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**DEPARTMENT OF COMMERCE CA**

**BUSINESS LAW**

**16CACCA1D**

UNIT-I

DEFINITION OF CONTRACT

            Contract is an agreement between two or more persons creating rights and duties between them and which is enforceable by law.

            Pollack defines contract as, “every agreement and promise enforceable at law is a contract.”

            According to Section 2(h) of the Contract Act, “an agreement enforceable by law is a contract.”

            From the above definitions it is clear that a contract consists of two elements:

            (1)        An agreement.

            (2)        The agreement should be enforceable by law.

(1) AGREEMENT

            According to Section 2(e) “Every promise and every set of promise forming the consideration for each other, is an agreement.”

            An agreement, therefore, comes into existence only when one party make a proposal or offer to the other and that other signifies his assent (i.e. gives his acceptance).

From the above definitions it is clear that for an agreement there must be:

(a) Plurality of Persons

            There must be two or more persons to make an agreement because one person cannot enter into an agreement with himself.

(b) Consensus ad idem

            It means that both the parties to an agreement must agree about the subject matter of the agreement in the same sense and the same time. The term consensus means identity of minds.

EXAMPLE:

            A own two cycles Sohrab and Eagle. A is selling Sohrab cycle to B. B. thinks he is buying Eagle cycle. There is no consensus ad idem and consequently no contract.

2)  Enforceability

            Enforceability is the second requirement of contract. An agreement is said to be enforceable if it is recognized by courts. In order to be enforceable by law, the agreement must create legal obligations between the parties. If an agreement does not create legal obligations, it is not contract. ‘All contracts are agreements but all agreements are not contracts. Agreements are of two types:

(a)                Social agreements

(b)               Legal agreements

Social agreements are social in nature and do no enjoy the benefits of law. In such agreements the parties do not intend to create legal relations.

Legal agreements are contracts because they create legal obligations between the parties. In business agreements it is presumed that the parties intend to create legal relations so all business agreements are in other words contracts.

EXAMPLE:

(a)   A invites B to a dinner. B accepts the invitation but does not attend it A cannot sue B for damages. It is a social agreement because it does not create legal obligation. It is not a contract.

(b)   a promise to sell his car to B for Rs.2 lac. It is a legal agreement because it creates legal obligations between the parties. This agreement is also a contract.

CLASSIFICATION OF CONTRACTS

            The contracts can be divided in the following three main groups.

1.                  According to enforceability.

2.                  According to formation.

3.                  According to performance.

ENFORCEABILITY:

            According to enforceability, a contract can be divided into the following five kinds:

1.  VALID CONTRACT:

DEFINITION:

            A valid contract, is an agreement enforceable by law. An agreement becomes enforceable by law when all the essentials of a valid contract as explained by section 10 are present. If even one is missing, there, is no valid contract.

OBLIGATION OF PARTIES

            In valid contract all the parties to the contract are legally responsible for the performance of a contract, if one of the parties breaks the contract, the other party has a right to take action against the guilty party. The contract can be enforced through the court also.

EXAMPLE:

            A Proposes to sell his car to B for Rs.2 lac and B accepts the proposal. If A and B both possess contractual capacity and B is consent is free, thee is a valid contract between A and B.

            If A fails to deliver the car, B can sue him in the court for delivery and if B fails to make the payment, A can sue him for recovery of price.

2.  VOIDABLE CONTRACT

DEFINITION:

            According to Section 2(i) “An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is avoidable.

            Generally, avoidable contract takes place when the consent of one of the parties is not free. It is a valid contract until it is avoided by the party having the right to avid it. Once it is avoided it becomes void. But if the party chooses to affirm it, the contract continuous to be valid.

CIRCUMSTANCES UNDER WHICH A CONTRACT BECOMES VOIDABLE

            The following are the circumstances under which a contract becomes voidable.

1.         A contract becomes voidable when the consent of one of the parties to the contract is obtained by coercion undue influence, misrepresentation or fraud. (Sec 19).

EXAMPLE:

(a)                A, threatens to shoot B to purchase his Honda 110 for Rs.20,000. B agrees. This contract was made by coercion and is voidable at the option of B.

(b)               A, in order to deceive B, falsely states that 500 pounds of sugar is produced annually at A’s factory and in this way induces B to buy the factory. The contract is voidable at the option of B.

2.         When a person promises o do something for another person but the other person prevents him from performing his promise, the contract becomes voidable at his option. (Sec 5).

EXAMPLE:

            A contracts with B that A shall whitewash. B’s House for Rs.10,000. A, is ready to whitewash but B prevents him from doing so. This contract is voidable at the option of A.

3.         When a party to the contract promises to do a certain thing within a specified time, but fails to do it, then the contract becomes voidable at the option of the promise, if the time is essence of the contract, (Sec 55)

EXAMPLE

            A, contracts with B that A shall white-wash B’s House for Rs.10,000 within one week. But A does not turn up within the specified time. The contract is voidable at the option of B.

3.  VOID CONTRACT

DEFINITION:

            The word void means not binding in law. A contract, -which cannot be enforced by either party, is called a void contract Section 2(j) defines “A contract which ceases to be enforceable by law becomes void, when it ceases to be enforceable.”

            From this definition, it is clear that a void contract is not void from the very beginning. It is valid contract and binding on the parties when it is originally made but after its formation it become void due to certain reasons.

FORMATION:

            According to formation, a contract can be divided into the following three kinds:

1.  EXPRESS CONTRACT

            Where the offer or acceptance is made in words spoken or written, it is an express contract.

            It can also be defined in this way that an express contract is one in which the parties directly state the terms of the contract orally or in writing at the time the contract is made.

EXAMPLE:

            A tells on telephone to B that he wants to sell his car for Rs.3 lac and B informs A that he agrees to purchase the car, there is an express contract.

2.  IMPLIED CONTRACT

            Where the offer or acceptance is made, otherwise than in words, it is an implied contract.

            Implied contract is one, which is not made by words, written or spoken, but by the acts and conduct of the parties thereto. It arises when one person, without being requested to do so, renders services under circumstances indicating that he expects to be paid for them, and the other person, known such circumstances, accepts the benefit of those services.

EXAMPLE

(a)                A, a Railway Coolie carries the luggage of B in order to carry it out of the railway station without being asked by B, and B allows him to do so. The conduct of B shows that he is a ready to pay to A for the services. It is an implied contract.

(b)               M, a professional shoes shiner starts polishing the shoes of W without being asked to do so, and W allows him to do so. It is an implied contract and W is under obligation to pay to M.

3.  CONSTRUCTIVE OR QUASI CONTRACT

            Such a contract does not arise due to express or implied agreement between the parties but the law imposes a contract under certain special circumstance. A quasi Contract is based upon the principle of equity that a person shall not be allowed to get benefit at the expense of another.

EXAMPLE

(a)                A, finder of lost goods is under a obligation find out the true owner and return the goods.

(b)               A, a trader, leaves goods at B’s house by mistake, B treats the goods as his own and starts using them. There is a quasi contract between A and B. B is bound to pay for the goods.

PERFORMANCE

            According to performance a contract can be divided into the following four kinds:

1.  EXECUTED CONTRACT

            Executed means that which is done. A contract is said to be executed when both the parties have completely performed their obligations. It means that nothing remains to be done by either party under the contract.

