   "Anything done or any promise made for the benefit of principal debtor is sufficient consideration to the surety for giving the guarantee."

   Ex. A agrees to sell to B certain goods if C guarantees for payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver goods to B. This is sufficient consideration for C's promise.
6. **Writing not necessary: -** A guarantee may be either oral or written (sec.126). It may be either express or implied
7. **It should be without misrepresentation or concealment: -** Section 142 of the Act specifies that a guarantee obtained by misrepresenting facts that are material to the agreement is invalid, and section 143 specifies that a guarantee obtained by concealing a material fact is invalid as well.

Ex. 1. A appoints B for collecting bills to account for some of the bills. A asks B to get a guarantor for further employment. C guarantees B's conduct but C is not made aware of B's previous miss-accounting by A. B afterwards defaults. C cannot be held liable.

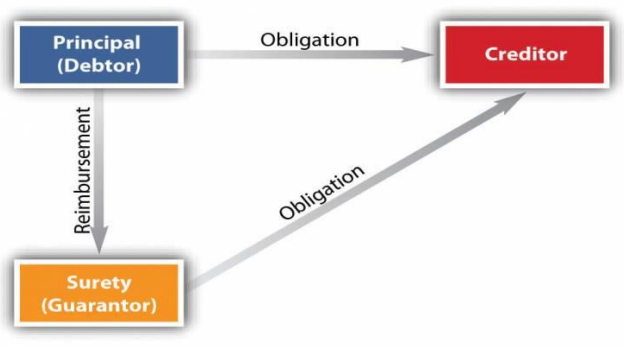
Ex. 2- A promise to sell Iron to B if C guarantees payment. C guarantees payment however, C is not made aware of the fact that A and B had contracted that B will pay Rs.5/- higher that the market price. B defaults. C cannot be held liable.

DIFFERENCE BETWEEN INDEMNITY & GUARANTEE

INDEMNITY	GUARANTEE
1. In indemnity there are two, one who is indemnified and the other indemnifier.	There are three parties, Principal debtor, surety and the Creditor.
2. It consists of only one contract under which indemnifier promises to pay in the event of certain loss.	There are three contracts between surety, principal debtor and creditor.
3. The contract of indemnity is made to protect the promise against some likely loss.	The object of contract of guarantee is the security of the creditor.
4. The liability of the indemnifier in a contract of indemnity is a primary one.	In guarantee the liability of surety is only a secondary, when principal debtor default.

NATURE, RIGHTS AND LIABILITIES OF A SURETY

The surety who is entitled to be reimbursed by the principal debtor for the amount paid by him on his behalf. The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract under **section 128.**



NATURE OF SURETY:- Section 128 surety liability is co-extensive with that of the principal debtor which means that on a default having been made by the principal debtor the creditor can recover from surety the all what he could have recovered from the principal debtor.

Ex. The principal debtor makes a default in the payment of a debt of Rs.10,000/- the Creditor may recover from the surety the sum of Rs.10,000/- plus interest becoming due thereon as well as the amount spent by him in recovering that amount.

LIABILITY OF SURETY:- Section 128 of the Contract Act, it is clear that although, the liability of a surety is co-extensive with that of the principal debtor, he may limit his liability. A guarantee for a part of the entire debt and a guarantee for the entire debt subject to a limit.

Ex. P owes to C Rs.8,000 on a continuing guarantee given by S. S may have given this guarantee in either of

(a) 'I guarantee the payment of the debt of Rs.5,000 by P to C.'

(b) 'I guarantee the payment of any amount lent by C to P subject to a limit of Rs.5,000.'

RIGHTS OF SURETY:-The surety has certain rights against the principal debtor, the creditor and the co-sureties. His right against each one of them are being discussed as under :-

RIGHT AGAINST PRINCIPAL DEBTOR

1. Right of Subrogation

After the payment of the debt to the creditor, the surety is subrogated to the rights of the creditor i.e., he has the same rights as those of the creditors. Therefore, he can sue the principal debtor to exercise those rights. Thus if the surety has performed his promise towards the creditor, all the rights of the principal debtor against the creditor devolve upon him.

2. Right of Indemnity

In every contract of guarantee, there is an implied promise by the principal debtor to indemnify the surety i.e., to compensate the surety. Therefore, upon the payment of debt of the principal debtor, the surety becomes entitled to recover from the principal debtor, all the amount including interest plus costs rightly paid to the creditor under the guarantee. The reason is that the surety is entitled to full indemnification.

3. Right to be Relieved Earlier

A surety can, even before making any payment, compel the debtor to relieve him from liability by paying off the debt. But, before doing so, the debt should be ascertained.

RIGHTS AGAINST CREDITOR

1. Rights in Case of Fidelity Guarantee

In case of fidelity guarantee i.e., guarantee as to good behaviour, honesty, etc., of the principal debtor, the surety can ask the employer to dispense with the services of the employee if the latter is proved to be dishonest.

2. Before the Payment of the Debt Guaranteed

A surety may, after the debt has become due but before he is called upon to pay, require the creditor to sue the principal debtor to recover the debt. But, in such cases, the surety must undertake to indemnify the creditor for any risk, delay or expense resulting there from.

3. Right to Claim Securities

After payment of the debt to the creditor or the performance of the promise of the principal debtor, the surety can recover all the securities which the creditor had with him either before or after the contract of guarantee was entered into. This right is available to the surety whether or not he knows about the existence of such security. He is entitled to all of them.

4. Right of Equities

After paying the amount due to the creditor, the surety is entitled to all equities of the creditor that he had against the debtor as well as any other person with regard to the debt.

5. Right of Set-off

Sometimes, the principal debtor is entitled to certain counter claim or deductions from the loan obtained from the creditor. In such cases, the surety is entitled to the benefit of such counter claim or deductions, if the creditor files a suit against the surety.

RIGHTS AGAINST CO-SURETIES

When two or more persons give a guarantee for the same debt, they are called as co-sureties. All of them are equally liable to the creditor for the payment of the debt to the creditor. The rights of one co-surety against the other co-sureties are as follows:

1. Right to Contribute Equally

If two or more persons are co-sureties for the same debt either jointly or severally, or whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable as between themselves, to pay each, an equal shares of the whole debt, or that part of it which remains unpaid by the principal debtor.

Sometimes, one co-surety discharges the entire obligations. In such cases, he can obtain equal contribution from the other co-sureties.

2. Liability of Co-sureties bound in Different Sums

If the co-sureties are bound in different sums, they are liable to pay equally but not more than the maximum amount guaranteed by each one of them.

Example: A, B and C are sureties for D, enter into three several bonds, each in a different penalty, such as A in the penalty of Rs.5,000, B in that of Rs.10,000, C in that of Rs.20,000, conditioned for D's duly accounting to E. D failed to the extent of Rs.15,000, A, B and C are each liable to pay Rs.5,000 each.

CONTRACT OF BAILMENT

Contract of bailment means delivery of goods i.e. moveable property by one person who is generally the owner thereof, to another person for some purpose. The goods are to be returned to the owner after accomplished the purpose to take further action as per directions of the owner of the goods. **A.T.Trust Ltd., v/s Trippunhura Devaswomi-1954.**

DEFINITION:- Section 148 of the Indian Contract Act, A bailment is the delivery of goods by one person to another for upon a contract that they shall when purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them. In a contract of bailment, the person who delivers the goods called the "**Bailor"** and to whom the goods are delivered is called as "**Bailee"**.

Ex. 1. A delivers a piece of cloth to B, a tailor, to be stitched into a suit. There is a contract of bailment between A and B.

2. A lends a book to B to be returned after the examination. There is a contract of bailment between A and B.

3. A enters into an agreement with B to deliver his bicycle to him on the condition that it shall be redelivered to A after two days. It will be a contract of bailment.

ESSENTIAL ELEMENTSCONTRACT OF BAILMENT:-

1. CONTRACT

The first condition is that there must be a contract between the two parties for the delivery of goods. Such contract may be express or implied, written or oral.

2. DELIVERY OF GOODS

This contract is for the delivery of some movable goods from one person (bailor) to another person (bailee) or to his authorized agent. If the goods are immovable the contract will not be a contract of bailment.

3. CHANGE OF POSSESSION

The possession of goods must be affected by such contract. Mere custody without possession is not a contract of bailment. Ex. A servant who receives certain goods from his master to take to a third party has mere custody of the goods; possession remains with the master and the servant does not become a bailee.

4. PURPOSE OF DELIVERY

The delivery of the goods is for temporary purposes. It may be for safe-custody, repair, carriage or for gratuitous use by the bailee.

5. NUMBER OF PARTIES

There is two parties under such contract e.g., the bailor and bailee. The person delivering the goods is called the bailor and the person to whom the goods are bailed is called the bailee.

6. RIGHT OF OWNERSHIP

In a contract of bailment, the right of ownership remains with an owner (bailor) and is not changed. If the ownership is transferred, the contract will be a contract of sale and is not of bailment.

7. CHANGE OF FORM

If the goods bailed are altered in form by the bailee, such as cloth is converted into a shirt still, the contract is one of bailment.

8. REDELIVERY OF GOODS

Under such contract, the goods are redelivered to the bailor or according to his directions upon the fulfillment of the purpose by the bailee.

9.RIGHT OF REWARD

In a contract of bailment, both the partiesbailor and the bailee can get a reward but it depends on the nature of the transaction.

KINDS OF BAILMENT

1. BAILMENT FOR SAFE-CUSTODY

When the bailor delivers his goods to the bailee only for keeping it. in his safe-custody, the bailment is said to be bailment for safe-custody.

Illustration; A delivers his camera to B to keep it in his safe-custody for six months. This will be the bailment for safe-custody.

2. BAILMENT FOR USE

If the bailor delivers, the goods to the bailee to use it. The bailment will be the bailment for use.

Illustration; A delivers his bicycle to B to use it for two days. This will be the example of bailment for use.

3. BAILMENT FOR REWARD OR NON-GRATUITOUS BAILMENT

Where the bailment is for use or for sate-custody and the bailee or bailor can charge for his services, then it will be the case of bailment for

Illustration: A delivers his bicycle to B to use it for two days for Rs.50 daily. This will be the bailment for a reward because Bailor (A) will get a reward for the use of a bicycle.

4. GRATUITOUS BAILMENT

Where the bailment is for safe-custody or for use and bailee does not charge anything, the bailment is a bailment for gratuitous.

Illustration: A delivers his bicycle to his friend B to use it for two days without reward. It will be the case of gratuitous bailment.

5. BAILMENT FOR LOST GOODS

When a person finds out the lost goods of another has the same responsibilities as the bailee has against the goods the bailor. Such implied bailment will be the case of bailment of lost goods. Under such conditions, the bailee is entitled to retain the goods until he receives compensation for the trouble and expenses he has to bear in order to find but the owner of the lost goods.

Ex. A found the lost horse B and redelivered it to B. It will be the bailment for lost goods.

6. BAILMENT FOR PLEDGE

When any moveable goods are given as security for the debt, to creditor by the debtor, it will be bailment for pledge until the repayment.

Ex. A gets loan from B and hands over his jewels to B as security until the repayment of the loan. It will be the bailment for pledge.

RIGHTS OF THE BAILOR

1. RIGHT TO GET BACK THE GOODS

The bailor has a right to get back the goods bailed by him as soon as the purpose of bailment is accomplished. If the bailee fails to do so, he is entitled to get reasonable compensation from the bailee.

2. RIGHT TO TERMINATE THE CONTRACT

The bailor has a right to terminate the contract of bailment if the bailee does any act with the goods bailed to him. which is inconsistent with the terms of the contract. For example-bailor gives his Tonga to bailee for his personal use, but he uses it for carrying passengers.

3. EXPENSES OF SEPARATION

If the bailee has mixed the goods of bailor with someone other goods not belonging to bailor without the consent of the bailor, the bailor has a right to get from bailee the expenses which he has to bear for the separation of his goods from others.

4. COMPENSATION FOR GOODS

If the bailee has mixed the goods of the bailor with someone other goods not belonging to bailor without the consent of the bailor and bailors goods cannot be separated from the other goods, the bailor has a right to get reasonable compensation from bailee tor his goods.

5. COMPENSATION FOR UNAUTHORISED USE

If the bailee make's any use of the goods bailed, which is not in accordance to the conditions of the bailment, the bailor has a right to get Compensation from the bailee for any damage arising to the goods from or during such unauthorized use of the goods.

6. COMPENSATION FOR DELAY IN TIME

According to The Contract Act, the bailee is responsible to return, deliver or to tender the goods to the bailor at a proper time. If he fails to do the bailor has a right to get compensation from bailee for any loss, destruction or deterioration of the goods due to such delay in time.

7. RIGHT TO SHARE PROFIT

The bailor has a right to share with bailee any profit earned from the goods bailed if it is so provided by the contract.

DUTIES OF THE BAILOR

1. TO DISCLOSE FAULTS

The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults Sec. 150.

Ex. A lends a horse, which he knows to be vicious to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

2. TO REPAY NECESSARY EXPENSES

Where under the contract of bailment, the goods have been carried by the bailee or he has done some work upon them for the bailor and the bailee has received no remuneration, the bailor must repay to the bailee necessary expenses incurred by him for the purpose of bailment.

Ex. A is a friend of B and repairs B's television set free of cost. On this repair, he bears Rs. 500 actual Expenses due to a replacement of parts. B is bound by law to pay Rs. 500, the actual cost of repair to A.

3. TO REPAY EXTRA-ORDINARY EXPENSES

When the contract of bailment is for reward but bailee does some work for the benefits of the bailor and bears extraordinary expenses, the bailor is bound to repay these extraordinary expenses in excess of the original reward.

Ex. A keeps his bicycle for safe custody with B for reward the bicycle gets punctured without the negligence of B and B repairs it. Now A is bound to pay these repair expenses to B in excess of the original amount.

4. TO INDEMNIFY BAILEE

The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give direction respecting.

Ex. A gives B's car for use to C without the permission of B. Later on, B gets compensation from C. Now C' has legal right to be indemnified by A.

RIGHTS OF BAILEE

1. TO RECOVER DAMAGES

The bailee is entitled to recover all the damages and losses suffered by the bailee due to the defects in the goods bailed to him with the knowledge of the bailor.

2. RECOVERY OF EXPENSES

The bailee is also entitled to recover all the expenses incurred for the purpose of bailment and for providing services to the bailor. Ex. A leaves his horse with the neighbour for safe custody for a week. B is entitled to recover the expenses incurred by him in feeding the horse.

3. RECOVERY OF COMPENSATION

The bailee can also recover compensation from the bailor for any loss caused to him due to any defect in the bailor's title.

4. RIGHT OF ACTION AGAINST THE THIRD PARTY

The bailee has a right to take legal action as an owner of the goods, against the third party who wrongfully deprives the bailee of the use of goods bailed or does them any injury. The compensation received from such claims must be dealt between the bailor and bailee in accordance with their respective interests.

5. RIGHT OF LIEN

When the bailee has rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them. Sec 170.

DUTIES AND LIABILITIES OF THE BAILEE

1. TO TAKE CARE OF GOODS

According to section 151, the bailee is bound to take as much care of the goods bailed to him as a common person takes off his own goods.

2. EXPENSES OF SEPARATION

If the bailee without the consent of the bailor mixes the goods of the bailor with his own goods, and goods can be separated or divided, the bailee is bound to bear the expenses of separation or division, and any damage arising from the mixture. Sec 156.

3. UNAUTHORISED USE OF GOODS

If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them. Sec 154.

4. INCONSISTENT ACT

A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard, to the goods bailee inconsistent with the conditions of the bailment. Sec 153.

5. COMPENSATION

If the bailee without the consent of the bailor mixes the goods of the bailor with his own goods in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods. Sec 157.

6. RETURN OF GOODS

It is the duty of the bailee to return or deliver, according to the bailor's directions the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished; Sec. 160.

7. RETURN OF GOODS AT PROPER TIME

The bailee is responsible to return, deliver or tender the goods to the bailor at a proper time. If he fails to do so, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. Sec 161.

8. RETURN OF PROFIT

In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed Sec 163.

POSITION OF FINDER OF GOODS

A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee as provided **in sec.71**. Since the position of the finder of goods is that of a bailee. He is supposed to take the same amount of care with regard to the goods as is expected of a bailee under **section 151**. He is also subject to all duties of a bailee including a duty to return the goods after the true owner is found.

Section 168 and 169 confer certain rights on the finder of goods which are as under:

1. May sue for specific reward offered: The finder of goods has no right to sue the owner for compensation or trouble and expenses voluntarily incurred by him to preserve the goods, but he may retain the goods until he receives such compensation and a specific reward offered by the owner for return of the goods. Refer sec. 168 of the Act.
2. If true owner is diligence not found or he refuses to pay the lawful charges of the finder of the goods, the finder may sell it on the following conditions:-

   i) When the thing is in danger of perishing or losing part of its value.

   ii)When the lawful charges of the finder, in respect of the found goods amount to two-third of its value.

   iii)Right of Lien: He can retain the Lien on the found goods until his expenses on find goods are paid.

   iv) Right to sell the goods found:- Finder of the goods has the right to sell the goods found by him under certain circumstances provided in section 169 of the act with a reasonable notice mentioning the intention to sale the goods found.

