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UNIT-III

Indemnity and Guarantee –

Bailment and pledge – Agency.

BUSINESS LAW

CONTRACTS OF INDEMNITY

Section 124 of the Indian Contract Act defines a contract of indemnity as a contract by which one party promises to save the other party from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

Example: X and Y claim a suitcase as rival owners from the cloakroom of a Railway station. X takes delivery of the suitcase and agrees to compensate the Railway Authorities for any loss they may sustain in case he is at fault. **In the above example,** 'X' is called the indemnifier and 'Railway Authorities' the indemnity-Holder or Indemnified.

CONTRACT OF GUARANTEE

- **The person who gives the guarantee is called the “Surety” – It is ‘R’ in the above example.**
- **The person for whom the guarantee is given is called the “principal Debtor” – It is ‘Q’ in the example.**
- **The person to whom the guarantee is given is called the “Creditor” It is ‘P’ in the example.**
- **In a contract of guarantee there are three parties namely, the creditor, the principal debtor and the surety.**

CONTRACT OF GUARANTEE

[Section – 126]: A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default

Example: ‘P’ lends Rs.50,000 to ‘Q’ and ‘R’ promises to ‘P’ that if ‘Q’ does not pay the money ‘R’ will make the payment to ‘P’. This is contract of guarantee.

BAILMENT

Bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them.

Example

- **'P' lends his book to 'Q'**
- **'P' delivers a pen to 'Q' for repair.**
- **'P' gives 'Q' his watch as security for a loan.**

In all these cases 'P' is the bailor and 'Q' is the bailee.

PLEDGE

The bailment of goods as security for **payment of a debt** or performance of a promise is called pledge or pawn. The bailor in this case is called Pledgor or Pawnor. The Bailee is called the pledgee or the Pawnee [Sec. 172].

EXAMPLE: X borrows Rs.2000 from Y and keeps his gold ring as security for the payment of the debt. X is the pawnor and Y is the pawnee

AGENT

An agent is defined by the Act as “a person employed to do any act for another or to represent another in dealings with a third person. In other words, an agent is a person who acts in place of another. The person for whom or on whose behalf he acts is called ‘Principal’.

For example, ‘X’ appoints ‘Y’ a broker to sell his house on his behalf. ‘X’ is the principal and ‘Y’ is his agent. The relationship between ‘X’ and ‘Y’ is called Agency.

CONTRACTS OF INDEMNITY

Section 124 of the Indian Contract Act defines a contract of indemnity as a contract by which one party **promises** to save the **other party from loss** caused to him by the conduct of the promisor himself, or by the conduct of any other person.

Example: 'A' contracts to indemnify 'B' against the consequences of any proceedings which 'C' may take against 'B' in respect of a certain sum of 1000 rupees. This is a contract of indemnity.

In the above example, 'A' is called the indemnifier and 'B' the indemnity-Holder or Indemnified.

ESSENTIAL ELEMENTS OF CONTRACT INDEMNITY

- **Special contract**
- **Valid contract**
- **Loss to one party**
- **Indemnity by the promisor**
- **Reason for loss**

RIGHTS OF INDEMNITY HOLDER

(Sec 125) RIGHTS TO RECOVER

➤ **DAMAGES**

➤ **COSTS**

➤ **SUMS PAID IN COMPROMISE**

FEATURES OF INDEMNITY CONTRACTS

→ THE PARTIES (INDEMNIFIER-INDEMNITY HOLDER)

→ CONSIDERATION IS NOT THERE (IF **A** is not going to pay)

→ CONDUCT OF THE PROMISOR (**C** has to be paid) bear the loss

→ EXPRESSED OR IMPLIED (Agreement made between both the parties can be oral

/written

& Gesture

→ OTHER FEATURES (what needed contract-sound capacity, legal aspects of contracts)

→ INSURANCE CONTRACT (marine/theft /road accident and life) are not indemnity.