EXAMPLE

(a)                A, purchased a book from B for Rs.200 and paid the price on the spot. It is an executed contract because both the parties have performed their duties.

(b)               A agrees to paint a picture for B for Rs.2,000. When A paints the picture and B pay the price, the contract is said to be executed.

2.  EXECUTORY CONTRACT

            Executory means that which remains to be done. In an executory contract something remains to be done. In other words a, contract is said to be executory when both the parties to a contract have yet to perform their obligations.

EXAMPLE

(a)                M promise to sell his car to N for Rs.2 lac and N pays only Rs.50,000 as advance money and promise to pay the balance later. M gives the possession of car to N and promises to transfer ownership on receipt of full amount. The contract between M and N is executory because there remains something to be done on both sides.

(b)               A agrees to teach B, from the next month and B promises to pay Rs.800 to A. It is an executory contract because the promises are yet to be performed.

3.  UNILATERAL CONTRACT

            Unilateral contract is one in which only one party has to fulfill his obligations at the time of formation of the contract, the other party has already fulfilled his obligations by doing some acts at the time of the contract or before the contract comes into existence. Such contract is also known as contract with executed consideration.

EXAMPLE

            A promised to pay Rs.1,000 to any one who found his lost bag. B found the bag and returned it to A. It is an unilateral contract which comes into existence when the bag is found. Now A has to pay as B as already performed his obligation by finding the bag.

4.  BILATERAL CONTRACT

            A bilateral contract is one in which die obligations of both the parties to the contract are outstanding at the time of the formation of the contract. In other words it is a contact in which both the parties have yet to perform their obligations.

            It is similar to executory contract and is also known as contract with executory consideration.

EXAMPLE

            A Promises to paint the picture for B and B promises to pay Rs.5,000 to A.

ESSENTIALS OF A VALID CONTRACT:

            A valid contract is an agreement, which is binding and enforceable. In valid contract all the parties are legally bound to perform the contract.

            According to Section 2 (h) of the Contract Act, “an agreement enforceable by law is a contract.”

            It means an agreement is regarded as a control when it is enforceable by law. It is a contract, which can be enforced by either of the parties to the contract. If one of the parties refuses to perform the contract, the other party can take an action in a court of law against such party. To be enforceable by law, an agreement must possess some essentials of a valid contract, which are stated in section 10.

            According to Section 10, “all agreements are contracts if they are made by the free consent of parties, competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.”

            When necessary the agreement must satisfy the requirements of law regarding writing attestation or registration.

ESSENTIALS OF VALID CONTRACT

            An agreement becomes enforceable by law when it fulfils essential conditions. These conditions may be called the essentials of a valid contract, which are as follows:

(1) OFFERS AND ACCEPTANCE

            For an agreement there must be a lawful offer by one and lawful acceptance of that offer from the other party. The term lawful means that the offer and acceptance must satisfy the requirements of Contract Act. The offer must be made with the intention of creating legal relations otherwise, there will be no agreement.

EXAMPLE:

            A say to B that he will sell his cycle to him for Rs.2000. This is an offer. If B accepts this offer, there is an acceptance.

2)  LEGAL RELATIONSHIP

            The parties to an agreement must create legal relationship. It arises when parties know that if one for the failure of a contract. Agreements of a social or domestic nature do not create legal relations and as such cannot give rise to a contract. It is presumed in commercial agreements that parties intend to create legal relations.

EXAMPLE:

(i)                 A father promises to pay his son Rs.500 every month as pocket money. Later, he refuses to pay. The son cannot recover as it is a social agreement and does not create legal relations.

(ii)               A offers to sell his watch to B for Rs.200 and B agrees to buy it at the same price, there is a contract as it creates legal-relationship between them.

(iii)             A husband promised to pay his wife a household allowance of 30 pounds every month. Later, the parties separated and the husband failed to pay. The wife used for allowance. Held that the wife was not entitled for the allowance as the agreement was social and did not create any legal obligations.

3.  LAWFUL CONSIDERATION

            The third essential of a valid contract is the presence of consideration. Consideration is “something in return.” It may be some benefit to the party. Consideration has been defined as the price paid by one party for the promise of the other. An agreement is enforceable only when both the parties get something and give something. The something given or obtained is the price of the promise and is called consideration.

EXAMPLE:

(i)                 A agrees to sell his house to B for Rs.10 Lac is the consideration for A’s promise to sell the house, and A’s promise to sell the house is the consideration for B’s promise to pay Rs.10 Lac. These are lawful considerations.

(ii)               A promise to obtain for B employment in the public service, and B promise to pay 10,000 rupees to A. the agreement is void, as the consideration for it is unlawful.

4.  CAPACITY OF PARTIES

            An agreement is enforceable only if it is entered into by parties who possess contractual capacity. It means that the parities to an agreement must be competent to contract. According to Section 11, in order to be competent to contract the parties must be of the age of majority and of sound mind and must not be disqualified from contracting by any law to which they are subject. A contract by a person of unsound mind is void  ab-initio (from the beginning).

            If one of the parties to the agreement suffers from minority, madness, drunkenness etc., the agreement is not enforceable at law, except in some cases.

EXAMPLE:

(i)                 M, a person of unsound mind, enters into an agreement with S to sell his house for Rs.2 lac. It is not a valid contract because M is not competent to contract.

(ii)               A, aged 20 promises to sell his car to B for Rs.3 Lac. It is a valid contract because A is competent to contract.

(5) FREE CONSENT

            It is another essential of a valid contract. Consent means that the parties must have agreed upon the same thing in the same sense. For a valid contract it is necessary that the consent of parties to the contact must be free.

EXAMPLE:-

            A compels B to enter into a contract on the point of pistol. It is not a valid contract as the consent of B is not free.

(6) LAWFULL OBJECT

            It is also necessary that agreement should be made for a lawful object. The object for which the agreement has been entered into must not be fraudulent, illegal, immoral, or opposed to public policy or must not imply injury to the person or property of another. Every agreement of which the object or consideration is unlawful is illegal and the therefore void.

EXAMPLE:-

            A promise to pay B Rs.5 thousand if B beats C. The agreement is illegal as its object is unlawful.

(7) WRITING AND REGISTRATION

            According to Contract Act, a contract may be oral or in writing. Although in practice, it is always in the interest of the parties that the contract should be made in writing so that it may be convenient to prove in the court. However, a verbal contract if proved in the court will not be considered invalid merely on the ground that it not in writing. It is essential for the validity of a contact that it must be in writing signed and attested by witness and registered if so required by the law.

EXAMPLE:

(i)                 A Verbally promises to sell his book to y for Rs.200 it is a valid contract because the law does not require it to be in writing.

(ii)               A verbally promises to sell his house to B it is not a valid contract because the law requires that the contract of immovable property must be in writing.

(8) CERTAINITY

            According to Section 29 of the Contract Act, “Agreements the meaning of which are not certain or capable of being made certain are void.” In order to give rise to a valid contract the terms of the agreement, must not be vague or uncertain. For a valid contract, the terms and conditions of an agreement must be clear and certain.

EXAMPLE:

(i)                 A promised to sell 20 books to B. It is not clear which books A has promised to sell. The agreement is void because the terms are not clear.