TERMINATION OF BAILMENT

1. ACCOMPLISHMENT OF PURPOSE

When the purpose for which goods were bailed" has been accomplished, the contract of bailment is terminated and goods are returned to the bailor.

2.EXPIRY OF TIME

When the goods are bailed for a fixed time, the contract of bailment is terminated at the expiry of the time fixed.

3. DEATH OF THE PARTY

A gratuitous bailment is terminated by the death either of the bailor Sec. 162.

4. BAILEE'S INCONSISTENT ACT

A contract of bailment 'is voidable (terminated) at the option of the bailee does any act with regard to the goods bailed' with the conditions of the bailment.

CONTRACT OF PLEDGE

Section 172 of the Act, pledge is a bailment the delivery of the goods from the 'pawnor' to the 'pawnee' which is essential. There must be delivery of the goods i.e. the transfer of possession from one person to another. The delivery however, be either actual or constructive. Mere agreement to transfer of possession in future is not enough to constitute a Pledge.

The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called "pawnee".

ESSENTIALS OF A VALID CONTRACT OF PLEDGE (SEC.172)

Contract: There must be a contract. The contract may be expressed or implied.

Goods: Pledge can be made of goods only.

Delivery: There must be delivery of goods by one person to another person.

Purpose of delivery:

- The goods must be delivered for some purpose.
- The purpose must be to deliver the goods as security for
    - **(a)** payment of a debt; or
    - **(b)** performance of a promise.

Return of goods:

- The delivery of goods must be conditional
- The condition shall be that the goods shall be –
    - – returned (either in original form or in altered form); or
    - – Disposed of according to the directions of the pawnor when the purpose is accomplished.

RIGHTS OF PAWNEE (SEC.173 AND 176)

1) Right of Retainer [Sec.173]:

Pawnee may retain the goods pledged for –

- **(a)** payment of the debt or the performance of promise,
- **(b)** any interest due on the debt; and
- **(c)** all necessary expenses incurred by him with respect to possession or for preservation of goods pledged.

2) Retainer for subsequent advances [Sec.174]

- **(a)** Where the Pawnee lends money to the Pawnor subsequently, after the date of pledge, it shall be presumed that the he has a right of retainer over the goods already pledged in respect of the subsequent lending also.
- **(b)** This presumption can be made invalid only by an expenses provision to that effect.

3) Reimbursement of Expenses [Sec.175]:

Where the Pawnee incurs extraordinary expenses to preserve the goods pledged with him, he is entitled to receive such amount from the Pawnor.

4) Rights in case of default by Pawnor [Sec.176]

- **(a) Suit:** Pawnee may institute a suit against Pawnor when there is a default in payment of debt or performance of promise at the stipulated time.
- **(b) Retention / Sale of goods:** Pawnee may – (a) retain the goods pledged as collateral security, or (b) sell the goods pledged by giving a reasonable notice to the Pawnor.
- **(c) Surplus / Deficit on Sale :**When there is a surplus on sale, Pawnee shall pay the excess to the Pawnor. In case of deficit, Pawnor shall be liable for the balance amount.
- **(d) No Notice:** Where the Pawnee does not give a reasonable notice to the Pawnor, the sale is valid, but Pawnee is liable to pay damages to Pawnor.

5) Right against true owner of goods [Sec.178A]

- **(a)** Where the Pawnor has acquired possession of pledged goods, under a voidable contract u/s 19 or 19A but contract has not been rescinded at the time of pledge, the Pawnee acquires a good title to the goods, against the true owner.
- **(b)** The title of Pawnee is good only where – (a) he had no notice of the Pawnor's defect in title and (b) he acts in good faith.

Reasonable notice u/s 176 means that a notice of intended sale of the security by the Creditor within a certain date, so as to afford an opportunity to the Debtor to pay the amount within the time mentioned in the notice. Notice of sale is essential and a clause in the agreement excluding the requirement of Notice is inconsistent with the Act & is void and unenforceable.

RIGHTS OF A PAWNOR (SEC.177)

1) Redeem the goods pledged

Meaning of redemption: Right to recover back the goods by making payment of the debt or performance of promise.

Time for redemption: Where time of redemption is fixed, the pawnor may exercise redemption:

- **(a)** within the time so fixed; or
- **(b)** even after expiry of time so fixed, provided –
    - the pawnee has not sold the good; and
    - the pawnor pays the pawnee all expenses arising on account of his default.

2) Enforce pawnee's duties: The pawnor has the right to enforce the duties of pawnee, if the pawnee fails to fulfill his duties.

3) Receive increase in goods: The pawnor has the right to recover from pawnee any increase in goods pledged.

4) Right to receive notice of sales: In case of default by the pawnor to pay the debt or perform his promise, the pawnee has the right to sell the goods, after giving a reasonable notice to the pawnor. If the pawnee fails to give notice, the pawnor has the right to recover the loss incurred by him.

DUTIES OF A PAWNOR (SEC.175)

Pay the debt: The pawnor is liable to pay the debt or perform his promise as the case may be.

Pay deficit on sale: If the pawnee sells the goods due to default by the pawnor, the pawnor must pay the deficit.

Pay extra – ordinary expenses: The pawnor is liable to pay to the pawnee any extraordinary expenses incurred by the pawnee for preservation of goods.

Disclose faults in goods: The pawnor is liable to disclose all the faults which

- **(a)** are material for use of the goods; or
- **(b)** may put the pawnee to extraordinary risks.

Indemnify the pawnee: If loss is caused to the pawnee due to defect in pawnor's title to the goods, the pawnor must indemnify the pawnee.

DUTIES OF A PAWNEE

1) Not to use the goods: The pawnee has no right to use the goods. However, he may use the goods, if he has been so authorised by the pawnor.

2) Return the goods: The pawnee must return the goods if the pawnor pays the debt or performs his promise.

3) Take reasonable care: The pawnee must take such care of goods pledged as a man of ordinary prudence would take care of his own goods.

4) Not to mix goods: The pawnee must not mix his own goods with the goods pledged.

5) Return increase in goods: The pawnee must return to the pawnor any accretion to the goods pledged with him.

DIFFERENCE BETWEEN PLEDGE & BAILMENT

PLEDGE	BAILMENT
• Pledge is bailment of goods for a specific purpose, i.e. to provide a security for a loan or fulfillment of an obligation. • Pledge is bailment of goods as security for the payment of debt or for the performance of a promise. • Moveable property is subject-matter of pledge under the contract Act.	• Bailment may be for purpose other than by way of providing security for a loan or fulfillment of an obligation. It may be for purpose like repairs, safe custody, etc. • Bailment is a delivery of goods by one person to another for some purpose upon a contract. • In the contract of bailment after the accomplishing of the purpose the goods are

• Pawnee, i.e. Pledgee has a right of sale of goods pledged on default of Pawnor. He can do so by giving a notice to the pawnor. • Pledgee has no right of using goods pledged.	to be returned or otherwise disposed of according to the directions of the Bailor. • There is no right of sale to the Bailee. Bailee may either – (a) retain goods, or (b) sue the Bailor for non – payment of his dues. • Bailee can use the goods bailed as per terms of contract.

CONTRACT OF AGENCY

An agent is a person employed to do any act for another or to represent another in dealing with third parties. The person for whom such act is done or who is so represented is called the principal. Where one person mere gives advice to another in matter of business agency does not arise because of such advice only does not create an Agency. The following are the various ways in which a relationship of agency is created:-

TYPES OF AN AGENCY CONTRACT

1. By Express Agreement

A contract of agency can be made orally or in writing (Se.186). Example of a written contract of agency is the Power of Attorney that gives a right to an agency to act on behalf of his principal in accordance with the terms and conditions therein.

A power of attorney can be general or giving many powers to the agent or some special powers, giving authority to the agent for transacting a single act.

2. By Implied Agreement

Implied agency arises from the conduct, the situation or relationship of parties. For ex. Arun and Prabhu are brothers. Arun lies in Delhi while Prabhu lies in Meerut. Arun with the knowledge of Prabhu leases Prabhu's lands in Delhi. Arun realizes the rent and remits it to Prabhu. Arun is the agent of Prabhu, though not expressly appointed as such. Implied agency includes:

a. Agency by Estoppel (Section 237)

The Doctrine of Estoppel may be stated as where a person by his conduct, or by words spoken or to act on that belief so as to alter his previous position, he is precluded from denying subsequently the fact of that state of affairs. For ex. A (Agent) tells T (Third party) within the

hearing of P (Principal) that he (A) is P's agent. P does not object to this statement of A. Later T supplies certain goods to A, who pretends to act as an agent of P. P is liable to pay the price to T.

b. Wife as Agent

Where a husband and wife are living together, we presume that the wife has her husband's authority to pledge his credit for the purchase of necessaries of life suitable to their standard of living. But the husband will not be liable if he shows that:

(i) he had expressly warned the tradesman not to supply goods on credit to his wife; or

(ii) he had expressly forbidden the wife to use his credit; or

(iii) he already sufficiently supplies his wife with the articles in question; or

(iv) he supplies his wife with a sufficient allowance.

Where the wife lives apart: Wife who is deserted by her husband for no fault of her, has authority to pledge her husband's credit for necessaries. The husband cannot escape liability by telling his wife not to pledge his credit nor even by telling the tradesman not to supply necessaries on credit.

c. Agency of Necessity (Sections 188 and 189):

In certain circumstances, a person who has been entrusted with another's property may have to incur unauthorized expenses to protect or preserve it. This is called an agency of necessity.

For example, A sent a horse by railway. On its arrival at the destination, there was no one to receive it. The railway company, is bound to take reasonable steps to keep the horse alive, was an agent of the necessity of A.

3. Agency by Ratification (Sections 169-200):

A person may act as an agent on behalf of another without his knowledge or consent, then the principal is not bound by the contract with the agent in respect of such authority. But the principal can ratify the agent's transaction and accept liability. In this way, an agency by ratification arises. For ex. A may act as P's agent though he has no prior authority from P. In such a case P may subsequently either accept the act of A or reject it. If he accepts the act of A, done without his consent, he is said to have ratified that act and it places the parties in exactly the same position in which they would have been if 'A' had P's authority at the time he made the contract.

This is ex post facto agency— agency arising after the event. By this ratification, the contract is binding on principal as if the agent had been authorized before. Ratification will have an effect on the original contract and so the agency will have effect from the original contract and not on ratification.

4. Agency by operation of law

Sometimes an agency arises by operation of law. For ex. (i) when a company is formed, its promoters are its agents by operation of law, (ii) A partner is the agent of the firm for the purpose of the business of the firm, and the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. In all these cases, agency is implied by the operation of law.

WHO MAY EMPLOY AS AN AGENT:- No person can employ an agent if he does not possess capacity to contract. So a minor or person of unsound mind cannot become the agent under **section 183** of the Indian Contract Act.

WHO MAY BE AN AGENT:- According to section 184 of the Act any person can be appointed as an agent but a person who is not of age of majority and of sound mind cannot be made personally liable for the act done on behalf of the principal. Minor can create contractual relation but a minor agent cannot be made personally liable to the principal for the misconduct like an adult agent.

CONSIDERATION: No consideration is required for the creation of an Agency under section 185 of the Act.

CLASSIFICATION OF AGENTS:-On the basis of provisions available in the Contract Act the following are kinds of Agent in the business of Agency:-

1. **Del-Credere Agent**:-A del credere agent is one who, in consideration of an extra commission, guarantees his principal that the persons with whom he enters into contract on behalf of the principal, shall perform their obligations. He occupies the position of both a guarantor and an agent.
2. **COMMISSION AGENT**:- A commission agent is person who purchases and sells goods in the market on behalf of his employer on the best possible terms and who gets commission for his labor.

3. **FACTOR**:-A factor is a mercantile agent entrusted with the possession of goods for the purpose of selling them. He is entitled to sell the goods in his own name. A factor has a right to retain the goods for a general balance of accounts.
4. **BROKER**:-A broker is an agent who is employed to buy or sell goods on behalf of another. He is employed primarily to bring a contractual relation between the principal and the third parties. He is not entrusted with the possession of the goods. He merely brings two parties together and if the deal is materialized he becomes entitled to the commission.
5. **CO-AGENT**:- Where several persons are expressly authorized with no stipulation that anyone or more of them shall be authorized to act in name of the whole body. They have a joint authority and they are called co-Agents.
6. **Sub-Agent**:- The sub-agents are usually appointed by the original Agent in the business of Agency. He works under the control of original Agent.
7. **BANKER**

   The relationship between the banker and the customer is that of debtor and creditor. But there is a super-added obligation on the part of the banker to pay when called upon to do so by the draft or order (in the form of a cheque) of the customer. To this extent, a banker is the agent of his customer.
8. **NON-MERCANTILE AGENTS**

   These include attorneys, solicitors, insurance agents, clearing and forwarding agents and wife, etc.
9. **SPECIAL AGENT**

   A special agent is one who is appointed to perform a particular act or to represent his principal in some particular transaction, for ex. an agent is employed to sell a house.
10. **GENERAL AGENT**

    A general agent is one who has authority to do all acts connected with a particular trade, business or employment, for ex. the manager of a firm has an implied authority to bind his principal by doing anything necessary for carrying on the business of the firm.
11. **UNIVERSAL AGENT**

    A universal agent is one whose authority to act for the principal is unlimited. He has authority to act for the principal is unlimited. He has authority to bind his principal by any act which he does, provided the act (i) is legal, and is agreeable to the law of the land.

RIGHTS OF AN AGENT

1. **Right to remuneration (Sec.219)**– an agent is entitled to get an agreed remuneration as per the contract. If nothing is mentioned in the contract about remuneration, then he is entitled to a reasonable remuneration. But an agent is not entitled for any remuneration if he is guilty of misconduct in the business of agency (Sec.220).

2. **Right of retainer (Sec.217)**– an agent has the right to hold his principal's money till the time his claims, if any, of remuneration or advances are made or expenses occurred during his ordinary course of business as agency are paid.
3. **Right of lien (Sec.221)** – an agent has the right to hold back or retain goods or other property of the principal received by him, till the time his dues or other payments are made.
4. **Right to indemnity (Sec.222)** – an agent has the right to indemnity extending to all expenses and losses incurred while conducting his course of business as agency.For ex. B, at Singapure, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A informs him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.
5. **Right to compensation (Sec.225)**– an agent has the right to be compensated for any injury suffered by him due to the negligence of the principal or lack of skill. For ex. A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make compensation to B.
6. **Right of stoppage in transit –** where the agent has bought goods for his principal by incurring a personal liability, he has a right of stoppage in transit against the principal, in respect of the money he has paid or is liable to pay. This right of the agent is similar to that of the unpaid seller.

DUTIES OF AN AGENT

1) Agent's duty in conducting principal's business (Sec 211):

An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it. For ex. B, a broker in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

2) Skill and diligence required from agent (Sec 212):

An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

For ex. A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual inquiries as to the solvency of B. B at the time of such sale is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

3) Duty to render proper accounts (Sec 213):

An agent is bound to render proper accounts to his principal on demand.

4) Duty to communicate with principal in case of difficulty (Sec 214):

It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

5) Not to deal on his own Account (Sec. 215):

If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the

case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

For ex. A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

6) Not to make Secret Profits (Sec 216):

Section 216 of the Indian Contract Act,1872 reads as - "If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction." An Agent, without the knowledge of his principal, should not deal in the business of agency on his own to make secret profit.For ex. A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

7) Duty to pay sums received for principal (Sec 218):

An agent is bound to pay to his principal all sums received on his account.

8) Not to Disclose Secret:

It is duty of an agent to maintain secrecy of the business of agency and should not reveal the confidential matters.

9) Protect and Preserve the interests of the Principal in case of death or insolvency(Sec 209):

When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

10) Not to delegate authority (Sec 190):

An agent must not, depute another person to do what he has himself undertaken to do.

AUTHORITY OF AGENCY

An agent who acts within the scope of authority conferred by his or her principal binds the principal in the obligations he or she creates against third parties. There are essentially three

kinds of authority recognized in the law: actual authority (express or implied), apparent authority, and ratified authority.

1. Actual authority

Actual authority can be of two kinds. Either the principal may have expressly conferred authority on the agent, or authority may be implied.

i) Express actual authority

Express actual authority means an agent has been expressly told he or she may act on behalf of a principal.

ii) Implied actual authority

Implied actual authority, also called "usual authority", is authority an agent has by virtue of being reasonably necessary to carry out his express authority. As such, it can be inferred by virtue of a position held by an agent. For example, partners have authority to bind the other partners in the firm, their liability being joint and several, and in a corporation, all executives and senior employees with decision-making authority by virtue of their position have authority to bind the corporation. Other forms of implied actual authority include customary authority. This is where customs of a trade imply the agent to have certain powers. In wool buying industries it is customary for traders to purchase in their own names.Also incidental authority, where an agent is supposed to have any authority to complete other tasks which are necessary and incidental to completing the express actual authority. This must be no more than necessary.