EXAMPLE:

A-PURCHASER (**INDEMNITY HOLDER**)  **B-SELLER**

 **C-INDEMNIFIER** (ASSURANCE)

FEATURES OF GUARANTEE CONTRACTS(126)

- **THREE PARTIES**(Take loan, Giving loan and take responsibility)
- **THREE CONTRACTS**(A to B ,A to C and C to B)
- **NO CONSIDERATION**
- **COMPETENCY OF PARTIES**(Parties are eligible to enter the contract-lunatic drunkard insolvent not allowed, but minor of debtors allowed and protect except B and C are major)
- **IT MAY BE ORAL** (by saying something)**AND WRITTEN**(evidence)
- **OTHER FEATURES**-valid Contracts Are Needed.(Proposal/acceptance/capacity)

EXAMPLE:



CONTRACT OF INDEMNITY

SCOPE OF CONTRACT OF INDEMNITY

**Express
Promise to
Indemnity**

**Implied
Promise to
Indemnity**

**Loss caused by
the conduct of
the promisor
or any other
person**

**Loss caused
by Accidents
and Events**

PARTIES:

There are **two** parties to a contract of indemnity.

1. INDEMNIFIER:

The person who promises to make good the loss is called the indemnifier (**promisor**).

2. INDEMNITY – HOLDER:

The person whose loss is to be made good is called the indemnity holder or indemnified (**promise**).

EXAMPLE:

A parked his scooter at the college scooter stands. He lost his token given by the **contractor**. The contractor refuses to return the scooter to **A** unless he (**A**) gives him an indemnity bond against any loss which he may suffer if any other person claims the scooter from the contractor.

RIGHTS OF INDEMNITY HOLDER

The following are the rights of indemnity – holder against the indemnifier.

- 1. He can recover **all damages** which he may be compelled to pay in respect of any suit filed against him.
- 2. He can recover **expenses** in respect of any suit filed by him with the authority of indemnifier.
- 3. He can recover all expenses which he may have paid under the terms of any **compromise** of any such, provided the compromise was made with the consent of indemnifier.

RIGHT OF INDEMNIFIER

It is a well known principle of law that where one person has agreed to indemnify another, he will on making good the loss, be entitled to all the ways and means by which the person indemnified **might have protected himself** against or **reimbursed** himself for the loss.

CONTRACT OF GUARANTEE

“A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default.”

EXAMPLE:

A requests **B** to lend Rs.5 lakhs to **C** and guarantees that if **C** fails to pay, he (**A**) will himself pay to **B**, there is a contract of guarantee.

DISTINCTION BETWEEN INDEMNITY AND GUARANTEE

The following are the points of distinction between the two:

INDEMNITY	GUARANTEE
<p>1. Number of Parties In a contract of Indemnity, there are two Parties the indemnifier and the indemnity holder.</p>	<p>In a contract of guarantee, there are three parties. The creditor, the principal debtor, and the surety.</p>
<p>2. Number of Contract In indemnity there is only one contract between the indemnifier and the indemnified.</p>	<p>In guarantee, there are three contracts one between creditors, and the principal debtor, second between the creditor and the surety, and the third between the surety and the principal debtor.</p>
<p>3. Number of Liability The liability of indemnifier is primary and independent.</p>	<p>The liability of surety is secondary. It means that surety is liable only if the principal debtor fails to perform his obligations.</p>
<p>4. Request In the contract of indemnity, the indemnifier acts without the request of the debtor.</p>	<p>In a contract of guarantee the liability already exists and its performance is guaranteed by the surety.</p>
<p>6. Purpose A contract of indemnity is for the reimbursement of loss.</p>	<p>A contract of guarantee is for the security of a debt.</p>

WRITING NOT NECESSARY

According to **section 126**, it is not necessary that contract of guarantee must be in writing. It may be either oral or written. It may be express or implied from the conduct of parties.

EXAMPLE:

A sells and delivers goods to **B** on the verbal guarantee of **C**. It is valid guarantee.

EXTENT OF SURETY'S LIABILITY

Section 128 of the contract Act 1872 provides that the liability of the surety is co-extensive with that of the principle debtor, unless it is otherwise provided by the contract.