(ii)               A agrees to sell B a hundred tons of oil. It is not clear what is the kind of oil. The agreement is void because of it uncertainty.

(iii)             O agreed to purchase a van from S on hire-purchase terms. The price was to be paid over two years. Held there was no contract as the terms were not certain about rate of interest and mode of payment.

(9) POSSIBILITY OF PERFORMANCE

            The valid contract must be capable of performance section 56 lays down that. “An agreement to do an act impossible in itself is void.” If the act is legally or physically impossible to perform, the agreement cannot be enforced at law.

EXAMPLE:-

(i)                 A agrees with B to discover treasure by magic, the agreement is not enforceable.

(ii)               A agrees with B to put life into B’s dead brother. The agreement is void as it is impossible of performance.

(10) NOT EXPRESSLY DECLARED VOID

            An agreement must not be one of those, which have been expressly declared to be void by the Act. Section 24-30 explains certain types of agreement, which have been expressly declared to be void. An agreement in restraint of trade and an agreement by way of wager have been expressly declared void.

EXAMPLE:-

            A promise to close his business against the promise of B to pay him Rs.2 lac is a void agreement because it is restraint of trade.

OFFER AND ACCEPTANCE:

            The first essential of a valid contract is an agreement i.e., offer and acceptance. The agreement result from an exchange of promises by the parties involved. An agreement arises when one party, the offer or, makes an offer and the other party to whom the offer is made i.e. the offeree accepts it. In every case, there must be both an offer and an acceptance. If either is lacking there is no agreement. In order to make a contract there must be a lawful offer by one party and lawful acceptance of the offer by the other party.

OFFER / PROPOSAL

DEFINITION:

            The words proposal and offer are synonymous and are used interchangeably. Section 2(a) defines a proposal as “when one person signifies to another his willingness to do or to abstain from doing any thing, with a view to obtaining the assent of that other to such act or abstinence he is said to make a proposal.”

            This definition of an offer consists of two parts.

(1)        There must be an expression of the willingness by one to another to do or to abstain from doing something.

(2)        The expression of willingness must be made to obtain the assent of the other person to such act or abstinence.

            The offer must be made with the intention of creating legal relations; otherwise, there will be no agreement.

EXAMPLE:-

(i)                 A offer to sell his watch to B for Rs.100 A is making an offer to B.

(ii)               A says to B I am willing to sell my car for Rs.3 Lac Are you interested to buy it. “A makes an offer to B.

DEFINITIONS:

OFFEROR:

            The person making the offer is called the offeror or promisor or proposer.

OFFEREE:

            The person to whom the offer is made is called the offeree or proposer.

PROMISOR:

            The person accepting the offer is called the promisor or acceptor.

ESSENTIALS OF A VALID OFFER

Following are the legal rules or essentials of a valid offer:

(1) IT MAY BE EXPRESS OR IMPLIED

            An offer may be made either by words or by conduct. An offer, which is made by words spoken or written, is called an express offer. The offer, which is made by the conduct of a person, is called an implied offer.

EXAMPLE:

(a)                M says to N that he will sell his motorcycle to him for Rs.40,000. It is an express offer.

(b)               A railway coolie carries the luggage of B without being asked to do so B allows him to do so. It is an implied offer.

(c)                The new Khan Transport Company runs buses on different routes to carry passengers at the scheduled fares. This is an implied offer by the company.

(2) IT MUST CREATE LEGAL RELATIONS

            The offer must be made in order to create legal relations otherwise, there will be no agreement. If an offer does into give rise to legal obligations between the parties it is not a valid offer in the eye of law.

EXAMPLE:-

(a)                A invites B to dinner B accept the invitation. It does not create any legal relations, so there is no agreement.

(b)               A offers to sell his watch to B for Rs.200 and B agrees. There is an agreement because here the parties intend to create legal relations.

(c)                Three friends joined to enter a newspaper competition and agreed to share any winnings. It was held the intended to create legal relations and their agreement was therefore a contract.

(3) IT MUST BE DEFINITE & CLEAR

            An offer must be definite and clear, if the terms of an offer are not definite and clear, it cannot be called a valid offer. If such offer is accepted it cannot create a binding contract.

EXAMPLE:

            A has two motorcycles. He offers B to sell one motorcycle for Rs.27,000. It is not a valid offer because it is not clear that which motor cycle A wanted to sell.

(4) IT IS DIFFEENT FROM INVITATION TO OFFER

            An offer is different from an invitation to offer. It is also called invitation to treat or invitation to receive offer. An invitation to offer looks like offer but legally it is not offer.

            In the case of an invitation to offer, the person sending out the invitation does not make an offer but only invites the other party to make an offer. His object is to inform that he is willing to deal with anybody who after getting such information is willing to open negotiations with him. Such invitations for offers are not offers according to law and so cannot become agreement by acceptance.

EXAMPLE:

(a)                Quotations, Catalogues of prices, display of goods with prices issue of prospectus by companies are examples of invitation to offer.

(b)               Display of goods in an auction sale is not an offer rather it is an invitation to offer. The offer will come from the buyer in the form of bids.

(5) IT MAY BE SPECIFIC OR GENERAL

            When an offer is made to a specified person or group of persons, it is called specific offer. Such an offer can be accepted only by the person or persons to whom it is made. A general offer, on the other hand, is one, which is made to public in general and it may be accepted by any person who fulfils the conditions mentioned in it. Both specified and general offers are valid.

EXAMPLE:-

(a)                M makes an offer to N to sell his bicycle for Rs.800, it is a specific offer. In this case, only N can accept it.

(b)               A announces in a newspaper a reward of Rs.1,000 for any one who will return his lost radio. It is general offer.

(6) IT MUST BE COMMUNICATED TO THE OFFEREE

            An offer is effective only when it is communicated to the offeree. If an offer is not communicated to the offeree it cannot be accepted. Thus an offer, which is not communicated, is not a valid offer. It applies to both specific and general offers.

EXAMLES:

            A without knowing that a reward has been offered for the arrest of a particular criminal, catches the criminal and informs the police. A cannot recover the reward as he was not aware of it.

(7) IT SHOULD NOT CONTAIN NEGATIVE CONDITION

            an offer should not contain a condition the non-compliance of which may be assumed as acceptance. An offeror cannot say that if acceptance is not communicated up to a certain date, the offer would be presumed to have been accepted. If the offeree does not reply, there is no contract, because no obligation to reply can be imposed on him, on the ground of justice no agreement because such condition cannot be imposed on the offeree. It is only a one sided offer.

EXAMPLE:

            A wrote to B offering to sell his book for Rs.500 adding that if he didn’t reply with in 5 days, the offeree would be presumed to have been accepted. There is no agreement b/c such condition can’t be imposed on the offeree. It is only a one sided offer.

(8) IT MAY BE SUBJECT TO ANY TERMS & CONDITIONS

An offeror may attach any terms and conditions to the offer he makes. He may even prescribe the mode of acceptance. There is no contract, unless all the terms of the offer are accepted in the mode prescribed by the offeror. It must be noted that if the offeror asks for sending the acceptance by telegram and the offeree sends the acceptance by letter, and the offeror may reject such acceptance.

EXAMPLE:

            A asks B to send the reply of his offer by telegram but B sends reply by letter, A may reject such acceptance because it is opposed to the prescribed mode of communication.