2. Apparent or ostensible authority

Apparent authority exists where the principal's words or conduct would lead a reasonable person in the third party's position to believe that the agent was authorized to act, even if the principal and the purported agent had never discussed such a relationship. For example, where one person appoints a person to a position which carries with it agency-like powers, those who know of the appointment are entitled to assume that there is apparent authority to do the things ordinarily entrusted to one occupying such a position. If a principal creates the impression that an agent is authorized but there is no actual authority, third parties are protected so long as they have acted reasonably. This is sometimes termed "agency by estoppel" or the "doctrine of holding out", where the principal will be estopped from denying the grant of authority if third parties have changed their positions to their detriment in reliance on the representations made.

- Rama Corporation Ltd v Proved Tin and General Investments Ltd [1952] 2 QB 147, Slade J, "Ostensible or apparent authority... is merely a form of estoppel, indeed, it has been termed agency by estoppel and you cannot call in aid an estoppel unless you have three ingredients: (i) a representation, (ii) reliance on the representation, and (iii) an alteration of your position resulting from such reliance."
- Case. A leading case on this subject is of Lloyds v/s GraceSmith in which it was held that a principal is liable for the fraud of his agent within the scope of his authority whether the fraud is committed for the benefit of the Principal or for the benefit of Agent.

PRINCIPALS LIABILITIES TO THIRD PARTIES FOR THE ACT OF THE AGENT

Rights and Liabilities of Principal and Agent in relation to Third Parties

1. acting for a named principal,
2. acting for an unnamed principal,
3. acting for an undisclosed principal.

I. Agent Acting for a Named Principal

The rights and liabilities of a named principal for the acts of his agent may be discussed as below:

1. Acts of an Agent within the Scope of his Authority

If an act is carried on by an agent within his authority, his acts are binding on the principal. However, the act done should be lawful.

Example: **A** authorized his agent, **B**, to collect money on his behalf. **B** received from **C** a sum of money due to **A**. This receipt of money is binding on **A**, and **C** is discharged from his obligation to pay this amount to **A**.

2. Acts of an Agent Exceeding his Authority

It can be discussed under two heads as shown below:

1. **Where the work can be separated** – Where an agent exceeds his agency to do the work of the principal, the principal is bound by that part of the work which is within his authority if it can be separated from the part of the work which is beyond his authority

Example: **A**, owner of a ship and cargo, authorizes **B** to procure an insurance policy for Rs.4,000 on the ship. **B** procures a policy for Rs.4,000 on the ship and another for Rs.6,000 on the cargo. **A** is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

2. **Where the work cannot be separated** – When an agent does more than what he is authorized to do, and such act cannot be separated from that which is within his authority, the principal is not bound by the transaction. He is in such a case entitled to repudiate the whole transaction. So if the agent does something in excess of his powers, the transaction is not binding on the principal.

Example: **A** authorized **B**, an agent to buy 500 sheeps. But **B** purchased 500 sheeps and 200 lambs, for a sum of Rs.6,000. In this case, the principal may repudiate the whole transaction.

3. Notice Given to Agent

The principal is bound by the notice given to the agent in the course of business. Thus, the knowledge of the agent is the knowledge of the principal.

However, if the knowledge is not acquired by the agent in the course of his employment, it cannot be imputed to the principal. Further, if the agent had committed a fraud on the principal, the rule of this section will not apply.

Example: **X** engaged **Y's** agent to insure him against loss of eye-sight for $500 in case of total loss of eye-sight and $250 in case of loss of only one eye. At the time of the insurance, it appeared that **X** was in fact a one-eyed man. Held, the knowledge of the agent that **X** was one-eyed man should be attributed to the company and that **X** could recover $500 when he lost the other eye.

4. Liability by Estoppel

The principal is liable for the unauthorized acts of the agent, if the principal has created an impression on the third party by his conduct, that the agent has the authority to do such acts.

Example: **A**, an owner of a house held out that **B**, the auctioneer had authority to sell the house. **B** sold the house by auction to a third party for an amount less than the amount authorized by **A**. It was held that the purchaser is not affected by **A's** instructions to the auctioneer not to sell below a certain price.

5. Liability for Misrepresentation or Fraud

The principal is liable for the misrepresentation or fraud committed by his agent while acting in the course of his business. It is immaterial whether the misrepresentation or fraud has been committed for the benefit of the principal or of the agent himself.

Example: **A** offered to buy a residential flats consisting of number of flats in it and enquired **C**, the property manager of **B**, whether all the tenants were paying their rents regularly. **C** informed **A** that the tenants were paying rents regularly with immaterial exceptions. This statement turned out to be false. **B** was held liable for fraud because his agent (property manager) who knew the real facts had made a false statement.

II. Agent Acting for an Unnamed Principal

When an agent contracts, as an agent for a principal but does not disclose his name, the principal is liable for the contract of the agent. But the unnamed principal should be in existence at the time of the contract and the acts must be within the scope of agent's authority.

Example: **A** appointed **B** as his agent to purchase some goods. **B** entered into an agreement with **C** for purchasing those goods. **B** signed the agreement as a broker "to my principal" but did not disclose the name of the principal. Here, **B** is not personally liable because he contracted in the capacity of an agent.

However, the agent is personally liable if he declines to disclose the identity of the principal when asked by the third parties.

III. Agent Acting for an Undisclosed Principal

In case of an agent acting for an undisclosed principal, the mutual rights and liabilities of the agent, principal and the third party are as follows:

1. Rights and Liabilities of Agent

Here agent contracts in his own name. So he is bound by the contract. He is personally liable to the third party also. On such contracts, he can sue and be sued in his own name because in the eyes of law he is the real contracting party. In such cases, the principal and the agent have their respective rights against each other.

2. Rights and Liabilities of Third Party

If the third party has discovered that there is a principal, he may file a suit against the principal, or his agent or both. In such a case, the third party must allow the principal, the benefit of all payments received by him from the agent.

Example: **A** sold 100 bales of cotton to **B** on credit. Afterwards, **A** discovered that **B** was acting as an agent of **C**. In this case, **A** may sue either **B** or **C**, or both for the performance of the contract.

3. Rights and Liabilities of Principal

The principal has the right to intervene and require the performance of the contract from the third party. In such cases, the other party may sue either the principal or the agent or both. The principal

if he likes may also require the performance of the contract from the other party. But in such a case, he should allow, the benefit of all payments made by the third party to the agent, to the third party.

Example: **A** contracted with **B**, a shopkeeper, to purchase furniture. **A** advanced a part payment of the price to **B**. Afterwards, **A** discovered that **B** is the agent of **C**. In this case, **C** may ask **A** to perform the contract. But he must account for the advance money received by his agent **B**.

TERMINATION OF AGENCY

Termination of agency means putting end to the legal relationship between principal and agent. Section 201 to 210 of the Indian Contract Act 1872 lay down the provision relating to the termination of Agency. The following may the reasons which can be responsible for the termination of the Agency:

1) By the act of the parties -

i) By agreement - The Contract of Agency can be terminated at any time by mutual agreement between the principal and agent

ii) By revocation of the principal (Sec. 201) - The Principal revoke agency at any time by giving notice to the agent

iii) By Renunciation or revocation of an agent (Sec 206) - Renunciation which means withdrawing from responsibility as Agent. Like Principal, Agent can also renounce the agency. The agent must give to his Principal reasonable notice of renunciation. Otherwise, he will be liable to make good for the damage caused to the principal for want of such notice.

2) By operation of law -

i) By the performance or completion of agency (Sec. 201) - Agency can become to an end after the completion of work for which the agency is created.

ii) By expiry of the time - Agency can also be terminated by the expiry of time. if the agency is created for the specific period, it is terminated after the expiry of the time.

iii) Death or insanity of principal or agent (Sec. 209) - An agent, duty to terminate the contract of agency on the death of the principal. In other words, Agency comes to an end on the death or insanity of the principal or agent.

iv) Insolvency of principal (Sec 201) – An insolvent or bankrupt is a person who is unable to run the business due to Excess of liabilities over assets. In this way, if the principal becomes an insolvent agency can be terminated.

v) Destruction of the subject matter - If this subject matter of the agency is destroyed agency comes to an end. For ex. An agency is created for sale of an Airplane if the Airplane caught fire before the sale the agency comes to an end. In this contract Airplane is the subject matter.

vi) Principal becoming an alien enemy - If the Principal becomes an alien enemy the contract of agency comes to an end.

vii) Dissolution of company or firm - A Firm or company may be regarded as a Principal in the contract of Agency. If the company or firm is dissolved the agency comes to an end.

viii) Termination of sub-agent's authority (Sec. 210) – The termination of an agent's authority puts an end to the sub-agent's authority.

References

1. Goel, P.K. Business Law for Managers, Wiley, 2006.
2. Kapoor, N.D., Elements of Mercantile Law, Sultan Chand & Co. Ltd, 37th Edition, 2015.
3. Kuchhal, M.C., Vivek Kuchhal, Business law, Vikas Publication, 7th Edition, 2018.
4. Tulsian, Business Law, McGraw-Hill Education, 3nd Edition, 2018.
5. Sheth, T Business Law, Pearson, 2nd Edition, 2017.

Question Bank

PART A

Sno.	Questions	CO	Blooms Level
1.	Define Contract of Indemnity.	CO2	L1
2.	List the parties involved on Contract of Guarantee.	CO2	L2
3.	Short note on Indemnifier and Indemnified.	CO2	L3
4.	Explain the rights of a surety against his principal debtor.	CO2	L2
5.	Define Contract of Bailment.	CO2	L1
6.	Short note on Bailor and Bailee.	CO2	L3
7.	State any two rights of Pawnor and Pawnee.	CO2	L2
8.	Is a minor can be employed as an agent? Comment your answer.	CO2	L5
9.	List the mode of creation of Agency.	CO2	L2
10.	Differentiate Sub-Agent with Substituted Agent.	CO2	L4

PART B

Sno.	Questions	CO	Blooms Level
1.	Differentiate Contracts of Indemnity and Contract of Guarantee.	CO2	L4
2.	Discuss the nature, rights and liabilities of a Surety.	CO2	L4

3.	Explain the essential features of Contract of Guarantee.	CO2	L2
4.	"Pledge and Hypothecation are same" – Justify.	CO2	L5
5.	Illustrate the essential elements of bailment. What are the duties & rights of Finder of lost goods as a Bailee?	CO2	L3
6.	Distinguish between Pledge and Bailment.	CO2	L2
7.	Explain in detail the various rights and duties of Pawnor and Pawnee.	CO2	L2
8.	Classify the different kinds of Agent.	CO2	L4
9.	Determine the modes in which agency can be terminated by the operation of law.	CO2	L4
10.	Discuss the rights and duties of Agent and Principal.	CO2	L4
11.	Describe the circumstances in which irrevocable of agency arise with illustrations.	CO2	L3

SATHYABAMA
INSTITUTE OF SCIENCE AND TECHNOLOGY
(DEEMED TO BE UNIVERSITY)
Accredited "A" Grade by NAAC | 12B Status by UGC | Approved by AICTE
www.sathyabama.ac.in

SCHOOL OF MANAGEMENT STUDIES

UNIT – III– BUSINESS LAW - SBAA1206

UNIT3 SALE OF GOODS ACT, 1930

Contract of sale, meaning and difference between sale and agreement to sell- Conditions and warranties - Transfer of ownership in goods including sale by a non-owner - Performance of contract of sale - Unpaid seller - meaning, rights of an unpaid seller against the goods and the buyer.

MEANING OF CONTRACT OF SALE OF GOODS:-

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

The term contract of sale is a generic term and includes both a sale and agreement to sell.

SALE:-

A contract of sale, means the property in the goods is transferred from the seller to the buyers the contract is called a Sale.

AGREEMENT TO SELL:-

Agreement to sell refers to transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled the contract is called an agreement to sell.

ESSENTIALS OF A CONTRACT OF SALE:-

1. **Two parties:** - There must be two distinct parties i.e., a buyer, a seller, to effect a contract of sales and they must be competent tocontract.
2. **Goods: -** There must be some goods the property in which is or is to be transferred from the seller to the buyers. The goods which form the subject matter of the contract of sale must be movable. Transfer of immovable property is not regulated by the sale of goodsAct.
3. **Price: -** The consideration for the contract of sale, called price, must be money. When goods are exchanged for goods, it is not a sale butbarter.
4. **Transfer of general property:** - There must be a transfer of general property as distinguished from special property in goods from the seller tobuyer. Ex. If A owns certain goods, he has general property in the goods. If he pledges them with B, B has special property in the goods.
5. **Essential elements of a valid contract: -** All the elements of a valid contract must

be present in the contract of sale.

CONTRACT OF SALE HOW MADE:-

No particular form is necessary to constitute a contract of sale. It is, like any other contract, made by the ordinary method of offer by one party and its acceptance by the other party.It may be made in writing or by word of mouth or by both.

SALE AND AGREEMENT TO SELL – DISTINCTION:-

1. **Transfer ofproperty:-**
    a. In a sale, the property in the goods passes from the seller to the buyer immediately so that seller is no more the owner of the goodssold.
    b. In an agreement to sell, the transfer of property in the goods is to take place at a future time or subject to certain conditions being fulfilled so that the seller continuous to beowner.
2. **Risk of Loss:-**
    a. In a sale, if the goods are being destroyed, the loss falls on thebuyer.
    b. In an agreement to sell, if the goods are destroyed, the loss falls on theseller.
3. **Nature ofContract:**
    a. A sale is an executed contract
    b. Whereas an agreement to sell is an executorycontract
4. **Consequences of breach:-**
    a. In a sale, if there is a breach of contract by the buyer, the seller can sue for price even though the goods are still in his possession.
    b. In an agreement to sell, the seller can sue only for damages and not for the price even though the goods are in the possession of the buyer.
5. **Right toresell:-**
    a. In a sale, the seller can't resell thegoods (except certain cases, ex. unpaid seller).
    b. In an agreement to sell, without prior notice of the resell, he is not bound to do so.
6. **Insolvency of Buyer:-**
    a. In a sale, if the buyer becomes insolvent before he pays for the goods, must

return them to the official Receiver orAssignee.

b. In an agreement to sell, if the buyer becomes insolvent and has not yet paid the price, the seller is not bound to part with the goods until he is paidfor.

7. **Nature ofRights:-**
    a. The buyer acquires a right against the wholework
    b. In agreement to sell, the sellersecures right against a particularindividual
8. **Insolvency of seller:-**
    a. In sale, if the seller becomes insolvent, the buyer, being the owner, is entitled to recover the goods from Official Receiver or Assignee.
    b. In agreement to sell, if the seller becomes insolvent, the buyer, who has paid the price, he can only claim a rateable interest and not the goods because property in them has not yet passed to him.

SUBJECT-MATTER OF SALE

'Goods' form the subject of a contract of sale. They mean every kind of movable property other than actionable claims and money, and include stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.

CLASSIFICATION OFGOODS

I. **Existing goods: -**Existing goods are owned and possessed by the seller at the time of sale. These goods may be specific, ascertained orunascertained:
    a) Specific goods which are identified and agreed upon at the time a contract of sale is made.
    b) Ascertained goods which are ascertained subsequent to the formation of a contract of sale.
    c) Unascertained or generic goods which are not identified and agreed upon at the time of the contract of sale. They are defined only by description and may from part of a lot.

II. **Future goods:-**Future goods is which the seller does not posses at the time of contract and which will be acquired manufactured or produced by him at some futuredate.

III. **Contingent goods: - Contingent** goods refer to the acquisition of which by the seller depends upon a contingency which may or may nothappen.

PRICE- The price is a contract of sale means the money consideration for sale of goods

1. It may be fixed by the contract itselfor
2. It may be left to be fixed in an agreedmanner
3. It may be determined by the course of dealing between theparties

CONDITIONS AND WARRANTIES

CONDITIONS

Sec.12 (2) of the Sale of Goods Act, 1930 defined as, "A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated".

Characteristics of Conditions

1. A condition is a stipulation or term regarding goods forming part of the contract of sale and it is not a mere expression of opinion or commendatory statement (i.e., statement ofpraise).
2. A condition is a stipulation in a contract of sale essential to the main purpose of the contract. It goes to the very root of the contract and forms the very foundation ofit.
3. The breach of a condition gives the aggrieved party the right to treat the contract as repudiated, and also entitles him to claim damages.
4. If a condition in a contract of sale is broken, no doubt, the aggrieved party can treat the contract as repudiated and reject the goods. But he has also an alternative option. That is, he can treat the breach of condition as a breach of warranty and can claim only damages without rejecting thegoods.