EXAMPLE: A guarantee to B the payment of a bill of exchange by C, the acceptor. The bill is dishonored by C. A is liable not only for the amount of the bill.(including interest and charges due also)

KINDS OF GUARANTEE(I)SPECIFIC

The guarantee which is given for a **single debt** or transaction is called specific or ordinary guarantee. It comes to an end as soon as the liability under the transaction ends.

EXAMPLE: D supplies 5 bags of wheat on credit to **E. F** guarantees the payment of **E**. This guarantee by **F** is a specific guarantee applicable only to this specific transaction.

KINDS OF GUARANTEE(II)CONTINUING

According to section 129, a guarantee, which extends to a series of transaction, is called continuing guarantee. (a) for a part of the entire debt or (b) for the entire debt subject to a limit.

EXAMPLE:(a) A guarantee to C for B's credit purchases with a running balance of account not exceeding Rs.5,000. this is a continuing guarantee.

(b) A guarantees to C for B's purchases from C for six months to the extent of Rs.5,000. this is a continuing guarantee.

© A, in consideration that B will employ C for collecting rent from B's tenants, guarantees to B the due collection of rent by C .

RIGHTS AND LIABILITIES OF SURETY

Rights of surety can be discussed under three sub-divisions, namely,

- **As against the Principal debtor**
- **As against the creditors and**
- **As against the co-sureties.**

Rights against the Principal debtor [Sec. 140-141]

- To require the principal debtor to payoff the creditor
- To recover from the principal debtor all sums paid under the guarantee.

Right of indemnity: The surety is entitled to be indemnified against all payments properly made by him. The surety is entitled to receive only that amount which he had paid rightfully to the creditor (Sec. 145).

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, provided the liability is an ascertained and subsisting one.

Right against the creditor

- In case of fidelity guarantee, i.e., guarantee regarding good conduct, honesty etc., of the principal debtor, the surety can ask the creditor or the employer to dispense with the services of the principal debtor or the employee in case the latter is proved to be **dishonest** or has committed any act of dishonesty.
- After the debt has become due, and before the surety is called upon to pay, the surety may ask the creditor to sue the debtor and collect the amount. But the surety must undertake to indemnify the creditor any risk, delay or expense, resulting from such a suit. In no circumstances, the surety can compel the creditor to sue the principal debtor before suing him (surety).

Right against the creditor

- **The surety can, after payment of the debt or performance of the promise of the principal debtor, recover all the securities which the creditor had either before or after the contract of guarantee was entered into [Sec. 141]. It is immaterial whether the surety was aware of such securities or not. He is entitled to all of them.**

Right against the co-sureties [Sec. 146-147]

- Where there are two or more sureties for the same debt either jointly or severally and, whether under the same or different contracts and, sureties were aware of such debts and if one of them is called upon to pay the debt of the principal debtor to the creditor, then such a surety is entitled to recover the excess of the amount over and above his share which he had to pay, from his **co-sureties, in equal amount.**
- If the sureties agreed to stand as sureties in different amounts for the same debt, in case the **principal debtor commits default** and one of the co-sureties is asked to clear the debt, he is entitled to recover the amount from the co-sureties but **not exceeding the amount which he had agreed originally to pay in the event of the default by the principal debtor.**

WHEN A SURETY IS DISCHARGED FROM LIABILITY

- **Notice of Revocation**
- **Death of Surety**
- **Variation of Contract**
- **Release or Discharge of Principal Debtor**
- **Arrangement with Principal Debtor**
- **By Creditor's Act or Omission Impairing Surety's
Eventual Remedy**
- **Loss of Security**

Notice of Revocation

In case of a continuing guarantee, a notice by the surety to the creditor stating that he will not be responsible, will revoke his liability as regards all future transactions. He will remain liable for all transactions entered into prior to the date of the notice [Sec. 130]

EXAMPLE: A lends B a certain sum on the guarantee of C. C cannot revoke the guarantee. But if A has not yet given the sum to B, C may revoke the guarantee by giving a notice.

Death of Surety

In case of continuing guarantee the death of a surety discharges him from all liabilities as regards transactions, after his death unless there is a contract to the contrary [Sec. 131]

EXAMPLE: A sells goods to B for Rs. 1 lac C guarantees payment. A delivers goods cost Rs.50,000. Afterwards C dies C's property is liable up to Rs.50,000 only.