(9) IT MUST NOT CONTAIN CROSS OFFERS

            When two parties make similar offers to each other, in ignorance of each other’s such offers are called cross-offers. The acceptance of cross-offers does not result in complete agreement.

EXAMPLE:

            On 23rd December 2007, A wrote B to sell him 100 ton of iron at Rs.10,000 per ton. On the same day, B wrote to A to buy 100 tons of iron at Rs.10,000 per ton. There is no contract between A & B because the offers wee similar and made in ignorance of the other and so there is no acceptance of each other’s offer.

REVOCATION OR TERMINATION OF OFFER

            According to Section 6, an offer may come to an end in any of the following ways:

(1) NOTICE OF REVOCATION

            The offeror can revoke his offer at any time by sending a notice of revocation to the offeree, before its acceptance. The offeror can reject the offer before its acceptance even though the period for which the offer was kept open has not yet expired.

EXAMPLE:

          A, the offeror at an auction sale makes the highest bid. But he has the right to withdraw (revoke) the bid (offer) is revoked before acceptance.

(2) LAPSE OF TIME

            When the offer states that, the it is open until a particular date the offer terminates on that date if it is not accepted by that time. If the offer does not specify the time, it will terminate after the lapse of a reasonable time. What is reasonable time depends upon the circumstances of each case.

EXAMPLE:

            An application for allotment of shares was made on 8th June. The application was informed on the 23rd November that shares have been allotted to him. He refused to accept them. It was held that his offer had lapsed by reason of the delay of the company in notifying their acceptance, and that he was not bound to accept the shares.

(3) FAILURE TO FULFILL CONDITION

            An offer stands revoked if the offeree fails to fulfill the conditions given therein. If an offer contains some conditions and the offeree has taken responsibility to fulfill such conditions and if the offeree fails to fulfill such conditions the offer terminates.

EXAMPLE:

            A offer to sell his scooter to B for Rs.48,000 if B gets admission in medical college. If B fails to get admission the offer will stand revoked as he fails to fulfill the conditions.

(4) REVOCATION OF OFFER BY OFFEREE

            If the offeree rejects the offer and communicates the rejection to the offeror, the offer shall terminate even though the period for which the offer was kept open may not have yet expired. The rejection may be by words spoken or written or implied.

EXAMPLE:

            A offered to B to sell his bicycle to him at Rs.1000 only telling t hat the offer was open for a period of 10 days. Here B being the offeree only after 3 days rejected the offer. It shall terminate although the period for which offer was kept open had not yet expired.

(5) COUNTER OFFER BY THE OFFEREE

            An offer may be revoked by the offeree by making the counter offer. An offer comes to an end when the offeree makes a counter offer.

EXAMPLE:

            A offers to sell his house to B for Rs.1 Lac B offers Rs.80,000. A refuses. Finally, B offers Rs.1 lac but A refuses to sell. There is no contract because B by offering Rs.80,000 has already rejected the offer.

(6) DEATH OR INSANITY OF THE OFFEROR OR OFFEREE

            If the offeror dies or becomes insane before the acceptance the offer lapses provided that the fact of his death or insanity comes to the knowledge of the acceptor before acceptance. If the person to whom a proposal is made dies before the acceptance of the proposal the proposal will come to an end. But if he dies after proposal is accepted then his legal representative, will be responsible for the contract.

EXAMPLE:

            X had written t o the D requesting them to give credit to Y and guaranteeing payment up to Rs.100. D gave credit to Y.X then died and D in ignorance of this fact of death continued the credit to Y. D sued X’s executors on the guarantee. It was held that the defendants were liable.

(7) SUBSEQUENT ILLEGALITY

            An offer lapses if it becomes illegal after it is made and before it is accepted. An offer may also terminate, when it becomes illegal due to change in law, before its acceptance by the offeree.

EXAMPLE:

            An offer is made to sell 10 bags of rice for Rs.2000 and before it is accepted a law prohibiting the sale of rice by private individuals is enacted the offer comes to an end as sale would be illegal on the promulgation of the new law.

(8) DESTRUCTION OF SUBJECT MATTER

            An offer lapses if the thing which is the subject matter of the offer destroys before its acceptance by the other party.

EXAMPLE:

            A offer to sell his horse to B the horse dies before the acceptance of offer by B the offer terminates.

ACCEPTANCE:

DEFINITION:

            Section 2(b) defines acceptance as follows:

            Thus acceptance is the assent given to a proposal and it has the effect of converting of the proposal into promise. Without the acceptance of the proposal no agreement can come into existence.

EXAMPLE:

            A offer to sell his house to B for Rs.5 Lac B accepts the offer to purchase the house for Rs.5 Lac. This is an acceptance.

ESSENTIALS OF A VALD ACCEPTANCE

            The following are the different legal rules or essentials a valid acceptance:

(1) IT MUST BE GIVEN BY THE OFFEREE

            An offer can be accepted only by the person to whom it is made. It cannot be accepted by an other person without the consent of offeror. If anyone attempted to accept it no contract with that person arises.

EXAMPLE:

            A sold his business to B without disclosing the fact to his customers. J sent an order for the supply of goods to A by name. B received the order and executed the same. It was held that thee was no contract between B and  J because J never made any offer to B.

(2) IT MUST BE ABSOLUTE & UNCONDITIONAL

            In order to convert the offer into an agreement the acceptance must be absolute and unconditional. If the offeree imposes any condition in his acceptance it is not a valid acceptance but a counter offer.

EXAMPLE:

            A offers to sell his watch to B for Rs.500 and B replies that he can buy it only for Rs.300 thee is a material variation in the acceptance. Therefore, there is no agreement as the acceptance is not absolute and unconditional.

(3) IT MUST BE IN A PRESCRIBED MANNER

            If the offeror in his offer has prescribed any particular manner of acceptance it must be given according to all that particular manner. If no particular manner is prescribed in the offer then acceptance should be made in a reasonable manner.

EXAMPLE:

            A makes an offer to B and writes “if you accept the offer send your acceptance by telegram.” B sends his acceptance by registered post. It is not a valid acceptance. But a should inform B that it is rejected because it not in the prescribed manner.

(4) IT MSUT BE COMMUNICATED TO THE OFFEROR

            In order to form a contract, the acceptance must be communicated to the offeror in a clear manner by the offeree or his authorized agent. Mere expression of intention to accept an offer is not a valid acceptance.

EXAMPLE:

            A proposes by letter to purchase B’s house. B expresses his intention to sell it to A but does not send a reply to him. The house is sold to C despite B’s intention. A has no legal remedy against B.

(5) IT MAY BE EXPRESS OR IMPLIED

            When an acceptance is given by words spoken or written, it is called express acceptance. When it is given by conduct, it is called implied acceptance. Sometimes the proposal instead of being made to a definite person is made to the public.

EXAMPLE:

            A wrote a letter to B to sell his cycle for Rs.2,000. B accepted his offer and sent a letter of acceptance to A. It is an express acceptance.

CONSIDERATION

ESSENTIALS OF A VALID CONSIDERATION

            The essentials or legal rules of a valid consideration are as under:-

(1) IT MUST MOVE AT THE DESIRE OF THE PROMISOR

            In order to constitute legal consideration the act or abstinence forming the consideration for the promise must be done at the desire or request of the promisor.