WARRANTIES

Sec.12 (13), of the Sale of Goods Act, 1930 defined as, "A warranty is a stipulation which is collateral to main purpose of the contract, the breach of which gives rise to only claim for damages but not to a right to reject the goods and treat the contract as repudiated".

Characteristics of Warranty

1. A warranty is a stipulation or term regarding goods forming part of the contract of sale, and is not a mere expression of opinion or statement of commendation orpraise.
2. A warranty is a stipulation or term, which is not essential to the main purpose of the contract and is only collateral (i.e., incidental, subsidiary or minor) to the main purpose of the contract. In short, it is only of secondaryimportance.
3. The breach of a warranty gives the aggrieved party only the right to sue for damages, and not the right to repudiate the contract. It may be noted that the measure of damages for breach of warranty is the estimated loss directly or naturally resulting in the ordinary course of events from thebreach.

EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES

Express conditions and warranties are those which are agreed upon between the parties at the time of the contract.

IMPLIED CONDITIONS

- **Conditions as totitle** – In every contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller, that :
  a. In case of a sale, he has a right to sell the goods, and
  b. In case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.
- **Condition as to description**– the goods shall correspond with the description. The term ' sale by description' includes the following situation:
  a. Where the buyer has not seen the goods and buys them relying on the description given by the seller.
  b. Where the buyer has seen the goods but he relies not on what he has seen but what was stated to him and the deviation of the goods from the description is not apparent.
  c. Packing of goods may sometimes be a part of the description. Where the goods do not conform to be method of packing described (by the buyer or the seller) in the contract, the buyer can reject the goods.
- **Conditions in a Sale bysample** – A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied to that effect. Usually, a sale by sample is implied when a sample is shown and the parties intend that the goods

should be of the kind and quality as the sample is.

- **Conditions in a sale by Sample as well as by Description -** A vast majority of cases where samples are shown, are sales by sample as well as by description. In a contract for sale by sample as well as by description, the goods supplied must correspond both with the sample as well as with the description.
- **Condition as to quality orfitness**– Where the buyer, expressly or by implication, makes known the seller the particular purpose for which goods are required, so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply (whether or not as the manufacturer of producer), there is an implied condition that the goods shall be reasonably fit for such purpose. In other words, this condition of fitness shall apply, if:
  a. The buyer makes known to the seller the particular purpose for which the goods are required,
  b. The buyer relies on the seller's skill or judgment,
  c. The goods are of a description which he sellers ordinarily supplies in the course of his business, and
  d. The goods supplied are not reasonably fit for the buyer's purpose.
- **Condition as tomerchantability**- Where the goods are bought by description from a seller, who deals in goods of that description (whether or not as the manufacturer or producer) there is an implied condition that the goods shall be of merchantable quality. Merchantable quality ordinarily means that the goods should be such as would be commercially saleable under the description by which they are known in the market at their full value.
- **Condition implied bycustom**– An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In certain sale contracts, the purpose for which the goods are purchased may be implied from the conduct of the parties or from the nature or description of the goods. In such cases, the parties enter into the contract with reference to those known usage. For instance, if a person buys a perambulator or a medicine the purpose for which it is purchased is implied from the thing itself; the buyer need not disclose the purpose to the seller.
- **Condition as to wholesomeness** - In case of sale of eatable provisions and foodstuff,

there is another implied condition that the goods shall be wholesome. Thus, the provisions or foodstuff must not only correspond to their description, but must also be merchantable and wholesome. By 'wholesomeness' it means that goods must be for human consumption.

IMPLIED WARRANTIES

A condition becomes a warranty when --

a) the buyer waives the conditions or opts to treat the breach of the condition as a breach of warranty; or

b) The buyer accepts the goods or a part thereof, or is not in a position to reject the goods.

i. **Implied Warranty of Quiet Possession** -- In every contract of sale, unless there is a contrary intention, there is implied warranties that the buyer's shall have and enjoy quiet possession of the goods. If the buyer's right to possession and enjoyment of the goods is in any way disturbed as consequences of the seller's defective title, the buyer may sue the seller for damages for breach of this warranty.

ii. **Implied Warranty of Freedom from Encumbrances** -- The buyer is entitled to a further warranty that the goods shall be free from any charge or encumbrance in favor of any third party not declared or known to buyer before or at the time when the contract is made. If the buyer is required to discharge the amount of the encumbrance it shall be a breach of this warranty and the buyer shall be entitled to damages for the same.

iii. **Warranty as to quality or fitness by usage oftrade** – An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.

iv. **Warranty to disclosure dangerous nature ofgoods**– Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.

DIFFERENCE BETWEEN CONDITION AND WARRANTY

CONDITION	**WARRANTY**
A condition is of primary importance.	A condition is of secondary importance.
Breach of condition leads to termination of the	In case of a breach of warranty, the

contract.	injured party is liable to be compensated.
The injured party can refuse to accept the goods as well as claim damages in case of breach of condition.	The Injured party can only claim damages in case of breach of warranty.
The injured party can refuse to accept goods not fulfilling the condition of the contract.	The Injured party cannot refuse to accept the goods not fulfilling the warranty.
A condition can be treated as a warranty on the wish of the buyer.	A warranty cannot be treated as a condition.
Defined in Section 12(2) of the Sale of Goods Act, 1930.	Defined in Section 12(3) of the Sale of Goods Act, 1930.

CAVEAT EMPTOR

It is originated from the Latin Word. It means "let the buyer beware", i.e., a contract of sale of goods, the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine themthoroughly.

Exceptions

- **Fitness for buyer'spurpose**- When the buyer informs the seller of his purpose of buying the goods, it is implied that he is relying on the seller's judgment. It is the duty of the seller then to ensure the goods match their desired usage. Ex. A goes to B to buy a bicycle. He informs B he wants to use the cycle for mountain trekking. If B sells him an ordinary bicycle that is incapable of fulfilling A's purpose the seller will be responsible.
- **Sale under a brand or tradename**- When the buyer buys a product under a trade name or a branded product the seller cannot be held responsible for the usefulness or quality of the product. So there is no implied condition that the goods will be fit for the purpose the buyer intended.
- **Merchantable quality** - the seller who is selling goods by description has a duty of providing goods of merchantable quality, i.e. capable of passing the market standards. So if the goods are not of marketable quality then the buyer will not be the one who is responsible. It will be the seller's responsibility. However if the buyer has had a reasonable chance to examine the product, then this exception will not apply.

- **Usage oftrade**- There is an implied condition or warranty about the quality or the fitness of goods/products. But if a seller deviated from this then the rules of caveat emptor cease to apply. Ex.A bought goods from B in an auction of the contents of a ship. But B did not inform A, the contents were sea damaged, and so the rules of the doctrine will not apply here.
- **Consent byfraud**- If the seller obtains the consent of the buyer by fraud then caveat emptor will not apply. Also if the seller conceals any material defects of the goods which are later discovered on closer examination then again the buyer will not be responsible. In both cases, the seller will be the guilty party.

TRANSFER OF PROPERTY IN GOODS

There are 3 stages in the performance of a contract of sale of goods by a seller viz.,

1. Transfer of property in the goods
2. Transfer of possession of the goods i.e. delivery
3. the passing of the risk

The property in the goods is said, to be transferred from the seller to the buyer when the latter acquires the proprietary rights over the goods and the obligations linked thereto. 'Property in Goods' which means the ownership of goods, is different from ' possession of goods' which means the physical custody or control of the goods.

The transfer of property in the goods from the seller to the buyer is the essence of a contract of sale. Therefore, the moment when the property in goods passes from the seller to the buyer is significant for following reasons:

a. **Ownership** -- The moment the property in goods passes, the seller ceases to be their owner and the buyer acquires the ownership. The buyer can exercise the proprietary rights over the goods. For example, the buyer may sue the seller for non-delivery of the goods or when the seller has resold the goods, etc.
b. **Risk follows ownership** -- The general rule is that the risk follows the ownership, irrespective of whether the delivery has been made or not. If the goods are damaged or destroyed, the loss shall be borne by the person who was the owner of the goods at the time of damage or destruction. Thus the risk of loss prima facie is in the person in whom the property is.

c. **Action Against Third parties** -- When the goods are in any way damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action against them.

d. **Suit for Price** - The seller can sue the buyer for the price, unless otherwise agreed, only after the goods have become the property of the buyer.

e. **Insolvency of the seller or the buyer** - In the event of insolvency of either the seller or the buyer, the question whether the goods can be taken over by the Official Receiver or Assignee, will depend on whether the property in goods is with the party who has become insolvent.

Essentials for Transfer of Property -- The two essentials requirements for transfer of property in the goods are:

1. **Goods must be ascertained:**Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained
2. **Intention to PASS Property in Goods must be there**: In a sale of specific or ascertained goods, the property in them is transferred to the buyer at the time when the parties intend it to pass. For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

   Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer are:

   I. Specific Goods (Sec 20 to 22)

a) **Specific goods in a deliverable state** - Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

b) **Specific goods to be put into a deliverable state** - Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of puttingthem into a deliverable state, the property does not pass until such thing is done

and the buyer has notice thereof.

c) **Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price -** Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

II. Unascertained Goods (Sec 23)

Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

Delivery to carrier - Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

III. Goods sent on approval or "on sale or return"

When goods are delivered to the buyer on approval or "on sale or return" orother similar terms, the property therein passes to the buyer—(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

RESERVATION OF RIGHT OF DISPOSAL.—

Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled as follows:

1. Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is prima faciedeemed to reserve the right of disposal.
2. Where the seller of goods draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading or, as the case may be, the railway receipt, to secure acceptance or payment of the bill of exchange, the buyer isbound to return the bill of lading or the railway receipt if he does not honour the bill of exchange; and, if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

PERFORMANCE OF CONTRACT

Performance of a contract of sale means as regards the seller delivery of the goods to the buyer, and as regards the buyer, acceptance of the delivery of the goods and payment for them, in accordance with the terms of the contract of sale.

DELIVERY OF GOODS

Delivery means voluntary transfer of possession of goods from one person to another. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has effect of putting the goods in the possession of the buyer or his agent.

Delivery of goods may be actual, symbolic or constructive.

1. **Actual delivery**, where the goods are handed over by the seller to the buyer or his duly authorized agent.
2. **Symbolic delivery**, where goods are ponderous or bulky and incapable of actual delivery ex. handing over the key of the house to the buyer
3. **Constructive delivery or delivery by attornment**, where a third person who is in possession of the goods of the seller at the time of sale acknowledges to the buyer that he holds the goods on his behalf.

Rules as to delivery of goods:-

1. **Mode ofdelivery:** Delivery should have the effect of putting the goods in the possession of the buyer or his duly authorized agent.
2. **Delivery and payment concurrentconditions:** Delivery of the goods and payment of

the price must be according to the terms of the contract.

3. **Effect of partdelivery:** A delivery of part of the goods in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole.
4. **Buyer to apply fordelivery:** Apart from any express contract, the seller of the goods is not bound to deliver them until the buyer applies for delivery.
5. **Place ofdelivery:** Where the place at which delivery of the goods is to take place is specified in the contract, the goods must be delivered at that place during business hours on a working day.
6. **Time of delivery:** Where the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
7. **Goods in possession of a thirdparty:** When at the time of sale, the goods are with a third party, there is no delivery by the seller to the buyer until such third party acknowledges to the buyer that he holds them on his behalf.
8. **Cost ofdelivery:** Unless otherwise agreed, all expenses of and incidental to making of delivery are borne by the seller, but all expenses of and incidental to obtaining of delivery are borne by the buyer. waive
9. **Delivery of wrongquantity:-**
    a. Delivery of goods less than contractedfor – the buyer may reject the goods. If he accepts them, he shall pay for them at the contract rate.
    b. Delivery of goods in excess of thequantity – the buyer may accept the whole or reject the whole or accept the quantity he ordered and reject the rest. If he accepts the whole, he must pay for them at the contract rate.
    c. Delivery of goods contracted for mixed (different description) with othergoods- the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.
10. **Installmentdeliveries** – Unless otherwise agreed, the seller is not entitled to deliver the goods by instalments and if he does so, the buyer is not bound to accept the goods.
11. **Delivery to carrier orwharfinger**- Where, in pursuance of a contract of sale, the goods are delivered to a carrier for the purpose of transmission to the buyer, or to a

wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.

RIGHTS OF THE BUYER:-

1. **Right to have delivery as percontract** – the first right of the buyer is to have delivery of the goods as per contract.
2. **Right to reject thegoods**– If the seller sends to the buyer a larger or smaller quantity of goods than he ordered, the buyer may (i) reject the whole, (ii) accept the whole or (iii) accept the quantity ordered and reject the rest.
3. **Right torepudiate**– Unless otherwise agreed, the buyer of the goods has a right not to accept delivery thereof by instalments.
4. **Right to notice ofinsurance -** Unless otherwise agreed, where goods are sent by the seller to the buyer by a sea route, the buyer has a right to be informed by the seller so that he may get the goods insured.
5. **Right toexamine** – The buyer has a right to examine the goods which he has not previously examined before he accepts them.
6. **Rights against the seller for breach ofcontract:-**
    a. **Suit fordamages -** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery
    b. **Suit forprice –** If the buyer has paid the price and the goods are not delivered, he can recover the amount paid.
    c. **Suit for specificperformance** – The buyer may sue the seller for specific performance of the contract to sell. The court may, if it thinks fit, order for the specific performance of the contract.
    d. **Suit for breach ofwarranty**– Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods. But he may (i) set up against the seller the breach of warranty in diminution or extinction of the price or (ii) sue the seller for damages for breach of warranty.
    e. **Suit for contract before duedate**– When the seller repudiates the contract before the date of delivery, the buyer may either treat the contract as subsisting and wait

till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach. This rule is known as "rule of anticipatory breach of contract"

f. **Suit forinterest**–Where there is a breach of contract on the part of the seller and as a result the price has to be refunded to the buyer, the buyer has a right to claim interest on the amount of the price refunded to him from the date on which the payment was made. The court may award the interest at such rate as it thinks fit.

DUTIES OF BUYER:-

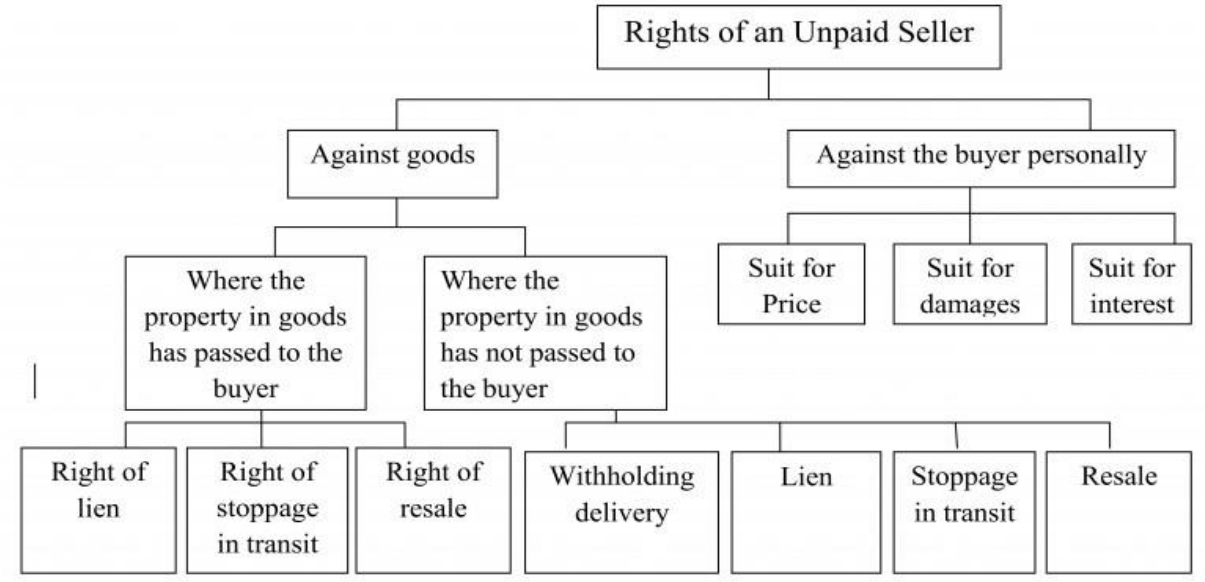
1. **Duty to accept the goods and pay for them in exchange forpossession –** It is the duty of the buyer to accept the goods and pay for them, in accordance with the terms of the contract of sale.
2. **Duty to apply fordelivery** – Apart from any express contract, it is the duty of the buyer to apply for delivery.
3. **Duty to demand delivery at a reasonablehour**– It is the duty of the buyer to demand delivery at a reasonable hour.
4. **Duty not to accept instalment delivery and pay forit**– Unless otherwise agreed, the seller is not entitled to deliver the goods by instalments and if he does so, the buyer is not bound to accept the goods. If he accepts, then pay for it.
5. **Duty to take risk of deterioration in the course oftransit** – Where the seller of the goods agrees to deliver them at his own risk at a place other than where they are sold, the buyer shall take any risk of deterioration in the goods necessarily incident to the course of transit.
6. **Duty to intimate the seller where he rejects thegoods** – Unless otherwise agreed, it is the duty of the buyer to inform the seller in case he refuses to accept the goods.
7. **Duty to takedelivery** – It is the duty of the buyer to take delivery of the goods within a reasonable time after the tender of the delivery. He becomes liable to the seller for any loss caused by his neglect or refusal to take delivery.
8. **Duty to payprice** – Where property in the goods has passed to buyer, it is his duty to pay the price according to the terms of the contract.
9. **Duty to pay damage for non-acceptance**–Where the buyer wrongfully neglects or refuses to accept and pay for the goods, he will have to compensate the seller, in a suit

by him, for damages for non-acceptance.