Variation of Contract

Any variance, made without the surety's consent in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance [Sec. 133].

Example: 'C' contracts to lend Rs.10,000 on the 1st March. 'A' guarantees repayment 'C' pays Rs.10,000 to 'B' on the 1st January. 'A' is discharged from his liability, as the contract has been varied in as much as 'C' might sue 'B' for the money before 1st March.

RELEASE OR DISCHARGE OF PRINCIPAL DEBTOR

The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.[Sec 134]

EXAMPLE: M contracts to lend N Rs.1 lac on 1 March. S guarantees payment. M pays the amount on 1 January. S is discharged from his liability, as the terms of contract have been changed.

ARRANGEMENT WITH PRINCIPAL DEBTOR

A contract between the creditor and the principal debtor, by which the creditor makes a composition with (or) promises to give time to or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract [Sec. 135].

EXAMPLE: P purchased a motor car from C under the hire purchase agreement on guarantee of S for the due performance of the agreement. C for valuable consideration gives P further time for payment of one of the installments. Held the giving of time to P discharged S from his liability.

BY CREDITOR'S ACT OR OMISSION IMPAIRING SURETY'S EVENTUAL REMEDY [SEC. 139]

If the creditor does any act which is his duty to the surety, and the eventual remedy of surety himself against the principal debtor is thereby impaired, the surety is discharged. **EXAMPLE: A employs B as a cashier on the guarantee of M. A promise to check up the cash of B at least once a month. A does not check the cash as promised. B commits fraud. M is not liable to A.**

LOSS OF SECURITY

If the creditor loses or parts with any security given to him by the principal debtor at the time the contract to guarantee was entered into, the surety is discharged to the extent of the value of the security, unless the surety consented to the release of such security

[Sec. 141].

BAILMENT

Bailment is the **delivery of goods** by one person to another for **some purpose**, upon a **contract** that they shall, when the **purpose is accomplished be returned** or otherwise disposed of according to the directions of the person delivering them.

Example

- 'P' lends his book to 'Q'
- 'P' delivers a **pen/car** to 'Q' for repair.
- 'P' gives 'Q' his watch as security for a loan.

In all these cases 'P' is the bailor and 'Q' is the bailee.

REQUISITES OF A VALID CONTRACT OF BAILMENT

- **Contract**
- **Delivery of goods**
- **Purpose**
- **Ownership (bailor)**
- **Movable goods**
- **Possession**

CONTRACT

Bailment is the result of a contract between the owner of the goods and the other to whom they are delivered temporarily with condition that they shall be returned or disposed of according to the discretion of the person delivering them. Sometime the bailment arises from implied contract i.e., finder of goods.(bailee)-without contract

DELIVERY OF GOODS

The delivery of goods is made to convert the transaction into a contract of bailment. Sometimes, if the goods are already in **possession** of a person who agrees to hold them on behalf of the owner, a contract of bailment is thereby entered into although the goods were never delivered. In this case it is called **constructive** delivery. If the key of the **godown** where the goods are lying given to the buyer, it will also amount to constructive delivery of goods

- The goods are not delivered permanently but are returnable or disposed of according to the directions of the person delivering them.

PURPOSE

The goods are delivered to another person for some **specific purpose**. The bailee will have to complete the purpose for which it is given to him before returning it to her bailor.

- **Safe Custody of goods or transfer of goods**
- **Express or implied**

OWNERSHIP

In bailment the bailor continues to be the owner of the goods. Therefore bailment does not cause any charge of ownership

MOVABLE GOODS

Bailment is concerned with only movable goods.

Money is not included in the category of movable goods

i.e., a deposit of money is not bailment. The relationship

between depositor and the bank is that of borrower and

the lender.(bank locker not bailment)

POSSESSION

A person already in possession of the goods becomes a bailee by subsequent agreements, express (or) implied.