EXAMPLES:

            A saves B’s house from the fire without being asked to do so. A cannot demand payment for his services because A performed this act voluntarily and not at the desire of B.

(2) IT MAY MOVE FROM THE PROMISEEE OR ANY OTHER PERSON

            The second essential of a valid consideration is that consideration may move from the promisee or from a third person on his behalf. In other words the act which is to constitute consideration may be done by the promise or any other person.

EXAMPLE:

            A, an old lady, gifted her property to her daughter R on the condition that she should pay certain amount annually to A’s brother C. On the same day R, entered into an agreement with her Uncle C to pay the amount. Afterwards she refused to fulfill her promise. C filed a suit. It was held that C was entitled to recover the amo0unt as the consideration on his behalf had moved from her sister A.

(3) IT MAY BE PAST, PRESENT OR FUTURE

            It is clear from the definition of consideration that it may be past present or future. It means that the consideration is an act, which has already been done at the desire of the promisor, or in progress or is promised to be done in future.

(A)  PAST CONSIDERATION:

            When the consideration for a present promise was given before the date of the promise it is called a past consideration. It is not a valid consideration.

EXAMPLE:

(a)                A has lot his pure and B a finder, delivers it to him. B cannot demand payment for his services because of past consideration.

(b)               A teaches the son of B at B’s request in the month of January and in February B promises to pay A sum of Rs.2,000 for his services. The services of A will be past consideration.

(B) PRESENT CONSIDERATION:

            When consideration is given simultaneously by one party to another at the time of contract, it is called Present Consideration. The act constituting the consideration is wholly or completely performed.

EXAMPLE:

            A sells a book to B and B pay its price immediately it is a case of present consideration.

(C) FUTURE CONSIDERATION:

            When the consideration on both sides is to be given at a future date, it s called future consideration or executory consideration. It consists of promises and each promise is a consideration for the other.

EXAMPLE:

            X promises to deliver certain goods to Y for Rs.1500 after a week upon Y’s promise to pay the agreed price at the time of delivery. The promise of X is supported by promise of Y and the consideration is executory on both sides.

(4) IT NEED NOT BE ADEQUATE

            It is not necessary that consideration should be adequate to the value of the promise. The law only insists on the presence of consideration and not on its adequacy. It is for the parties to the contract to consider the adequacy of consideration and the courts are not concerned about it.

EXAMPLE:

            A agrees to sell his car worth Rs.200,000 for Rs.50,000 only and his consent is free. The agreement is valid contract.

(5) IT MUST BE REAL

            It is necessary that consideration must be real and competent. Where consideration is physically impossible illegal uncertain or unreal it is not real and therefore shall not be a valid consideration.

(a) PHYSICALLY IMPOSSIBLE:

            A promise to do something which is physically impossible.

EXAMPLE:

            A, promise to put life in B’s dead brother on B’s promise to pay him Rs.1 Lac.

(b) LEGALLY IMPOSSIBLE:

            A promise to do something which is illegal.

            E.g. A promise to pay Rs.1 Lac to B on his promise to beat C.

(c) UNCERTAIN CONSIDERATION:

            A promise to do something, which is too unclear and uncertain.

            E.g. A employs B for a certain work and B promises to pay a

CAPACITY OF PARTIES

            Section 10 of the Contract Act requires that the contracting parties must be competent to contract. Section 11 lays down that “every person is competent the contact who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject. According to section 11 the following persons are incompetent to contract.

1.                  Minors.

2.                  Persons of unsound mind.

3.                  Persons disqualified by law.

MINOR

AGE OF MAJORITY:

            According to the Majority Act, 1875, a minor is a person who has not completed 18 year of age. Where a guardian of minor’s person or property has been appointed under the guardian and wards Act or court of wards ha taken charge of minor’s property a minor will attain the age of majority after 21 years of age.

NATURE OF MINOR’S AGREEMENTS

            The law regarding minor’s agreements may be explained as under:

(1) VOID AGREEMENT

            According to Contract Act, a minor’s agreement is absolutely void because a minor has no legal capacity to enter into a contract. The agreement is deemed as void ab-initio a minor is not liable to perform any act, which he has promised to perform under an agreement. He cannot be held liable because he does not possess the capacity to judge what is good and what is bad for him. He cannot be compelled to pay back the money received by him under the agreement.

EXAMPLES:

            A. a minor sold his shop to B. The amount was paid to A but the sale deed could not be registered as A was minor. On a suit by B, it was held that as, A was minor, so agreement was void ab-initio and the amount was not recoverable.

(2) MINOR AND NECESSARIES

            According to Section 68, a person who supplies necessaries to a minor or anyone whom the minor is bound to support the supplier is entitled to recover reasonable value of such goods from the property of a minor. If a minor owns no property the supplier will lose the price of the price of necessaries. In nutshell minor will not be personally liable it is his property only which is liable.

            What is a necessary article depends upon the status and circumstances of the particular minor. Luxury goods cannot be regarded as necessaries. Food and clothing may be necessaries. The necessaries may include lodging expenses medical expenses and loans taken up by minor for necessaries, etc. But if a minor takes a loan for trade that will not be a necessary.

EXAMPLES:

(a)                A supplies necessaries to B, a minor for his life. A is entitled to recover value from B’s property.

(b)               A supplied minor a coat with diamond buttons. A cannot recover the price of the coat.

(3) AGREEMENT BY GUARDIAN OF BEHALF OF MINOR

            A contract made, on behalf of minor, by his guardian is binding on the minor. It can be enforced against the minor provided the contract is within the authority of the guardian and it is for the benefit of the minor. The sole aim should be the benefit and welfare of the minor.

EXAMPLE:

            A contract of sale of immovable property by the guardian of minor, for the minor’s benefit, may be specifically enforced by either party to the contract.

(4) MINOR AS AN AGENT

            A minor can be an agent. If a minor works as an agent he can make his principal responsible to third parties for his acts. But he cannot be held personally liable for negligence or breach of duty.

EXAMPLE

            A appoints M, a minor as his agent to sell his house. M makes an agreement with B to sell A’s house. The agreement is valid.

FREE CONSENT

INTRODUCTION:

            It is essential to the creation of a contract that both parties should agree to the same thing in the same sense. In such situations, a person who ha made an agreement should not be held responsible to it, because his consent is not real.

DEFINITION OF CONSENT:

            According to section 10 free Consent of all the parties to an agreement is one of the essential elements of a valid contract. Contract Act, defines the term Consent as “Two or more persons are said to consent when they agree upon the same thing in the same sense.”

DEFINITION OF FRE CONSENT:

            Contract Act lays down that consent is said to be free when it is not caused by coercion undue influence fraud misrepresentation, or mistake.

            In other words when the consent is obtained by coercion, undue influence misrepresentation or fraud thee is no free consent, and the contract is voidable at the option of the party whose consent was not free.

            The various reasons, which make consent un-free, are discussed one by one in detail.

COERSION

DEFINITION:

            Section 15 of the Contract Act, defines coercion as follows:

            “Coercion is the committing or threatening to commit, any act, forbidden by the Pakistan Code, or the unlawful detaining to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

BURDEN OF PROOF:

            The burden of proof that coercion was used lies on the party who to set aside the contract on the ground of coercion.