RIGHTS OF AN UNPAID SELLER

A seller of goods is deemed to be an unpaid seller when:-

1. When the whole of the price has not been paid ortendered
2. When a bill of exchange or other negotiable instrument has been received as a conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonored of the instrument orotherwise.



AS AGAINST THE GOODS

1. **Right of Lien**

   A lien is a right to retain possession of goods until payment of the price. It is available to the unpaid sellerof the goods who is in possession of them where:

   a. The goods have been sold without any stipulation as tocredit

   b. The goods have been sold on credit, but the term of the credit hasexpired

   c. The buyer becomesinsolvent

   Rules regarding Lien:

   - The seller may exercise his right of lien notwithstanding that he is in possession of the goods asagent or bailee for the buyer.

- Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show agreement to waive the lien.
- The seller may exercise his right of lien even though he has obtained a decree for the price of the goods.

2. **Right of stoppage intransit**

The seller may resume possession of the goods, as long as they are in the course of transit and may retain then until payment or tender of theprice.

The right o of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goodsare.

3. **Right ofre-sale**

the unpaid seller can re-sell the goods

i. Where the goods are of a perishablenature
ii. Where he has exercised his right of lien or stoppage in transit and given notice to the lawyer of his intention to re-sell the goods
iii. Where the seller expressly reserves a right of resale in case the buyer makesdefault.

4. **Right of withholdingdelivery**

When the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies a right of withholding delivery similar to and co- extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

AS AGAINST THE BUYER PERSONALLY:-

1. **Suit forprice:-**

   Where undera contract of sale the property in the good has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may suit him for price of the goods.

2. **Damage for non-acceptance: -** where the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for damages for non-acceptance.
3. **Suit for interest: -** The seller can recover interest on price from the date on which the payment become due, if there is a special agreement to theeffect.

4. **Repudiation of contact before due date:-** when the buyer in a contract of sale repudiates the contract before the date of delivery, the seller may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

References

1. Goel, P.K., Business Law for Managers, Wiley, 2006.
2. Jyoti Rattan, Sale of Goods Act, Bharat Law House, 4th Edition, 2017.
3. Kapoor, N.D., Elements of Mercantile Law, Sultan Chand & Co. Ltd, 37th Edition, 2015.
4. Kuchhal, M.C., Vivek Kuchhal, Business law, Vikas Publication, 7th Edition, 2018.
5. Tulsian, Business Law, McGraw-Hill Education, 3nd Edition, 2018.

Question Bank

PART – A

Sno.	Questions	CO	Blooms Level
1.	Define Contract of Sale.	CO3	L1
2.	"Sale and Barter system are same" – Do you agree.	CO3	L5
3.	Explain Sale and Agreement to Sell.	CO3	L2
4.	Determine the subject-matter of a Contract of Sale.	CO3	L3
5.	Classify the Goods based on its types.	CO3	L4
6.	Short note on Condition and Warranty.	CO3	L3
7.	Discuss the exceptions to Caveat Emptor rule.	CO3	L4
8.	Illustrate the conditions upon which the seller can stop the goods in transit.	CO3	L3
9.	State any four rights of a Buyer.	CO3	L2
10.	Short note on Unpaid Seller.	CO3	L3

PART – B

Sno.	Questions	CO	Blooms Level
1.	Differentiate Sale and Agreement to Sell.	CO3	L4
2.	Explain the different types of goods.	CO3	L2
3.	Describe the rules as to the passing of property from the seller to the buyer in a contract of the sale of goods.	CO3	L2
4.	With a neat diagram, explain the rights of an unpaid seller.	CO3	L4
5.	Explain in detail the implied Conditions and Warranties.	CO3	L2
6.	Define delivery of goods. Describe the rules as to delivery of goods.	CO3	L2
7.	Analyse the rights and duties of the Buyer.	CO3	L4
8.	Differentiate ‘Condition’ and ‘Warranty’.	CO3	L4
9.	Critically examine the non-applicability of Caveat Emptor.	CO3	L4
10.	Evaluate the points in which the rule of caveat emptor does not apply.	CO3	L5

SATHYABAMA
INSTITUTE OF SCIENCE AND TECHNOLOGY
(DEEMED TO BE UNIVERSITY)
Accredited "A" Grade by NAAC | 12B Status by UGC | Approved by AICTE
www.sathyabama.ac.in

SCHOOL OF MANAGEMENT STUDIES

UNIT – IV– BUSINESS LAW - SBAA1206

UNIT 4 PARTNERSHIP LAW, 1932

The Partnership Act, 1932 - Nature and Characteristics of Partnership - Registration of a Partnership Firms - Types of Partners - Rights and Duties of Partners - Implied Authority of a Partner - Incoming and outgoing Partners - Mode of Dissolution of Partnership - The Limited Liability Partnership Act, 2008 - Salient Features of LLP - Differences between LLP and Partnership, LLP and Company.

DEFINITION AND NATURE OFPARTNERSHIP

A Partnership is defined by the Indian Partnership Act, 1932, as "the relations between persons who have agreed to share profits of the business carried on by all are any of them acting for all" which gives three minimum requirements to constitute a Partnership, viz:

- There must be an agreement entered into orally or in writing by the persons who desire to form aPartnership,
- The object of the agreement must be to share the profits of business intended to be carried on by the Partnership,and
- The business must be carried on by all the partners or any of them acting for all ofthem.

DEFINITION OF "PARTNERSHIP", "FIRM", AND "FIRM NAME"

Partnership" is the relation between persons who have agreed to, share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name".

NATURE OF PARTNERSHIP FIRM

According to Section 4 of the Indian Partnership Act 1932, "Partnership is a relation between persons who have agreed to share the profits of of a business carried on by all or any of them acting for all."
Persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm' and the name under which their business is carried on is called the 'firm name'.

CHARACTERISTICS

1. **Two or more Persons**

Minimum number of persons to start a partnership is two however there is no maximum limit on the number of partners according to the Indian Partnership Act. But the Indian Companies Act has

restricted the number of partners in a Banking Business to ten and for any other business it is 20.

2. Agreement among Partners

Partnership comes into existence by an agreement among the partners willing to enter into a partnership. The agreement can be written or oral. Partnership is not the result of any operation of Law. It is the result of an agreement on the basis of which the rights and duties of the partners are defined.

3. Business

The purpose of a Partnership firm is to carry on a business. The business must be legal. Any agreement to share the profits of an illegal business is not partnership. Also joint ownership of a property cannot be termed as partnership. The business must be continuous in nature. Coming together for a single venture is not partnership.

4. Agreement to share profits

In a Partnership business the main aim of the partners is to carry on some business for the purpose of earning profits. They share the profits or losses of the business among themselves according to a predetermined ratio. If there is no agreement over the profit sharing ratio these are to be shared equally. A person not having the right to share profits cannot be called partner. However, the partners can agree that one or more partners among is not liable to share the losses.

5. Business is to be carried on by all or any of them acting for all

Each partner has the right to participate in the proceedings of the business. The business can be carried by any one or more of them or by all of them. Some partners may be sleeping i.e. they are not actively involved in the activities of the firm. Each partner is an agent as well as a principal. As an agent he can bind all the other partners by his acts. As a principal he is bound by the acts of the other partners.

REGISTRATION OF A PARTNERSHIP FIRMS

The partnership act does not provide for the compulsory registration of firms. It has left it to the option of the firms to get themselves registered. For the firms to get registered, the application must state the following:

a) The firm’s name,

b) The place or principal place of business of the firm,

c) The names of any other places where the firm carries on business,

d) The date when each partner joined the firm,

e) The names in full and permanent addresses of the partners, and

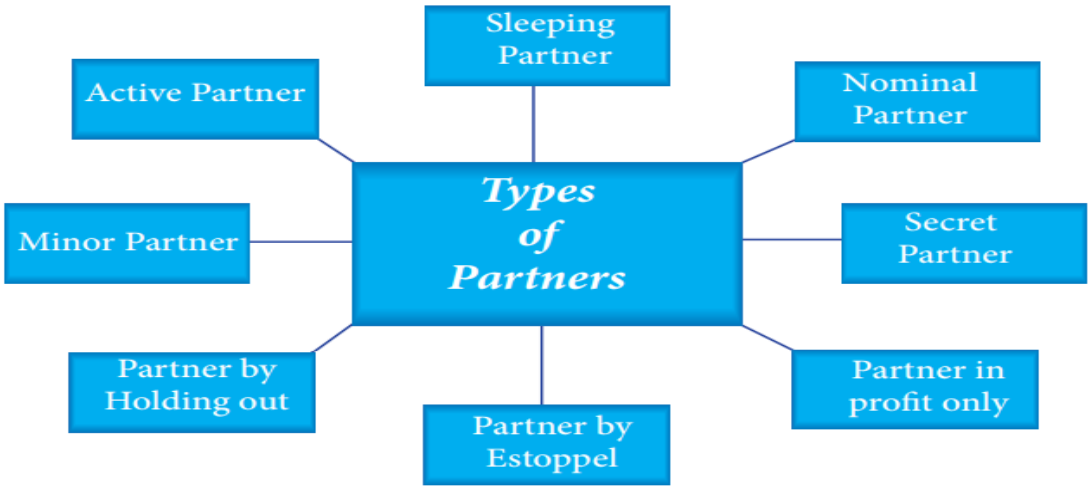
f) The duration of the firm.

PARTNERSHIP DEED

Partnership deed is a document in writing containing the various terms and conditions as to the relationship of the partners to each other. Partnership deed may contain the following information:

1. Name of the partnership form.
2. Names of all the partners.
3. Nature and place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

TYPES OF PARTNERS



i. Active Partner

A partner who takes an active part in the conduct of the partnership business is known as an active partner. Though every partner is entitled to manage its affairs, all may not do so.

ii. Sleeping Partner or Dormant Partner

Such a partner contributes capital and shares in the profits or losses of the firm but does not take part in the management of the business. He may not be known as a partner to the outsiders; yet he is liable to third parties to an unlimited extent as any other partner.

iii. Nominal Partner

Such a partner neither contributes any capital nor is he entitled to manage the affairs of the business. He only lends his name to the firm because on the strength of his name and reputation, the firm may attract additional business and raise funds easily. A nominal partner, however, is liable for all the acts and debts of the firm as if he were a real partner, though he does not get any share in the firm's profit.

iv. Partner in Profits only

When a person joins a firm as a partner on the condition that he is entitled to a specified share of the firm's profit only, he is called a partner in profits only. It means that he will not be called upon to bear any portion of the losses sustained. He will, however, be liable to third parties for all the debts of the firm like any other partner. Such partners usually do not take part in the management of the business.

v. Partner by Estoppel

In case, a person represents himself/ herself by words or actions or has allowed him to be represented as a partner of the firm, even though he is not a partner, he is called partner by estoppels.Such a partner cannot deny his liability, if outside party lends money to the firm supposing him to be a partner.

vi. Partner by Holding out

When a person is declared as a partner and he does not deny this even after becoming aware of it, he becomes liable to the third party, who lends money or credit to the firm on the basis of such a declaration.

vii. Secret Partner

A secret partner is one whose association is not known to the general public. Other than this distinct feature, he is like rest of the partners in all respects.

viii. Minor Partner

Under the Indian Majority Act, person who has not completed 18 years of age is a minor. However, he will continue to be a minor till he completes 21 years if a guardian has been appointed to the minor. He can be admitted to the benefits of partnership.

Partnership arises as a result of contract. But a minor has no contractual capacity. Though a partnership cannot be created with a minor as a partner, a minor can be admitted to the benefits of a partnership which is already in existence. The consent of all partners is a 'must' for such admission.

RIGHTS AND DUTIES OF PARTNERS

Rights of a Partner

1. Right to take part in business

Every partner has a right to take part in the management of the business.

2. Right to be consulted

Every partner has the right to be consulted in all the matters concerning the firm. The decision of the majority will prevail in all the routine matters. But, where the matter is of fundamental importance such as admission of a new partner, change in the nature of business etc., decision must be unanimous.

3. Right of access to books, record and document

Every partner has the right of access to all records and books of accounts, and to examine and copy them.

4. Right to share profit

Every partner is entitled to share the profits in the agreed ratio. If no profit- sharing ratio is specified in the deed, they must be shared equally.

5. Right to receive interest

A partner has the right to receive interest on loans advanced by him to the firm at the agreed rate, and where no rate is stipulated, interest @ 6% p.a. allowed.

6. Right to be indemnified

Every partner has the right to be indemnified by the firm for all acts of other partners in the ordinary course of the business. He has a further right to receive back any amount spent by him on behalf of the firm. Only thing is he must have acted prudently.

7. Right to use partnership property for the business

Every partner has the right to use partnership property for the purpose of the partnership.

8. Right to retire

Every partner has a right to retire as per the terms of the deed or with the consent of the other partners. In case of partnership at will, he can retire at any time by giving prior notice to the other partners.

9. Right to continue

Every partner has the right to continue in the firm. He cannot be expelled except in accordance with the Partnership Deed.

Duties of Partner

1. Duty to carry on business

Every partner has to carry on the business of the firm to the maximum advantage of all the partners.

2. Duty to be true

Every partner must be true, just and faithful to one another. There must be utmost good faith and fair dealings.

3. Duty to render true accounts

A partner is bound to keep and render true and full accounts of the partnership. He must produce relevant vouchers for the expenses incurred by him and hand over to the firm all amounts which have come into his hands as a partner.

4. Duty to indemnity the firm

Every partner must indemnify the firm for any loss caused by his fraud or willful negligence in the conduct of the business.

5. Duty to share the loss

Every partner is bound to share the losses in the agreed ratio in the absence of an agreed ratio, it must be borne equally.

6. Duty to claim remuneration

Nopartner, includingamanagingpartner is entitled to any remuneration (salary or commission), for the work done by him, unless there is an agreement to the contrary.

7. Duty not to use firm's property for personal use

The partnership property belongs to all partners. But a partner should not use the partnership property for his private purposes.

8. Duty not to carry on competing business

No partner can carry on a competing business. If he does so, he should surrender to the firm all profits earned by him in such business. No partner is allowed to earn secret profit.

9. Duty to act within scope of his authority

A partner must act within the scope of his authority.

10. Duty to consult other partners before assigning or transferring his interest in partnership

No partner can assign or transfer without the consent of all other partners his interest in the firm to any other person so as to make him a partner thereof.

IMPLIED AUTHORITY OF A PARTNER

Every partner has the implied authority to bind the firm and other partners by his acts done in the name of the firm, in the ordinary course of the firm's business and with the intention to bind the firm.

A partner has the implied authority to do the following acts on behalf of his firm:

(i) To buy, sell and pledge goods on behalf of the firm.

(ii) To raise loans on the security of such assets.

(iii) To receive payments of debts due to the firm.

(iv) To accept, make an issue bills of exchange, promissory notes, etc., on behalf of the firm.

(v) To engage servants for the firm's business.

(vi) To take on lease a premises on behalf of the firm.

However, a partner has no implied authority, unless otherwise expressed in the partnership deed, in the following matters:

(a) To submit a dispute relating to the firm to arbitration.

(b) To compromise or relinquish any claim or a portion of claim made by the firm.

(c) To withdraw a suit or proceeding filed on behalf of the firm.

(d) To admit any liability in a suit or proceeding against the firm.

(e) To open a bank account on behalf of the firm in his own name.

(f) To acquire or purchase immovable property for and on behalf of the firm

(g) To transfer or sell immovable property belong to the firm; and

(h) To enter into partnership with others on behalf of the firm.

RECONSTITUTION OF A FIRM

Incoming Partners

1. Introduction/Admission of a partner Sec.31

Section 31 of the Act states that a new partner can be admitted to a partnership firm only

a) with prior consent of all partners or

b) in accordance with a contract entered into by the existing partners.

Liability of an incoming partner

While the Act makes partners jointly liable for all acts of the firm, Section 31(2) clarifies that a newly admitted partner is not liable for any act done by the firm before the date on which he/she became a partner.