- **Bailee –some purpose- purpose achieved-return to bailor or disposed of according to this direction**
- **Original or altered form**

DIFFERENT KINDS OF BAILMENT

Bailment may be classified into

- **Voidable Bailment**
- **Gratuitous Bailment and free charge eg. books**
- **Bailment for Reward.**

Voidable Bailment

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

Example: ‘A’ lends to ‘B’, on hire, a horse for his riding. ‘B’ drives the horse in his carriage. This contract can be terminated at the option of ‘A’.

Gratuitous Bailment

A gratuitous bailment is one when the goods are delivered to another **without any charge or consideration on the condition** that they shall be returned to the bailor. In such cases, **the following points must be considered:** [Sec. 159].

- The bailor may at any time ask the bailee to return the goods even though they might have been bailed for a specific time or purpose .
- The bailor must indemnify the gratuitous bailee, if the bailee is asked to return the goods **before the expiry of the specified period** or before the fulfilment of the purpose, for which the good were bailed provided the bailee in such a case suffers a loss greater than the benefit which he has derived from the gratuitous bailment for the goods

BAILMENT FOR REWARD

A bailment for reward is one where either the bailor or the Bailee is entitled to remuneration.

Example: Motor car let out for hire; goods given to a carrier for carriage for a price; articles given to a person for being **repaired** for a remuneration etc.

DIFFERENCE BETWEEN PLEDGE AND BAILMENT

PLEDGE	BAILMENT
1. PURPOSE In case of pledge, the goods are delivered to provide a security for a loan or for the performance of the promise.	In case of bailment, the goods are delivered for a purpose other than the above two purposes, e.g., for repair and safe custody etc.
2. RIGHTS In case of pledge, the pledge has a right of sale of the pledged goods on default after giving a notice to the pledgor.	In case of bailment, the bailee has not such right of sale. He can remain the goods or use for the dues.
3. USE OF GOODS In case of pledge, the pledge has no right of using the goods pledged.	In case of bailment, there is no such restriction if the nature of transaction so requires.
4. RETURN OF GOODS In case of pledge the pledge is not bound to return the goods delivered under pledge by the pledgor unless the debt is repaid or promise performed.	In case of bailment without reward the bailee is bound to return the goods on demand by the bailor.
5. LIEN In pledge, lien can be exercised even for non-payment of interest.	In bailment, lien can be exercised only for the labour and skill spend.

RIGHTS OF THE BAILOR

- 1. To get back the goods after expiry of the time for which they were bailed (or) after the accomplishment of the purpose of bailment.**
- 2. To get back the goods from the goods from the bailee at any time if it is a gratuitous bailment. Even if the goods are bailed for a specific period, the bailee will have to be indemnified for any loss which might be more than the benefit he derived out of the gratuitous bailment and which he might suffer due to early termination of the contract of bailment [Sec. 159].**

RIGHTS OF THE BAILOR

3. To **terminate** the contract of bailment if the bailee is guilty of an act in respect of the bailed goods that is **inconsistent with the terms of bailment.**
4. To claim separation/compensation if the Bailee, without consent, mixes up the goods bailed with his own goods(sec156&157)
5. The bailor may enforce the duties of the bailee.
6. To claim any benefit accrued from out of the goods bailed(sec163)
7. To claim damages if the bailee shows negligence

RIGHTS OF THE BAILEE

- The bailor is entitled to be rewarded if the goods were bailed to be worked upon by him [Sec. 148].
- The bailee has a right to be **compensated** if he has suffered any loss from the **defect in the goods** which he bailed and which he did not disclose [Sec. 150].
- The bailee has a right to be compensated if he has suffered any loss from the fact that the bailor was not entitled to bail the goods [Sec. 164].” If the bailor has no **title to the goods**, and the bailee, in good faith, delivers them back to or according to directions of the bailor, the bailee is not responsible to the owner in respect of such delivery” [Sec 166].
- The bailee is entitled to **recover reasonable expenses** incurred by him in connection with the goods bailed.