UNDUE INFLUENCE

DEFINITION:

Section 16(1) of the act define undue influence as follows:

            “A contract is said to be induced by undue influence where the relations subsisting between the parties such that one of the parties to a contract are in a position to obtain an unfair advantage over the other.”

            Position t o dominate the will of the other is clarified as under. A person is deemed to be in a position to dominate the will of another:

(a)                Where he hold a real or apparent authority over the other e.g. the relationship between master and servant police office and the accused or;

(b)               Where he stands in a fiduciary relation to the other.

(c)                Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress e.g. old  illiterate persons etc.

(1) POSITION TO DOMINATE

            In order to prove undue influence it is necessary that relations existing between the parties should be such that one of them must be in a position to dominate the will of the other. The person who occupies the superior position may be in a position to obtain the consent of another party.

EXAMPLE:

            U, a spiritual adviser induced his follower M to gift to him the whole of his property to secure benefits to his soul in t he next world. Such consent is said to be obtained by undue influence. U is in a position to dominate the will of another.

(2) UNFAIR ADVANTAGE

            In order to prove undue influence it is also necessary that the party who is in a dominating position must have used his position to obtain an unfair advantage from the other.

EXAMPLE:

            A, having advanced money to his son B, obtains from him, by misuse of parental influence, a bond for a greater amount than the sum advanced. A obtains unfair advantages.

DISTINCTION BETWEEN COERCION AND UNDUE INFLUENCE

            The following are the points of distinction between the two.

|  |  |
| --- | --- |
| COERCION | UNDUE INFLUENCE |
| NatureCoercion is a physical threat either to property or person. | Undue influence is a mental or moral threat |
| Illegal & UnfairThreatening to do an illegal act. | In undue influence the act may not be illegal, it may only be unfair. |
| PartiesCoercion may be exercised by Or Against the party to the agreement it may also be exercised by or Against some third party. | Undue influence must be exercised by or against the party t the agreement. |
| RelationshipFor concern no specific relationship between the parties is necessary. | For undue influence there must be a specific relationship between the parties. |
| EffectIn coercion the contract is voidable at the option of aggrieved party. | In undue influence the contract is either voidable or the court may set aside it or enforce it in a modified form. |

FRAUD

            The term fraud includes all acts committed by a party to induce the other party to enter into a contract with an intention to deceive.

DEFINITION:

            According to Section 17, “Fraud means and includes any of the following acts committed by a party to a contract or with his connivance, or by his agent, with intent to deceive or to induce another party thereto or his agent, to enter into the contract.”

1.                  The suggestion as a fact, of that which is not true, by one who does not believe it to be true;

2.                  The active concealment of a fact b one having knowledge or belief of the fact;

3.                  A promise made without any intention of performing it;

4.                  Any other act fitted to deceive; and

5.                  Any such act or omission as the law specially declares to be fraudulent.

(1) SUGGESTION REGARDING FACTS

            When a party to the contract makes a false statement intentionally, he would be liable for fraud. But if a person honestly believes his statement to be true, he cannot be held liable for fraud.

EXAMPLE:

(a)                A tells B known to be false that his factory produce 500 pound of butter per day. On this suggestion, B agrees to buy the factory. A is guilty of fraud.

(b)               A known that his watch is made in Pakistan. In order to sell his watch he tells B that it is made in Japan. B buys the watch. A is guilty of fraud.

(2) ACTIVE CONCEALMENT OF FACT

            When the party to be contract conceals material facts, essential to the contract, which he is under an obligation to disclose to the other party before entering into a contract he is guilty of fraud. According to sale of goods act, the seller is bound to disclose to the buyer about the faults in the goods hi is selling.

(3) PROMISE IWTHOUT INTENTION OF PERFORMING

            The initial intention into to perform the promise that is being made is a necessary element to constitute fraud. Thus, where a person enters into a contract and obtains possession of goods with the intention of not paying for them, he commits fraud.

EXAMPLE:

(a)                X purchases certain good from Y on credit without any intention of paying for them as he was under insolvent circumstances. X is guilty of fraud.

(b)               A knowing that he has no money, takes a dinner in a hotel with an intention of slipping away. A is guilty of fraud.

(4) ANY ACT WITH INTENTION TO DECEIVE

            This is general clause and includes all cases not falling within any of the other clauses provided the act is fitted to deceive. A person can adopt different methods to cheat the other party. It is therefore difficult to explain all the methods under the definition of the fraud.

EXAMPLE:

            A company issued prospectus containing statement which was true that company has paid divided between 2004 and 2005. In fact in these years the company suffered losses and paid dividend out of secret reserves.

(5) ANY ACT OR OMISSION

            According to this section it is obligatory to disclose relevant facts to the other party in certain cases. The seller is bound to disclose to the buyer all material defects about the property i.e. property is mortgaged etc. If some one omits to disclose facts he would be guilty of fraud.

            A mere expression of opinion or commendatory expression is not fraud. For example if some one says tat land is very fertile or our products are best in the market.”

(6) CONTRACTS OF MARRIAGE ENGAGEMENT

            Every material fact must be disclosed by both parties to a contract of marriage otherwise the other party is justified in breaking off the engagement.

DISTINCTION BETWEEN FRAUD AND MISREPRESENTATIN

            The following are the points of distinction between the two:

|  |  |
| --- | --- |
| FRAUD | MISREPRESENTATION |
| IntentionIn case of fraud, the party makes a False statement with an intention to deceive the other party. | In case of misrepresentation there is no intention to deceive the other party. |
| BeliefIn case of fraud, the person making the suggestion does not believe it to be true. | In case of misrepresentation the person making the suggestion believes it to be true. |
| DamagesIn fraud, the aggrieved part can Claim damages in addition to the right of avoiding the contract | In misrepresentation entitles the party to avoid contract and there can be no suit for damages |
| OffenceFraud may amount to an offence of cheating. It is a criminal act. | Misrepresentation does not amount to a Offence of cheating. It is not a criminal act. |
| TruthIn case of fraud, the aggrieved party can avoid contract even if it had the means of discover the truth with Ordinary diligence. | In case of misrepresentation aggrieved party cannot avoid the count if it had means to discover the truth ordinary diligence. |

UNIT - II

PERFORMANCE OF CONTRACTS

            Performance of Contract means the fulfillment of legal obligations created under the contract by both the promisor and the promise. When a Contract is duly performed by both the parties to the contract, the contract comes to an end. The various rules regarding the performance of contracts are as under:

PERFORMANCE OF A SINGLE PROMISE

WHO CAN DEMAND PERFORMANCE?

            It is only the promise who can demand performance of the contract. There is a rule that a person cannot acquire right under a contract to which he is not a party. A third party cannot demand performance of the contract even though it was made for his benefit. In case of death of the promise, his legal representatives can demand performance.

EXAMPLE:

(a)                A promises B to pay C a sum of Rs.1000. The person who can demand performance is B and not C. In case of death of the promise, his legal representatives can demand performance.

(b)               A draws a cheque for Rs.100 in favour of C the banker makes a mistake regarding A’s balance and refuses payment. Bank is liable to A ad not to C because C is not a party to contract.

Who May Perform?