The Act does not permit a minor to become a partner in a firm, till he/she attains majority, but permits him/her to be admitted to the benefits of the partnership. On attaining majority, a minor has the right to elect whether or not to become a partner in the firm.

While a newly admitted partner is only liable for the firm's acts which are done after he/she was admitted to partnership subject to a contract to the contrary, a minor, on becoming partner after attaining majority, also becomes liable for all of the firm's acts done after the date on which the minor got admitted to the benefits of the partnership.

Outgoing Partners

2. Retirement of a Partner Sec. 32, 36, 37

Any partner of a partnership firm may want to retire, at any time, for any reason such as bad health etc. Section 32(1) of the Act states that a partner can retire:

a) with prior consent of all other partners

b) in accordance with the terms of any agreement existing between the partners.

c) Where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

Naturally, the retirement of a partner leads to a change in capital contribution and profit sharing ratios between the continuing partners.

Liability of retiring partner (Sections 32(2) to 32(4))

Section 32(2) allows a retiring partner to escape his/her liability, in respect of acts done by the firm **before** the date of retirement, by an agreement with the continuing partners and the concerned third party having the right to enforce such liability.

Section 32(3) of the Act provides that a retired partner is liable to a third party for all acts done by the firm in respect of such third party even **after** the date of his/her retirement unless a public notice has been given of the partner's retirement. Section 32(4) of the Act requires such notice to be given either by any continuing partner or the retired partner.

Rights of a retiring partner

a. To carry on competing business

Section 36(1) of the Act permits a retired partner to carry on, post-retirement, a business competing with that of the firm from which he/she has retired and the right to advertise such business.In order to protect the firm's interest, the aforesaid right to compete is subject to the following restrictions:

(a) the retired partner does not use the firm's name

(b) the retired partner does not represent himself/herself to be still carrying the firm's business; and,

(c) the partner must not solicit persons who were the firm's customers before his/her retirement.

Further, Section 36(2) permits a firm's partners to enter into an agreement with any partner to the effect that on ceasing to become a partner, he/she will not carry on any business, similar to the firm's business, for a specified period or within specified local limits. Such agreements are treated to be valid even though agreements in restraint of trade are void under Section 27 of the Indian Contract Act, 1872.

b. Right to share subsequent profit

At the time of retirement, the retiring partner can re-claim his/her share of capital contributed in the firm through a settlement of accounts with the continuing partners. Section 37 of the Act clarifies that if no such settlement takes place at the time of retirement and the firm continues to use the retired partner's capital for its business, the retired partner shall be entitled to claim, even after his/her retirement, either:

(a) 6% interest per annum on the amount of his share in the firm's property or

(b) such share of the firm's profits which are attributable to his share of capital in the firm

3. Expulsion of Partner

Partners of a firm may want to expel any particular partner for various reasons such as misconduct, not taking interest in the firm's business etc. Under Section 33(1) of the Act, expulsion of a partner is permissible only if:

1. The power of expulsion of a partner should be conferred by a contract between the partners.
2. The power should be exercised by a majority of the partners
3. The power should be exercised in good faith (majority not enough) The test of good faith is:

(a) that the expulsion must be in the interest of the partnership;

(b) that the partner to be expelled is served with a notice; and

(c) that he is given an opportunity of being heard.

Irregular Expulsion

If the expulsion of a partner does not satisfy the aforesaid 3 conditions simultaneously, it will be considered as an irregular expulsion and shall not be effective against the expelled partner. In such case, the expelled partner may claim to be reinstated as a partner or claim refund of his/her share of capital and profits in the firm.

Regular Expulsion

Where a partner is expelled subject to the satisfaction of the conditions, his expulsion would be regular. The rights and liabilities of an expelled partner are the same as those of a retired partner.

4. Insolvency of a Partner

Section 34(1) of the Act states that if any partner of a partnership firm has been adjudicated as insolvent by the competent authority/court:

- he/she ceases to remain partner in the partnership firm from the date of order of adjudication
- Section 34(2) of the Act clarifies that the insolvent partner's estate shall not be made liable for the firm's acts which are done after the date on which the order of insolvency was passed.
- The firm also does not remain liable for any act of the insolvent partner which is done by him/her after being declared insolvent.

5. Death of a Partner

Death of any partner of a firm may occur naturally or due to disease, accident etc. Section 42(c) of the Act provides that death of any partner will lead to the dissolution of the firm i.e. end of the partnership unless there is an existing contract between the partners providing for continuation of the partnership.

6. Transfer of a partner's share

The act permits any partner of a partnership firm to transfer his/her interest in the firm to any other person either absolute or partial by sale or conditionally i.e. in the form of a mortgage or by creation of a charge on the interest. Section 29 of the act clarifies that in case of such transfer of interest, the transferee has the right to receive the transferor's share of profits in the firm. However, the transferee cannot:

a. interfere in the conduct of the business of the firm, or

b. require accounts of the firm, or

c. inspect the books of the firm.

MODES OF DISSOLUTION

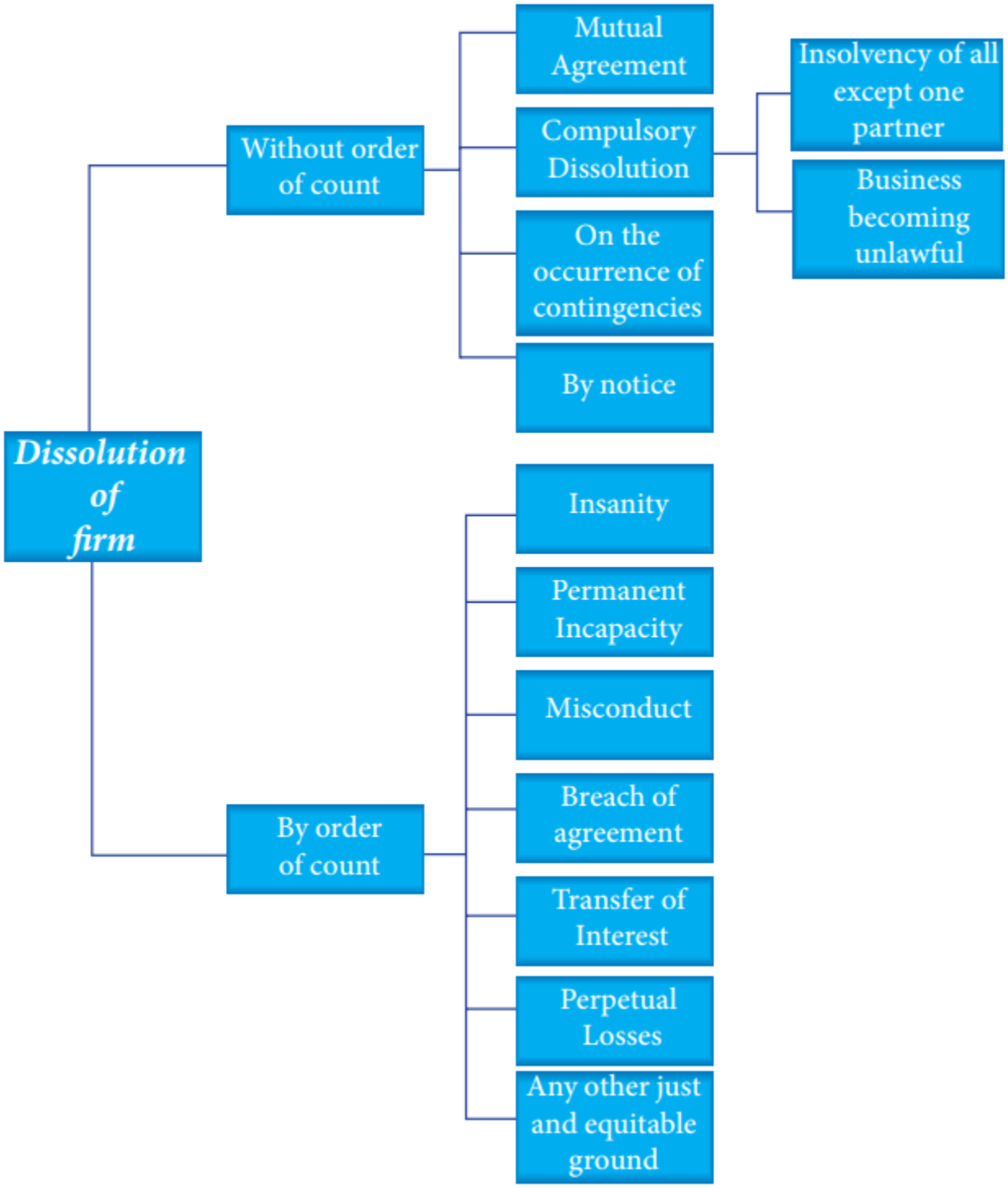
a. Dissolution of Firm

Dissolution of Partnership is different from the dissolution of partnership firm. It is due to the fact that when the relation present between all partners, comes to an end, it is known as **dissolution of firm**. On dissolution of firm, partnership business comes to an end. Its assets are realised and the creditors are paid off. The business cannot be continued after dissolution of partnership firm. For ex. A, B and C are partners in a business. If all the three partners decide to dissolve, it is known as "dissolution of the firm".

b. Dissolution of partnership

Dissolution of partnership means the termination of the original partnership agreement. A partnership is dissolved by insolvency, retirement, expiry or completion of the term of partnership. The business will continue after dissolution of partnership. For example: A, B and C are partners in a business. If 'A' retires, 'B' and 'C' can continue the business which is known as dissolution of partnership.

Dissolution of Firm



Dissolution of a firm may take place in two ways:

a. without the order of the court and

b. By order of the court.

a. Without the order of the court

i. Dissolution by agreement or mutual consent (Sec 40)

A firm may be dissolved when all the partners agree to close the affairs of the firm. Just as a partnership is created by contract, it can also be terminated by contract.

ii. Compulsory dissolution (Sec 41)

If any of the partners adjudged an insolvent (or if all the partners become insolvent) it is necessary to dissolve the firm.

By the happening of any event which makes it unlawful for the business of the firm to be carried on, or for the partners to carry it on in partnership.

iii. Dissolution on the happening of certain contingencies (Sec 42)

Dissolution of partnership itself may involve the dissolution of the firm unless parties agree to continue it otherwise, it will take place.

a. On the expiry of a specified period in case of partnership for a fixed term.
b. On the completion of a particular adventure for which it has been formed
c. in case of particular partnership.
d. On the death of a partner.
e. On the retirement of a partner.
f. On the insolvency of a partner.

In all the above cases if the business is not continued by the remaining partners, dissolution of the firm takes place automatically.

iv. By notice of dissolution (Sec 43)

In the case of partnership at will when any partner gives in writing to all the other partners indicating his intention to dissolve the firm, the firm will be dissolved.

b. Dissolution by the order of Court (Sec 44)

The court may order for the dissolution of the firm on the following grounds:

(i) Insanity of Partner

On the application of any of the partner, court may order for the dissolution of the firm if a partner has become of an unsound mind. Lunacy of a partner does not itself dissolve the partnership but it will be a ground for dissolution at the instance of other partners.

(ii) Incapacity of Partner

If a partner has become permanent incapable of discharging his duties and obligations, then court may order for the dissolution of firm on the application of any of the partner. For ex. where a partner is imprisoned for a long period of time the court may dissolve the partnership.

(iii) Misconduct of Partner

If any partner other than partner suing is responsible for any loss to the firm, which amounts to misconduct and prejudicially affects the carrying on of business then the court may order for the dissolution of the firm.

(iv) Constant breach of agreement by partner

The court may order for the dissolution of the firm if the partner other than the suing partner is found guilty for constant breach of agreement regarding the conduct of business or the management of the affairs of the firm and it becomes impossible to continue the business with such partner.

(v) Transfer of Interest

When any of the partner other than the suing partner transfers whole of its share to the third party for permanently.

(vi) Continuous/Perpetual Losses

The court may order for dissolution, if the firm is continuously suffering losses and there is no more capital available for the future growth of the firm.

(vii) Any other Just and Equitable ground

The court may order for dissolution on any other ground which court think is just, fair and equitable. e.g. loss of total confidence between the partners.

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (LLP)

LLP is an alternative corporate business form which offers the benefits of limited liability to the partners at low compliance costs. It also allows the partners to organize their internal structure like a traditional partnership. A limited liability partnership is a legal entity, liable for the full extent of its assets. The

liability of the partners, however, is limited. Hence, LLP is a hybrid between a company and a partnership. But it should not be confused with limited liability company.

SALIENT FEATURES OF LLP

LLP is a body corporate

According to Section 3 of the Limited Liability Partnership Act (LLP Act), 2008, an LLP is a body corporate formed and incorporated under the Act. It is a legal entity separate from its partners.

Perpetual Succession

Unlike a general partnership firm, a limited liability partnership can continue its existence even after the retirement, insanity, insolvency or even death of one or more partners. Further, it can enter into contracts and hold property in its name.

Separate Legal Entity

Just like a corporation or a company, it is a separate legal entity. Further, it is completely liable for its assets. Also, the liability of the partners is limited to their contribution in the LLP.

Mutual Agency

Another difference between an LLP and a partnership firm is that independent or unauthorized actions of one partner do not make the other partners liable. All partners are agents of the LLP and the actions of one partner do not bind the others.

LLP Agreement

The rights and duties of all partners are governed by an agreement between them. Also, the partners can devise the agreement as per their choice. If such an agreement is not made, then the Act governs the mutual rights and duties of all partners.

Artificial Legal Person

For all legal purposes, an LLP is an artificial legal person. It is created by a legal process and has all the rights of an individual. It is invisible, intangible and immortal but not fictitious since it exists.

Common Seal

If the partners decide, the LLP can have a common seal [Section 14(c)]. It is not mandatory though. However, if it decides to have a seal, then it is necessary that the seal remains under the custody of a responsible official. Further, the common seal can be affixed only in the presence of at least two designated partners of the Limited Liability Partnership.

Limited Liability

According to Section 26 of the Act, every partner is an agent of the LLP for the purpose of the business of the entity. However, he is not an agent of other partners. Further, the liability of each partner is limited to his agreed contribution in the Limited Liability Partnership. It provides liability protection to its partners.

Minimum and Maximum Number of Partners in an LLP

Every Limited Liability Partnership must have at least two partners and at least two individuals as designated partners. At any time, at least one designated partner should be resident in India. There is no maximum limit on the number of maximum partners in the entity.

Business Management and Business Structure

The partners of the Limited Liability Partnership can manage its business. However, only the designated partners are responsible for legal compliances.

Business for Profit Only

Limited Liability Partnerships cannot be formed for charitable or non-profit purposes. It is essential that the entity is formed to carry on a lawful business with a view to earning a profit.

Investigation

The power to investigate the affairs of a Limited Liability Partnership resides with the Central Government. Further, they can appoint a competent authority for the same.

Compromise or Arrangement

Any compromise or arrangement like a merger or amalgamation needs to be in accordance with the Act.

Conversion into LLP

A private company, firm or an unlisted public company can convert into an LLP in accordance with the provisions of the Act.

E-Filing of Documents

If the entity is required to file any form/application/document, then it needs to be filed in an electronic form on the website www.mca.gov.in. Further, a partner or designated partner has to authenticate the same using an electronic or digital signature.

Differences between LLP and Company

Features	LLP	Company
Registration	Compulsory registration required with the ROC	Compulsory registration required with the ROC. Certificate of Incorporation is conclusive evidence.

Name	Name to end with "LLP"" Limited Liability Partnership"	Name of a public company to end with the word "limited" and a private company with the words "private limited"
Capital contribution	Not specified.	Private company should have a minimum paid up capital of Rs. 1 lakh and Rs.5 lakhs for a public company.
Legal entity status	Is a separate legal entity.	Is a separate legal entity.
Liability of shareholders/ LLP partners	Limited to the extent of the contribution to the LLP.	Limited to the extent of the unpaid capital.
No. of shareholders / Partners	Minimum of 2. No maximum.	Minimum of 2. In a private company, maximum of 50 shareholders
Foreign Nationals as shareholder / Partner	Foreign nationals can be partners.	Foreign nationals can be shareholders.
Taxability	Income tax is levied at the rate of 30%+ surcharge+cess.	The income of domestic companies is taxed at 30% + surcharge+cess.
Meetings	Not required.	Quarterly Board of Directors meeting, annual shareholding meeting is mandatory.
Annual Return	Annual statement of accounts and solvency & Annual Return has to be filed with ROC.	Annual Accounts and Annual Return to be filed with ROC.
Audit	Required, if the contribution is above Rs.25 lakhs or if annual turnover is above Rs. 40 lakhs.	Compulsory, irrespective of share capital and turnover.
Foreign Investment	Foreign investment in LLPs has been allowed on May 11, 2011, but it is restricted to only those sectors where 100% foreign investment for companies is permitted, and which do not have any performance linked conditions. All foreign investment in LLP on approval basis.	Foreign investment allowed on automatic or approval basis on various sectors in accordance with FDI policy. There are percentage restrictions, and performance linked conditions, such as minimum capitalization in various sectors. For details, refer to latest FDI Circular.