RIGHTS OF THE BAILEE

- **If the bailee is deprived of the goods bailed by a third person, he has a right to sue such a person to recover goods from him as if the goods belonged to him. If he has incurred any expense in such a case, he can recover the amount from the bailor.**
- **“If several joint-owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint-owner without the consent of all, in the absence of any agreement to the contrary” [Sec. 165].**
- **The bailee has a right to exercise lien. The right of a person to retain the property of another person till his satisfies the right of a person, who is in possession of the goods of another, to retain such possession until the debt due to him has been discharged. This right is sometimes called a ‘Possessory Lein’.**

CONTRACT OF PLEDGE OR PAWN

Definition: The bailment of goods as security for payment of a debt or performance of a promise is called pledge or pawn. The bailor in this case is called pledgor or pawnor. The bailee is called the pledgee or the pawnee [Sec. 172].

Essentials of Valid Pledge

- **There must be a debt or a promise to perform some act.**
- **Goods are bailed by way of security for the repayment of the debt or the performance of the promise.**
- **Goods to be pledged must be delivered to the pledgee.**
- **Only movable goods can be pledged.**
- **Legal Possession is necessary in case of pledge and therefore, mere physical possession cannot be considered to be a pledge, e.g., a servant cannot pledge the goods belonging to his master because legally he is not the owner of those goods.**

Rights of Pledgee or Pawnee

Right of Retainer: “The pawnee can retain the goods pledged not only for payment of the debt or the performance of the promise, but also for the interest of the debt and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged” [Sec. 173]. The pawnee enjoys only particular lien. If the pawnee makes fresh advances to the same debtor it will be presumed that the debtor has agreed to create lien on the goods already pledged for the fresh advance [Sec. 174].

Rights of Pledgee or Pawnee

- **Rights to sell:** The Pawnee may sell the goods by giving reasonable notice to the pawnor if the principal debt and the interest is not paid to him even if the pawnor's title to the goods was defective. If the sale results in deficit, he can recover the remaining amount by filing a suit against the pawnor.
- **Rights to Sue the Pawnor:** If the pawnor does not repay the debt or perform the promise after the expiry of the period, he may sue the pawnor for the same without losing his right of lien or the right to sell the goods pledged.

Rights of Pawnor

- **(1) Defaulting Pawnor's Right to Redeem [Sec. 177]:** A pawnor who has committed default in the payment of the debt or in the performance of the promise within the stipulated time, may redeem (take back) the goods pledged, before the pawnee has sold the goods by giving a reasonable notice.
- **(2) Preservation and Maintenance:** The pawnor can enforce the preservation and proper maintenance of the goods pledged.
- **(3) Protection of Debtors:** The pawnor as a debtor has various rights given to him by statutes enacted for the protection of debtors e.g., Money Lender's Acts.

AGENT(SEC.182)

An agent is defined by the Act as “a person employed to do any act for another or to represent another in dealings with a third person. In other words, an agent is a person who acts in place of another. The person for whom or on whose behalf he acts is called ‘Principal’.

For example, ‘X’ appoints ‘Y’ a broker to sell his house on his behalf. ‘X’ is the principal and ‘Y’ is his agent.

The relationship between ‘X’ and ‘Y’ is called Agency.

Rights of an Agent

Right to Receive Remuneration (Sec. 219 - 220): An agent is entitled to his agreed commission or remuneration and if there is no agreement, to a reasonable remuneration.

Right of Retention (Sec. 217): In agent may retain, out of any sums received, or account of the Principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as an agent.

Rights of an Agent

Right of Lien (Sec. 221); An agent is entitled to retain goods, papers and other. Property, whether movable or immovable of the principal received by him, until the due amount towards commission, remuneration etc. has been paid by the Principal.

Right of Stoppage in Transit: This right is available to the agent in the following cases:

a) Where he has purchased goods on behalf of the principal either with his own funds, or by incurring a personal liability for the price, he stands towards the principal in the position of an unpaid seller. Like an unpaid seller, he enjoys the right of stopping the goods in transit if in the meantime the principal has become insolvent.

b) Where an agent holds himself liable to his principal for the price of the goods sold; for example, del credere agent; he may exercise the unpaid seller's right of stopping the goods in transit in case of buyer's insolvency.