(1) THE PROMISOR HIMSELF

            As a general rule, a contract may be performed by the promisor, either personally or through any other competent person.

            But in case of contract involving personal skill, taste or diligence e.g. a contract to paint a picture a contract of agency or of service; the promisor himself must perform the contract of agency or of service; the promisor himself must perform the contact. In case of death or disablement of a promisor, a contract will be discharged and the other party would be freed form liability.

EXAMPLE:

            A promise to paint a picture for B. A must perform the promise himself.

(2) THE PROMISOR OR HIS AGENT

            Where personal skill is not necessary and the work could be done by any one, the promisor or his representative may employ a competent person to perform it. In case of a contract to sell goods, the promisor himself or his agent may perform the contract.

EXAMPLE:

            A promise B to sell goods. A may perform this promise himself or ask his agent for performance.

(3) THE LEGAL REPRESENTATIVE

            In case of death of the promisor before performance, the liability of performance falls on his legal representatives of a deceased promisor are not bound to perform the contract. But in case of a contract of impersonal nature the legal representative are bound to perform the contract. They are not personally liable.

EXAMPLE:

(b)        Promises to paint a picture for B on a certain day at a certain price. A dies before the day. The contract cannot be preformed. A’s heirs are not liable for the contract as in this case the personal skill of A was involved.

(c)                Promises to deliver goods to B on a certain day on payment of Rs.1000. A dies before that day. A’s representatives are bound to deliver the goods to B and B is bound to pay the settled sum of Rs.1000 to A’s representatives.

(4) THE THIRD PERSON

            If a promise accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. Once the third party performs the contract, and that is accepted by the promise there is end of the matter and the promisor is then discharged.

EXAMPLE:

            A promise accepted lesser amount from a third party in full satisfaction of his claim; it was held that he could not enforce the promise against the promise against the promisor for the remainder.

PERFORMANCE OF JOINT PROMISES

            Joint promises may take any of the following shapes:

(1)               Where several joint promisor make a promise with a single promise, e.g. A, B C jointly promise to pay Rs.3,000 to D, or

(2)               Where a single promisor makes a promise with several joint promises e.g. P promise to pay Rs.3000 to Q and R jointly, or

(3)               Where several joint promisor make a promise with several joint promises, e.g. A, B and C jointly promise to pay Rs.3000 to P, Q and R jointly. The following are the rules regarding performance in this case.

Who Can Demand Performance?

            When a promise is made with several persons jointly, then, in the absence of any agreement to the contrary all the promise jointly have a right to claim compensation and a single promise cannot demand performance.

            In case of death of any one promise, the legal representatives of deceased persons jointly can demand performance with serving promises.

            When all the promise are dead, the legal representatives of all jointly can demand performance.

EXAMPLE:

            A borrows Rs.5000 from B and C. A promises B and C jointly t return the sum with interest B dies. B’s representative with C jointly can demand performance. On the death of C the representative of B and C jointly can demand performance.

Who May Perform?

(1) ALL PROMISORS MUST JOINTLY FULFILL THE PROMISE

            When two or more persons make a joint promise the, unless a contrary intention appears from the contract, all such persons must jointly fulfill the promise. When any one of he joint promisor dies his legal representative must fulfill the promise, jointly with the surviving promisors. On the death of all the original promisors the legal representatives of all of them jointly must fulfill the promise.

            The above rule is of course subject to the following usual conditions:

(a)        The contracts involving personal skill e.g. to paint a picture; come to an end on the death of any of the joint promisor and the liability of performance does not fall on the legal representatives.

(b)        the legal representatives are not personally liable. Their liability is limited to the assets inherited by them.

EXAMPLE:

            A, B and C jointly promise to pay D Rs.3,000. D may compel either A or B or C or all or any two of them to pay him Rs.3000.

(2) EACH PROMISOR MAY COMPEL FOR CONTRIBUTION

            If one of the joint, Promisors is compelled to perform the whole contract, he can ask for equal contribution to the others, unless a contrary intention appears from the contract.

EXAMPLE:

            If A is compelled to pay the entire amount of Rs.3000 he can recover from B and C Rs.1000 each.

(3) SHARING OF LOSS BY DEFAULT IN CONTRIBUTION

            If any one of the joint promisors makes a default in making contribution, if any, the remaining joint promisors must bear the loss arising out of such default in equal shares.

EXAMPLE

            If A is compelled to pay the whole Rs.3000 and C is unable to pay anything. A is entitled to receive Rs.1500 from B. If C’s estate is able to pay one half of his share, A is entitled to receive Rs.500 from C’s estate and Rs.1250 form B.

(4) EFFECT OF RELEASE OF ONE JOINT PROMISOR

            In case of a joint promise, if one of the joint promisors is released form his liability by the promise, his liability to the promise ceases but his liability to the other promisors to contribute does not cease.

EXAMPLE:

            A, B and C are under a joint promise to pay Rs.3000 to X. X may release C from liability, but A & B remain liable to pay to X. C is not released from the debt.

DISCHARGE OF CONTRACT

            When the rights and obligations arising out of a contract come to an end, the contract is said to be discharged or terminated. A contract may be discharged in any of the following ways:

**1.                  Discharge by performance.**

**2.                  Discharge by Agreement.**

**3.                  Discharge by subsequent impossibility.**

**4.                  Discharge by lapse of time.**

**5.                  Discharge by operation of law.**

**6.                  Discharge by breach of contract.**

1.  DISCHARGE BY PERFORMANCE:

            Performance is the natural mode of discharge. When the parties to a contract perform their shares of the promises, the contract is discharged. If only one of the several parties performs the promise, he alone is discharged. Performance may be: (a) actual performance; or (b) offer of performance or tender.

2.  DISCHARGE BY AGREEMENT:

            A contract can also be discharged by the fresh agreement between the same parties. A contract may be terminated by agreement in any of the following ways:

(a) NOVATION

            Novation of contract means replacement of an existing contract by another contract. In novation the parties may change. If the parties are not changed then the material terms of the contract must be altered in the new contract because a mere variation of some of the terms of a contract is not novation but alteration.

EXAMPLE

            A is indebted to B and B to C. By mutual agreement B’s debt to C and B’s loan to. A are cancelled and G accepts A as his debtor. There is novation involving change of parties.

(b) ALTERATION

            Alteration of a contract takes place when one or more of the terms of the contract are changed. If a material alteration in a written contract is made with the consent of all the parties the original contract is discharged by alteration and a new contract takes its place. An alteration may be a change in the amount of money, the rate of interest, or the names of the parties. Alteration results in the discharge of the original contract.

            The difference between “novation and “alteration” is that in case of novation there may be a change of parties but in case of alteration parties remain the same and only the term o the contract are changed.

EXAMPLE

            A agrees to supply B. 1000 mounds of salt at Rs.50 a mound within 3 months from date. Later on, A and B alter the agreement in the following way: A agrees to supply 800 mounds of salt at the same rate within 2 months instead of three. The latter agreement puts an end to the former.

(c) RESCISSION:

            Means cancellation of contract by mutual consent. A contract may be cancelled ‘by agreement between the parties at any time before it is discharged by performance. The cancellation of agreement releases the parties form their obligation arising out of the contract.