Differences between LLP and Partnership

BASIS	LLP	PARTNERSHIP
Meaning	Limited Liability Partnership is a form of business operation which combines the features of a partnership and a body corporate.	Partnership refers to an arrangement wherein two or more person agree to carry on a business and share profits & losses mutually.

BASIS	LLP	PARTNERSHIP
Governed By	Limited Liability Partnership Act, 2008	Indian Partnership Act, 1932
Registration	Mandatory	Optional
Charter document	LLP Agreement	Partnership deed
Liability	Limited to capital contribution, except in case of fraud.	Unlimited
Contractual capacity	It can sue and be sued in its name.	It cannot enter into contract in its name.
Legal Status	It has a separate legal status.	Partners are collectively known as firm, so there is no separate legal entity.
Name of firm	Name containing LLP as suffix	Any name
Maximum partners	No limit	100 partners
Property	Can be held in the name of the LLP.	Cannot be held in the name of firm.
Perpetual Succession	Yes	No
Audit of accounts	Mandatory, only if turnover and capital contribution overreaches 40 lakhs and 25 lakhs respectively.	Not mandatory
Relationship	Partners are agents of LLP only.	Partners are agents of firm and other partners as well.

References

1. Goel, P.K., Business Law for Managers, Wiley, 2006.
2. Kapoor, N.D., Elements of Mercantile Law, Sultan Chand & Co. Ltd, 37th Edition, 2015.
3. Kuchhal, M.C., Vivek Kuchhal, Business law, Vikas Publication, 7th Edition, 2018.
4. Tulsian, Business Law, McGraw-Hill Education, 3nd Edition, 2018.
5. Universals's(Lexis Nexix) , The Indian Partnership Act, 1932, Universal's Publisher, 1st Edition, 2021.

Question Bank

PART A

Sno.	Questions	CO	Blooms Level
1.	Define Partnership and Firm.	CO4	L1
2.	List any four types of partners.	CO4	L2
3.	Short note on Partnership Deed.	CO4	L3
4.	Critically examine whether the partnership agreement should be in writing.	CO4	L4
5.	Explain any two types of partners.	CO4	L2
6.	"Every partner having the right to use the property of the firm for the business" – Do you agree.	CO4	L5
7.	Differentiate Dissolution of Partnership and Dissolution of firm.	CO4	L4
8.	State any two implied authority of a Partner relating to business.	CO4	L2
9.	Differentiate LLP and Partnership.	CO4	L4
10.	Registration is must in LLP, Partnership and Company – Give your comments.	CO4	L5

PART – B

Sno.	Questions	CO	Blooms Level
1.	Discuss the essentials elements of Partnership firm.	CO4	L4
2.	"Reconstitution of partnership Firmmeans Admission of Partner" – Justify this statement.	CO4	L5

3.	Explain in detail the rights and duties of Partners.	CO4	L2
4.	Describe different types of Partners.	CO4	L2
5.	Enumerate the implied authorities of a Partner.	CO4	L2
6.	Discuss the circumstances under which a partnership firm is reconstituted.	CO4	L4
7.	Examine the various modes in which a partnership firm get dissolved.	CO4	L4
8.	Explain Limited Liability Partnership Act along with its features.	CO4	L2
9.	Differentiate Limited Liability Partnership and Partnership.	CO4	L4
10.	Distinguish Limited Liability Partnership and Company.	CO4	L4

SATHYABAMA
INSTITUTE OF SCIENCE AND TECHNOLOGY
(DEEMED TO BE UNIVERSITY)
Accredited "A" Grade by NAAC | 12B Status by UGC | Approved by AICTE
www.sathyabama.ac.in

SCHOOL OF MANAGEMENT STUDIES

UNIT – V– BUSINESS LAW - SBAA1206

UNIT 5 NEGOTIABLE INSTRUMENTS ACT, 1881

The Negotiable Instruments Act 1881 - Meaning, Characteristics and Types of Negotiable Instruments: Promissory Note - Bill of Exchange - Cheque - Holder and Holder in Due Course, Privileges of Holder in Due Course - Negotiation - Types of Endorsements - Crossing of Cheque - Bouncing ofCheque.

A Negotiable Instrument (NI) is a written contract evidencing a right to receive money and it may be transferred by negotiation i.e., either by delivery or by endorsement. The term negotiable instrument literally means a document transferable by delivery.

Sec.13 (1) of the Negotiable Instrument Act states that, a Negotiable Instrument means a promissory note, bill of exchange or cheque payable either to order or bearer.

Essential features of Negotiable Instruments / Characteristics / Nature / Requisites

1. Freely Transferable - The property in the NI passes from one person to another by delivery.

2. **Title of holder free from all debts -** A person taking an instrument bonafide and for value, known as holder in due course gets the instruments free from all defects of the title of the transferred.

3. Right to file suit - The transferee for NI is entitled to file a suit in his own name for enforcing any right or claim on the basis of the instruments.

4. Notice of Transfer - It is not necessary to give notice of transfer of NI to the party liable to pay.

5. Number of transfer - These instruments can be transferred in infinitum till they are at maturity.

6. Rule of Evidence - These instruments are in writing and signed by the parties. They are used as evidence of the fact of indebtedness because they have special rules of evidence.

7. Exchange - These instruments relate to payment of certain money in legal tender. The parties to these instruments know for certain (by whom, to whom, how much, when and where) the liabilities or claims will mature.

PRESUMPTIONS

1. Consideration - Every negotiable instrument bearing a date is presumed to have been made for consideration.

2. Time of Transfer - Every accepted bill was made within a reasonable time after its date and before its maturity.

3. Date - Every negotiable instrument was made or drawn on the date it bears

4. Stamping - A promissory notes, bill of exchange or cheque must be duly stamped.

5. Proof of protest - In a suit instruments which has been dishonoured, the court shall, on proof of protest, presume the fact of dishonour, unless and until such fact is disproved.

Parties to Negotiable Instruments

1. Drawer - The maker of a NI is called 'drawer'.

2. Drawee –The person on whom the instrument is drawn.

3. Acceptor - He is a person who accepts the instruments.The drawee becomes the acceptorafter accepting the instrument (but sometimes a stranger may accept on behalf of the drawee).

4. Payee - Payee is a person to whom the sum stated in the instrument is payable. The drawer or anyother person may also be the payee. In the latter case, he is called payee for honour.

5. Holder - He is either the original payee or any other person to whom the payee has endorsed theinstrument. In case of the bearer cheque, the bearer is the holder.

6. Endorser - When the holder endorses the instrument to anyone else, he becomes the endorser.

7. Endorsee - The person to whom the instrument is endorsed is known as endorsee.

8. Endorsee in case of need - The person to who resort may be had in case of need i.e., when the bill is dishonouredeither by non-acceptance or by non-payment.

9. Acceptor for honour - Further, any person may voluntarily become a party to a bill as an acceptor. A personwho, on refusal by the original drawee to accept the bill or to furnish better security whendemanded by the notary, accepts the bill in order to safeguard the honour of the drawer or anyendorser is called acceptor for honour.

10. Holder in due course - According to Sec. 8 of the Negotiable Instruments Act, a holder of a negotiableinstrument is 'a person entitled in his own name to the possession thereof and to receive orrecover the amount due thereon from the parties thereto'. Thus, a person who has obtained thepossession of an instrument by theft or under a forged endorsement is not a holder in due course,as he is not entitled to recover the amount of the instrument.

PROMISSORY NOTE

Sec.4 of the NI Act defines; a promissory note is an instrument in writing (not being abank note or a currency note) containing an unconditional undertaking signed by the maker, topay a certain sum of money to or the order of certain person or to the bearer of the instrument.

FORMAT OF A PROMISSORY NOTE

Hari Das — 113, Janak Puri, Ambala Cantt

₹ 1,00,000 — 1st April, 2011

Stamp

Five months after date I promise to pay Sh. Vinay Pujari or order a sum of rupees one lakhs only for value received.

(Signed)
Hari Das

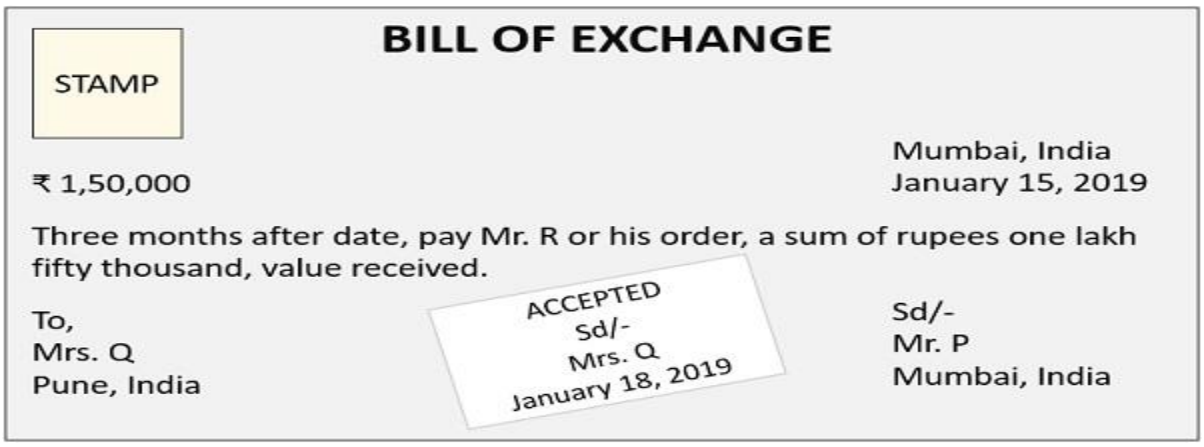
To
Shri Vinay Pujari
236, Mall Road
New Delhi.

Essential features of a promissory note

1. The promissory note must be in writing
2. It must contain an express promise or clear undertaking to pay
3. The promise to pay must be definite and unconditional
4. It should be signed by the maker
5. The amount must be certain
6. The promise should be to pay money
7. The payee must be certain
8. It should bear the required stamping
9. It should be dated

BILL OF EXCHANGE

According to Sec.5 of the NI Act, a bill of exchange is an instrument in writingcontaining an unconditional order, signed by the maker directing a certain person to pay a certainsum of money only to, or to the order of certain person or to the bearer of the instrument.



Essential features of a Bill of Exchange

1. A bill of exchange is an instrument in writing
2. The instrument must contain an order to pay, which is express, certain and unconditional
3. The drawer must be certain
4. The drawee must be certain
5. The payee must be certain
6. The instrument must be duly signed by the drawer
7. The amount of the money to be paid must be certain
8. The payment must be in terms of money
9. The money must be payable to a definite person or according to his order
10. The bill may be payable on demand or after a specified or definite period of time
11. It must be properly stamped as prescribed by the Indian Stamp Act
12. It must be dated. The date of the bill is necessary for the calculation of the due date of bill.

DIFFERENCE BETWEEN BILL OF EXCHANGE AND PROMISSORY NOTE

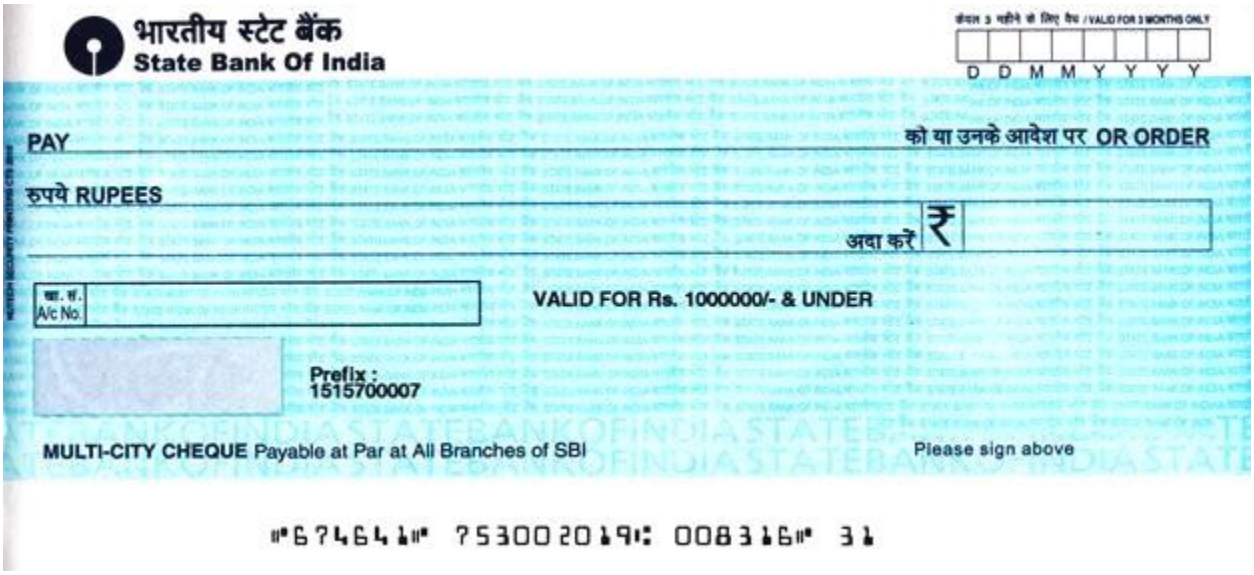
Basis	Bill of Exchange	Promissory Note
No. of Parties	There are 3 parties in the case of bill of exchange	There are only 2 parties to a promissory note
Order and Promise	A bill contains an unconditional order	A promissory note contains an unconditional undertaking or promise

Nature of Relationship	A bill arises usually upon the basis of a creditor – debtor Relationship	A promissory note is based on a debtor – creditor relationship
Acceptance	A bill needs to be accepted to make it valid. The drawee put his signature as acceptor No such acceptance is required	A promissory note is signed by the maker only
Nature of Liability	The liability of the drawer of a bill is secondary and conditional; the drawee or the acceptor is primarily liable	The liability of the maker of a promissory note is primarily and absolute because he himself is the main debtor
Immediate relations	The drawer of an acceptance bill stands in immediate relation with the acceptor and the payee	The maker of a note stands in immediate relation with the payee
Notice to prior parties	When a bill is dishonoured either by non-payment due notice of dishonour must be given by the holder must be given by the holder to all prior parties	Notice of dishonour need not be given to the maker of a promissory note
Sets	Foreign bills are drawn in sets	Promissory notes are not so drawn
Protest	Foreign bills must be protested for dishonour when such protest is required by the law of the place where they are drawn	No such protest for dishonour is required for foreign promissory note
Conditional Acceptance	A bill may be accepted conditionally	The maker of the promissory note cannot attach any such condition to it
Acceptor for honour	The acceptor for honour can even make the payment of a bill	It cannot be paid for honour
Payable to the maker himself	A bill may be payable to the maker himself when the drawer and the payee are one and the same person	A note cannot be made payable to the maker himself

CHEQUE

Sec.6 of the NI Act, defines, a cheque is a bill of exchange and not expressed to be payable otherwise than on demand.

A cheque is an unconditional order in writing drawn on a banker signed by the drawer, requiring the banker to pay on demand a sum certain in money to or to the order of a specified person or bearer and which does not order any act to be done in addition to the payment of money**.**



Essential characteristics of Cheque

1. A cheque must be an instrument in writing
2. A cheque must contain an order to pay money only
3. The order in the cheque must be unconditional
4. A cheque must be signed by the maker or drawer
5. The sum payable must be certain
6. A cheque is always payable on demand
7. The cheque must be drawn on a specified banker
8. The payee of a cheque must be certain
9. A cheque should bear a date
10. Delivery of the cheque is essential. The stamp duty on cheque was abolished in India in the year 1927, therefore now a cheque need not be stamped.