Rights of an Agent

Right of Indemnification (Sec. 222-224): The principal is bound to indemnify the agent against consequences of all lawful acts done by the agent in exercise of authority conferred upon him. However, the agent cannot claim indemnification for an unlawful act, even though the principal had agreed to do so.

Right to Compensation for Injury Caused by Principal's Negligence (Sec.225): The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.
Example: 'A' employs 'B' as a bricklayer in building a house and he failed to provide enough support systems and safety measures. Consequently 'B' met with an accident 'A' must make compensation to 'B'.

Creation of Agency

A contract of Agency may be created by

1. Express agreement.
2. Implied agreement, and
3. By ratification.

Express /Implied Agency

- 1. Express Agency:** A person may be appointed as an agent, either by word of mouth or by writing. No particular form is required for appointing an agent. The usual form of a written contract of agency is the **power of attorney on a stamped paper.**
- 2. Implied Agency:** Implied agency arises from the conduct, situation or relationships of parties. Implied agency therefore includes **agency by estoppels, agency by holding out, and agency of necessity.**

1. Express Agency

Example: ‘A’ owns a shop in Serampur, himself living in Calcutta and visiting the shop occasionally. The shop is managed by **B**, and he is in the habit of ordering goods from ‘C’ in the name of ‘A’ for the purposes of the shop, and of paying for them out of A’s funds with A’s knowledge. **‘B’** has an implied authority from ‘A’ to order goods from ‘C’ in the name of ‘A’ for the purposes of the shop.

2(a) Implied-Agency by Estoppel:

When a person has by his conduct or introduced others to believe that a certain person is his agent, he is **stopped** from subsequently, **denying** it.

Example: 'P' allows 'A' telling 'C' that 'A' is 'P's agent. Later on, 'C' supplies certain goods to 'A' thinking him to be 'P's agent. 'P' shall be held liable to pay the price to 'C'.

2(b) Implied-Agency by Holding out

Though it is an extension of Agency by estoppels, some affirmative conduct by the principal is necessary in creation of agency by holding out.

Example: ‘P’ allows his servant ‘A’ to buy goods for him on credit from ‘C’; and pays for them regularly. On one occasion, ‘P’ pays his servant cash to purchase the goods. The servant purchased goods on credit pocketing the money ‘C’ can recover the price from ‘P’ since through previous dealings ‘P’ has held out his servant ‘A’ as his agent.

2© Implied-Agency of Necessity

This arises where there is no express or implied appointment of person as agent for another but he is forced to act on behalf of a particular person.

Example: A horse was sent by rail and at the destination it was not taken delivery of by the owners. The station master had to feed the horse. Held, **station master became the agent by necessity** and hence, the owner must compensate him.

3. Agency by Ratification

(Sec. 196-200) Where an agent does an act for his Principal but without knowledge of authority, the principal is not held bound by the transaction. However, Sec. 196 permits the principal, if he so desires, to ratify the act of the agent. If he so elects, it will have the same effect as if the act was originally done by this authority. Agency in such a case is said to be created by ratification. In other words, the agency is taken to have come into existence from the moment the agent first acted and not from the date of Principal's ratification.

Example: The case of *Bolten Partners V. Lambert (1881)* is a good illustration on the point. In this case, 'L' made an **offer** to 'X' Managing Director of a company 'L' subsequently withdrew the offer, but the company ratified 'X's acceptance. Held 'L' was bound. The ratification related back to the time 'X' accepted the offer, thus rendering the revocation of the offer inoperative. **An offer once accepted cannot be withdrawn.** Requisites of a **valid Ratification** Ratification may be expressed or implied (Sec. 197).

CLASSIFICATION OF AGENTS

- **Broker**
- **Factor**
- **Commission agent**
- **Del Credere Agent**
- **Auctioneer**
- **Banker**
- **Indentor**

Broker

A broker is a mercantile agent engaged to buy and, or sell property or to make bargains and contracts between the engager and a third party for a commission (called **brokerage). He cannot have the possession of goods. He is merely a connecting link between the person who engages him and a third party.**

Factor

A factor is a mercantile agent who is entrusted with the possession of goods with an authority to sell the same. He can even sell the goods on **credit** and in his own name. He is also authorised to raise money on their **security**. A factor has a **general lien** on the goods in his possession. A factor cannot delegate his authority.

Commission agent

A commission agent is an agent who is engaged to buy and sell goods or transact business. The **remuneration** that he gets for the purpose is called the commission. A commission **agent is not liable** in case the **third party fails** to carry out the agreed obligation. A commission agent may have possession of the goods or not. His lien is a particular lien.

Del Credere Agent

Del Credere Agent is one who, in consideration of an extra commission, called a delcredere commission, guarantees the performance of the contract by the other party. A delcredere agent occupies the position of a guarantor, as well as of an agent. A delcredere agent is mostly appointed in case of deals with foreign nationals, about whom the principal knows nothing. (Bad debts)

Auctioneer

An auctioneer is one who is authorised to sell goods of his principal by auction. He has a **particular lien** on the goods for his remuneration. He has the goods in his possession and can sue the buyer in his own name for the purchase price up to the moment of sale. He acts as an **agent for the seller**. After the sale he acts as an agent for the buyer. An auctioneer has an implied authority to sell the goods without any restriction.

Banker

Though the relationship between a banker and customer is ordinarily that of debtor and creditor, he acts as his agent when he buys and sells securities on his behalf. Likewise, when he collects **cheques, bills, interest dividends etc.** or when he pays **insurance premium** out of customer's account as per customer's request, he acts as his agent.

Indentor

An indentor is a commission agent, who, for a commission procures a sale, or, a purchase on behalf of his principal, with a merchant in a foreign country. According to a custom judicially recognised in Bombay. Such agent can charge commission at the rates mentioned in the indent.

TERMINATION OF AGENCY

- **Section 201 of the Indian Contract Act, 1872 mentions the circumstances under which an agency terminates or comes to an end. It reads, “An agency is terminated by the **principal revoking his authority**; or by the agent renouncing the business of the agency being completed; or by either the principal or agent dying or becoming insolvent or becoming of unsound mind under the provisions of any act for the time relief of insolvent debtors.”**

By Revocation by the Principal

1. The principal may, by notice, revoke the authority of the agent at anytime. Where the agent is appointed to do a single act, agency may be revoked anytime before the commencement of the act. In case of continuous agency, **notice of revocation** is essential to the agent as well as to the third parties who have acted on the agency with the knowledge of the principal.

Where an agency is for a fixed period of time, and the contract of agency is revoked **without sufficient cause**, compensation must be paid to the agent.

The agency is **revocable in the following cases:**

- I.** Where the authority of the agent is one which is coupled with interest.
- II.** The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts already in the agency (Sec. 204).

TERMINATION OF AGENCY

- **On the Expiry of Fixed Period of Time:** When the agency is for a fixed period of time, it comes to an end on the expiry of that time.
- **On the Performance of the Specific Purpose:** where an agent is appointed to do a particular act, it terminates when that act is done or when the performance becomes impossible.

Insanity or Death of the Principal or Agent

- **Death or insanity of the principal or the agent terminates the agency. But, an agent in such a case, should take all reasonable steps for the preservation of property on behalf of the legal representatives of the principal.**
- **An Agency shall also terminate in Case **Subject-matter** is either **Destroyed** or becomes Unlawful.**
- **If the Principal Becomes **Insolvent** the Agency Get Terminated.**

By Renunciation of Agency by the Agent

- If Principal can cause termination of agency by revocation, an agent may renounce his agency by giving a **sufficient notice** to that effect. Where an agency is fixed for a particular period and the agency is renounced without a sufficient notice, and cause, the principal must be compensated. (Sec. 205).

When termination of agency takes effect

- The termination of the authority of an agent **does not**, so far as regard the agent, take effect until it becomes known to him.
- As regards third parties, they can **continue to deal** with the agent, as such, till they come to know of the termination of the authority. (Sec. 208.)
- The termination of the authority of an agent causes the termination of **all sub-agents** appointed by him.

Thank you