DISTINCTION BETWEEN A CHEQUE AND A BILL OF EXCHANGE

Basis	Cheque	Bill of Exchange
Drawee	A cheque is always drawn on a specified banker only	A bill may be drawn on any one, including a banker
Payable on demand	A cheque is always payable on demand	A bill may be drawn payable on demand or on the expiry of a certain period after date or sight
Payable to the bearer on demand	A cheque is always payable on demand and may be payable to bearer or order	A bill cannot be drawn payable to the bearer on demand
Acceptance	A cheque requires no acceptance	A bill must be accepted before payment can be claimed
Days of Grace	No days of grace are allowed	In the case of time bills three days of grace are allowed from the due date for calculating the maturity of the bill
Supposition	A cheque can be crossed either generally and specially	In case of a bill, there is no such presumption
Crossing	A cheque can be crossed either generally and specially	A bill cannot be crossed
Stamping	A cheque does not require any stamp	A bill must be properly stamped
Countermanding	A payment of a cheque can be countermanded by the drawer	The payment of a bill cannot be countermanded by the drawer
Circulation	A cheque is not intended for circulation but for immediate drawer	A bill may be circulated by endorsing it
Discounting	A cheque cannot be discounted	A bill can be discounted and rediscounted with the banks
Primary liability	The drawer of a cheque is primarily liable for payment	The drawer or the acceptor of a bill is primarily liable on it
Statutory protection	The banker is protected if he pays a cheque under a forged endorsement	A bill must be noted and protested when it is dishonoured
Noting and protesting	A cheque need not be noted and protested when dishonoured	A bill must be noted and protested when it is dishonoured
Sets	Cheques are not issued in sets	Foreign bills are generally drawn sets of three or four

DISTINCTION BETWEEN A CHEQUE AND A PROMISSORY NOTE

Basis	Cheque	Promissory Note
No. of Parties	A cheque has three parties	A promissory note had two parties only
Order and promise	A cheque contains an unconditional order to the banker to pay the money	A promissory note contains an unconditional undertaking by the debtor to pay the money
Drawee	The drawee is a specified banker, i.e., the drawee of a cheque always a banker	A promissory note may be executed either by a banker or by a non-banker
Payable on demand	A cheque is always payable on demand	It may be payable either on demand or after a certain period
Bearer of order	A cheque may be payable to order or to bearer	A promissory note cannot be made payable to the bearer on demand
Crossing	A cheque can be crossed	There is practice of crossing a promissory note
Stamping	A cheque does not require any stamp	It must be properly stamped
Days of grace	Grace days are not allowed because it is always payable on demand	A grace period of three days is allowed
Discounting	A cheque is not discounted	A promissory note can be discounted and rediscounted with banks

HOLDER

He is either the original payee or any other person to whom the payee has endorsed theinstrument.

HOLDER IN DUE COURSE

Any person who for consideration becomes the possessor of the instrument payable to thebearer for valuable consideration before maturity of instrument in good faith without knowledgeabout its bad title.

Privileges of Holder in due course

 The holder in due course is not liable until all the prior parties are held liable

 The holder in due course gets a good title even if it defective but without knowledge ofsuch defect

 Every holder in presumed to be holder in due course though such presumption isreputable.

 The principle of estoppels is applicable to the deniers of the bonafide title of theinstruments and or the holder in due course can set up the plea of estoppels

 If the instruments are without consideration or obtained by illegal means, he gets only adefective title but the subsequent holders may get the privileges.

DIFFERENCE BETWEEN HOLDER AND HOLDER IN DUE COURSE

Holder	**Holder in Due Course**
He takes it subjects to all defects and equities	He takes the instrument for free from all defects
Consideration is not necessary	Acquires the instruments for valuable consideration
He could acquire the possession after the amount mentioned in it became payable	He should have acquired possession of the instrument before the amount mentioned in it became payable
He can take the instrument with notice of defects	He should not have noticed any defect in the instruments
It is sufficient if he entitled to the possession of the instruments	He must have possession of the instruments

NEGOTIATION

According to Section 14 of Negotiable Instrument Act 188 "When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute the person the holder thereof,the instrument is said to be negotiated.

Modes of Negotiations

Negotiation may take place (i) by delivery (ii) by endorsement and delivery.

(i) Negotiation by Delivery

According to Section 47 Subject to the provisions of Section 58 of the Negotiable Instrument Act, 1881 a promissory note, bill of exchange or cheque payable to bearer is negotiable by

delivery thereof.

Exception: A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens. Ex.

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possess the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

(ii) Negotiation by Endorsement and Delivery

According to Section 48 of the said Act Negotiation by endorsement, Subject to the provisions of Section 58, a Promissory Note, bill of exchange or cheque payable to order, is negotiable by the holder by endorsement and delivery thereof.

ENDORSEMENT

Endorsement means signing at the back of the instrument for the purpose of negotiation. Section 15 of the Negotiable Instrument Act 1881 defines endorsement is the act of the signing a cheque, for the purpose of transferring to the someone else, is called the endorsement of Cheque. The person who endorses is called "endorser" and the person to whom the instrument is endorsed is called the "endorsee".The endorsement is usually made on the back of the cheque. If no space is left on the Cheque, the Endorsement may be made on a separate slip to be attached to the Cheque.

Types of Endorsement

There are six Kinds of Endorsement i) Endorsement in Blank / General ii) Endorsement in Full / Special iii) Conditional Endorsement iv) Restrictive Endorsement v) Endorsement Sans Recourse vi) Facultative Endorsement.

(a) Endorsement in Blank / General

An endorsement is said to be blank or general when the endorser puts his signature only on theinstrument and does not write the name of anyone to whom or to whose order the payment is to be made.

(b) Endorsement in Full / Special

An endorsement is 'special' or in 'full' if the endorser, in addition to his signature also mention the name of the person to whom or to whose order the payment is to be made. There is direction added by endorse to the person specified called the endorsee, of the instrument who now becomes its payee entitled to sue for the money due on the instrument.

(c) Conditional Endorsement

The conditional endorsement is negotiation which takes effect on the happening of a stated event, or not otherwise. Section 52 of the Negotiable Instrument Act 1881 provides - The endorser of a negotiable instrument may, by express words in the endorsement, exclude his own liability thereon, or make such liability or the right of the endorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.Where an endorser so excludes his liability and afterwards becomes the holder of the instrument all intermediates endorsers are liable to him. Ex.

(a) The endorser of a negotiable instrument signs his name, adding the words “without recourse”. Upon this endorsement, he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement, “without recourse”, he transfers the instrument to B, and B endorses it to C, who endorses it to A. A is not only reinstated in his former rights but has the rights of an endorsee against B and C.

(d) Restrictive Endorsement

Restrictive endorsement seeks to put an end the principal characteristics of a Negotiable Instrument and seals its further negotiability. This may sound a little unusual, but the endorsee is very much within his rights if he so signs that its subsequent transfer is restricted.This prevents the risk of unauthorized person obtaining payment through fraud or forgery and the drawer losing his money.

(e) Endorsement Sans Recourse

Sans Recourse which means without recourse or reference.As such a when the property in a negotiable instrument is transferred sans recourse, the endorser, negatives his liability and excludes himself from responsibility to all subsequent endorsees. It is one of the commonest form of qualified endorsement and virtually prohibits negotiation since the endorser says in

effect.

(f) Facultative Endorsement

Facultative Endorsement is an endorsement where the endorser waives some right to which he is entitled. For example, the endorsee is liable to give notice of dishonor to the endorser and normally failure to give notice will absolve the endorser from his liability.

CROSSING OF CHEQUE

There are two types of Cheques, open cheques and crossed cheques. Open Cheque is one which is payable in cash across the counter of a bank. A crossed cheque is one, on which two parallel transverse lines with or without the words "& Co." are drawn. The crossing of cheque gives a direction to the drawee bank to not pay the mentioned amount at the counter, instead the payment should be done through a bank.Thus crossing is a direction to the drawee banker to pay the amount of money on a crossed cheque through a banker so that the party who obtains the payment of the cheque can be easily traced.

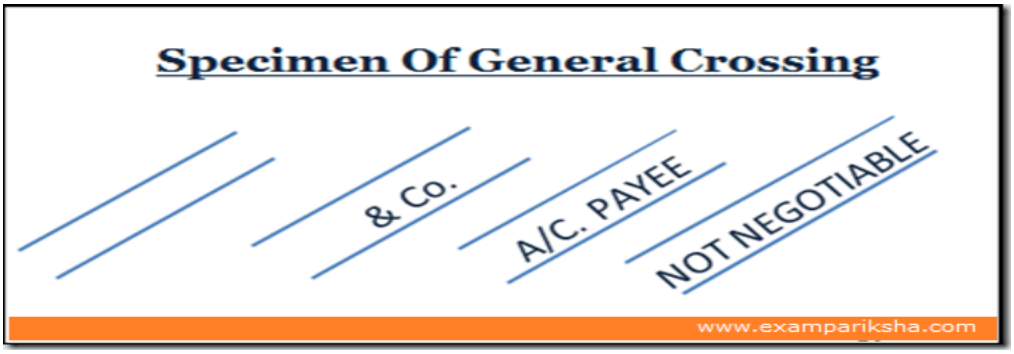
Importance of Crossing of Cheque

A crossed cheque cannot be encashed by the bearer but can only be collected from the drawee bank in the bank account. (Sec. 123 and 126 of the Negotiable Instruments Act) Therefore, Crossing of cheque provides protection and safeguard to the issuer of the cheque. In case of a crossed cheque one can easily detect who encashed the said cheque, unlike the case of non-crossed cheque. Hence, Crossing protects both payer and the payee of the cheque. Also, both bearer and order cheques can be crossed.

There are two types of crossing. General crossing and special crossing. Another type of crossing Known as 'restrictive crossing' is developed out of business usage.

1) General crossing

Section 123 of the Negotiable Instruments Act has defined General Crossing – "where a cheque bears across its face an addition of the words 'And Company' or any abbreviation thereof, between two parallel transverse lines or of two parallel transverse lines simply, and either with or without the words 'not negotiable', that addition shall be deemed to be a crossing of cheque and the cheque shall be deemed to be crossed generally".



A cheque is considered to be generally crossed in the following cases:

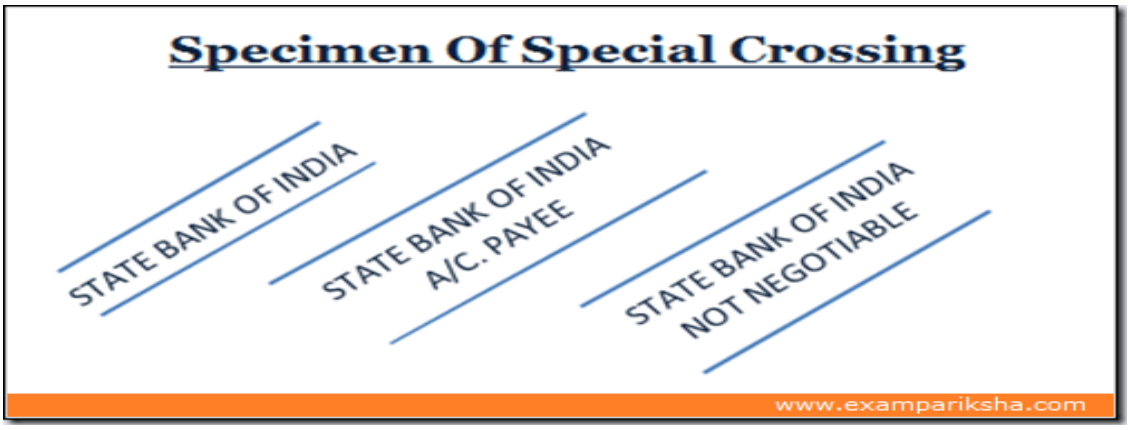
- When there are two transverse parallel lines marked across the face of cheque
- When the cheque bears an abbreviation "& Co." between the two transverse parallel lines
- When the cheque bears the words "Not Negotiable" written between the two parallel lines
- When the cheque bears the words "A/c. Payee" between the two transverse parallel lines.

2) Special crossing

A cheque is said to be specially crossed when a particular bank's name is written in between the two transverse parallel lines on the cheque.

According to the Section 124 of the Negotiable Instruments Act, Special Crossing is defined as, the cheque which "bears across its face an addition of the name of a banker, with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed specially and to be crossed to that banker".

In a special crossed cheque, the amount written in cheque is payable by the drawee only, and only to the bank named in the crossing.



3) Restrictive crossing

In addition to the two statutory types of crossing discussed above, there is another type which has been adopted by commercial and banking usage. In this type of crossing the words, "A/c payee" are added to the general or special crossing.

Not negotiable Crossing of Cheque

The effect of writting 'not negotiable' crossing of cheque is that the cheque can be transferred but transferee will not be able to acquire a better title to the cheque. Thus, such a cheque is deprived of its essential feature of negotiability. The payment of such a cheque is not made unless the bank named in the crossing of cheque is presenting the cheque.

BOUNCING/DISHONOUR OF CHEQUE

A cheque is said to be honoured, if the banks give the amount to the payee. While, if the bank refuses to pay the amount to the payee, the cheque is said to be dishonoured. In other words, dishonour of cheque is a condition in which bank refuses to pay the amount of cheque to the payee.

Whenever the cheque is dishonoured, the drawee bank instantly issues a 'Cheque Return Memo' to the payee banker specifying the reasons for dishonour. The payee banker provides the memo and the dishonouredcheque to the payee. The payee has an option to resubmit the cheque within three months of the date specified on the cheque after fulfilling the reason for the dishonour of cheque.

Moreover, the payee has to give a notice to the drawer within 30 days from the date of receiving "Cheque Return Memo" from the bank. The notice should state that the cheque amount will be paid to the payee within 15 days from the date of receipt of the notice by the drawer.However, if

the drawer fails to make a fresh payment within 30 days of receiving the notice, the payee has the right to conduct a legal proceeding against the defaulter as per Section 138 of the Negotiable Instruments Act.

Reasons for Dishonour of Cheque

1. If the cheque is overwritten.

2. If the signature is absent or the signature in the cheque does not match with the specimen signature kept by the bank.

3. If the name of the payee is absent or not clearly written.

4. If the amount written in words and figures does not match with each other.

5. If the account number is not mentioned clearly or is altogether absent.

6. If the drawer orders the bank to stop payment on the cheque.

7. If the court of law has given an order to the bank to stop payment on the cheque.

8. If the drawer has closed the account before presenting the cheque.

9. If the fund in the bank account is insufficient to meet the payment of the cheque.

10. If the bank receives the information regarding the death or lunacy or insolvency of the drawer.

11. If any alteration made on the cheque is not proved by the drawer by giving his/her signature.

12. If the date is not mentioned or written incorrectly or the date mentioned is of three months before.

Dishonour of Cheque - Consequences

When the cheque is dishonoured, a ‘cheque return memo’ is offered by the bank to the payee stating why the cheque has been bounced. The payee can resubmit the cheque if he believes that it will be honoured second time. The payee can prosecute the drawer legally if the cheque is bounced again.

The Negotiable Instrument Act, 1881 is applicable for the cases related to dishonour of cheques. In accordance with section 138 of this act, dishonour of cheque is a criminal offence and is punishable with monetary penalty or imprisonment up to 2 years or both.

1. Penalty

If a cheque is bounced, then a penalty is levied on both drawer and payee by their respective banks. The person will additionally have to pay late payment charges if the dishounouredcheque is against repayment of a loan.

2. Damage to Credit History

Your credit history is negatively impacted if a cheque is dishonoured since your payment activities are reported to the credit bureaus by the financial institutions. The lenders will trust you if you have a good credit score. In order to have a good credit score, it's a good practice to avoid your cheques from being bounced. Your good payment activities will help you build good CIBIL score and benefit you at the time of lending money from financial institutions.

References

1. Goel, P.K., Business Law for Managers, Wiley, 2006.
2. Kapoor, N.D., Elements of Mercantile Law, Sultan Chand & Co. Ltd, 37th Edition, 2015.
3. Kuchhal, M.C., Vivek Kuchhal, Business law, Vikas Publication, 7th Edition, 2018.
4. Tulsian, Business Law, McGraw-Hill Education, 3nd Edition, 2018.
5. Universals', The Negotiable Instruments Act, 1881, Universal's Law Publishing, 1st Edition, 2018.

Question Bank

PART-A

Sno.	Questions	CO	Blooms Level
1.	Define Negotiable Instrument.	CO5	L1
2.	State any four essential features of Negotiable Instruments.	CO5	L2
3.	Differentiate Promissory Note and Bill of Exchange.	CO5	L4
4.	Define Cheque.	CO5	L1
5.	Differentiate Cheque and Bill of Exchange.	CO5	L4
6.	"Holder in due course is privileged" – Comment.	CO5	L5
7.	Differentiate Holder in Due course and Holder.	CO5	L4
8.	State any four parties involved in Negotiable Instruments.	CO5	L2

9.	Explain Negotiation.	CO5	L2
10.	“Crossing of Cheque is must.” – Do you agree this statement.	CO5	L5

PART – B

Sno.	Questions	CO	Blooms Level
1.	Explain Negotiable Instrument with its types.	CO5	L2
2.	Explain in detail the essential features of Negotiable Instruments.	CO5	L2
3.	Differentiate Bill of Exchange and Cheque.	CO5	L4
4.	Illustrate Crossing of a Cheque with suitable example.	CO5	L3
5.	Differentiate Promissory Note and Cheque.	CO5	L4
6.	Differentiate between Promissory Note and Bill of Exchange.	CO5	L4
7.	Illustrate the different types of Endorsement.	CO5	L3
8.	Explain the term holder and holder in due course and also discuss the privileges enjoyed by holder in due course.	CO5	L2
9.	Explain the conditions to be fulfilled for penal action for dishonor of a Cheque on account of insufficiency of funds.	CO5	L2
10.	Enumerate the circumstances under which, a Cheque can be dishonoured.	CO5	L2