EXAMPLE:

            A promises to deliver certain goods to B on a certain date. Before the date of performance, A and B mutually agree that the contract will not be performed. The parties have cancelled the contract.

(d) REMISSION:

            Remission means the acceptance of lesser sum than what was due from promisor. According to the section 63, a person who has a right to demand the performance of a contract may:

(i)                 Remit or give up the whole or part of a debt.

(ii)               Extend the time for performance.

Where a promise remits a part of the debt and gives a discharge for the whole debt on receiving a smaller amount, such discharge is valid.

EXAMPLE:

            A owes B Rs.5,000. A pays to B and B accepts in full satisfaction Rs.2000. The whole debt is discharged.

3.  DISCHARGE BY SUBSEQUENT IMPOSSIBILITY:

INITIAL IMPOSSIBILITY:

            According to section 56, “An agreement to do impossible act is void ab-initio.” It means agreement which is obviously impossible cannot be binding, e.g., an agreement to discover treasure by magic is void agreement.

SUBSEQUENT IMPOSSIBILITY:

            Sometimes, a contract capable to be performed after formation becomes impossible or unlawful and as a result void.

(a) DESTRUCTION OF SUBJECT MATTER

            When the parties make a contract for a particular subject matter, the contract is discharged if the subject matter is destroyed without the fault of the promisor or promise.

EXAMPLE:

            A, let out a music hall to B for a number of concerts on certain days. The hall was destroyed by fire before the date of first concert. The plaintiff sued the defendant for damages. It was held that the contract has become void and the defendant was not liable.

(c) DEAT OR PERSONAL IN CAPACITY

            Where the performance of a contract depends upon the personal skill, or qualification or the existence of a given person, the contract is discharged on the illness or incapacity or the death of that person.

            In other words the death or illness of a particular person whose action is necessary for the promised performance discharges the duty to render that performance.

EXAMPLE:

(a)        A and B contract to marry each other. Before the time fixed for the marriage, A dies. The contract becomes void.

(b)       An artist undertook to perform at a concert for a certain price, but before he could do so, he met with an accident and lost his right arm. Held the artist was discharged due to disablement.

(d) CHANGE OF LAW

            Contracts, which are lawful when made but become unlawful later due to change in law, become impossible to be performed. A subsequent change in law may render the contract illegal and in such cases the contract is deemed discharged. Impossibility created by law is valid excuse for non-performance.

EXAMPLE:

            A sold to B 100 bags of wheat at Rs.150 per bag. But before delivery the government banned the sale and purchase of wheat by private traders. The contract was discharged by subsequent change in law.

(e) DECLARATION OF WAR

            A contract entered into with an alien enemy during war is illegal and void abinitio. Contract entered into before the commencement of war is suspended during the war. However, such contracts may be revived after the war is over if the nature of the contract so permits.

EXAMPLE:

            A contracts to take in cargo for B at a foreign port. A’s Govt. afterwards declared war against the country in which the port is situated. The contract becomes void.

(4) DISCHARGE BY LAPSE OF TIME:

            A contract is discharged by lapse of time. The Limitation Act, 1908 laws down that a contract should be performed within a specified period. If the contract is not performed and no legal action is taken by the promise within the period of limitation, he is deprived of his remedy at law, the contract is terminated in such a case.

EXAMPLE:

            A owes Rs.5000 to B. The last date for the repayment of the loan has expired and B does not file a suit against A for three years. B loses the rights to recover the money back.

(5) DISCHARGE BY OPERATION OF LAW:

            A contract terminates by operation of law in the following cases:

(a) INSOLVENCY

            The insolvency Act provides for discharge of contracts under particular circumstances. Where the court declares a person as insolvent, the rights and duties of such person are transferred to the officer of court, know as Official Receiver, After the order of the court such person is discharge from his liabilities incurred before his insolvency.

EXAMPLE

            A promises to sell his car to B for Rs.2 lac. Before the performance of the contract A is declared insolvent by court. The contract between A, & B is discharged.

(b) MERGER

            Merger takes place when an inferior right available to a party merges into a superior right available to the same party under, some other contract. As a result of merger the former contract stands discharged automatically.

EXAMPLE

(a)               Where a man holds property under a contract of tenancy buys the property. His rights as a tenant are merged into the rights of ownership and the contract of tenancy stands discharged by operation of law.

(b)               Where a part-lime lecturer is made full time “lecturer, the contract of part time, lectureship is discharged by merger.

(c) UNAUTHORIZED MATERIAL ALTERATION

            Where a party to the contract makes any material alteration in the contract, without the consent of the other party, the contract can be avoided by the other Party. A material alteration is one, which changes the legal identity or character of the contract or the rights and duties of the parties to the contract. An alteration which is not material or which is authorized will not affect the validity of the contract. An alteration even by a stranger will entitle the other party to avoid the contract, but where the alteration is unintentional, contract cannot be avoided.

EXAMPLE:

            A executes a promissory note in favour of B for Rs.3,000. B by alteration exceeds the amount from Rs.3,000 to 30,000. A may refuse to pay Rs.3,000.

6.  DISCHARGE BY BREACH OF CONTRACT:

            Ac contract must be performed according to its terms. But where the Promisor fails to perform the contract according to the terms of the contract, thee is a breach of contract by him. Breach of contract may be of two kinds;

1.                  Actual Breach

2.                  Anticipatory breach

(1)        Actual Breach

It occurs when a party fails to perform a contract, when performance is due. But, if a party, who has failed to perform the contract at the appointed time, subsequently expresses his willingness to perform, he can do so after paying compensation, if time is not essence of contract.

EXAMPLE:

            A degrees t o deliver 5 bags of wheat on 1st March He does not deliver the wheat on the day. There is a actual breach of contract.

            (2)        Anticipatory Breach

                        An anticipatory breach of contract occurs before the time fixed for performance has arrived. It may happen in two ways.

(i) Express Breach

            In this case a party to the contract communicates t the other party, his intention not to perform the contract, before the due date of performance has arrived.

EXAMPLE:

            A contracts with B to supply 100 bags to wheat for Rs.15,000 on 1st March. On 15th February, A informs B that he will not be able to supply the wheat. Thee is express rejection of contract.

(ii) Implied Breach

            In this case a party to the contract does an act, which makes the performance of the contract impossible.

EXAMPLE:

            A promises to sell his horse to B on 1st June and before that date he sells the same horse to C.

UNIT - III

INDEMNITY AND GUARANTEE

CONTRACT OF INDEMINITY

DEFINITION AND NATURE:

            “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 and other person, is called a contract of indemnity.”

            In other words a contract where one person promise to compensate the other from the loss, which may arise due to the conduct of the promisor himself or any other person, is called a contract of indemnity.

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)               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.

(b)               A and B went to a shop. A says to the shopkeeper. ”Let B have the goods I shall see  you are paid” It is contract of indemnity.

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

DEFINITION:

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

            A contract of guarantee is made with the object of enabling a person to get a loan or goods on credit or an employment etc. It may be either oral or written. It is a promise to pay a debt owing by a third person in case the later does not pay.

PARTIES:

            There are three parties to a contract of guarantee:

1.  Surety:

            The person who gives the guarantee is called the surety or guarantor;

2.  Creditor:

            The person to whom the guarantee is given is called he creditor.

3.  Principal debtor:

            The person for whom the guarantee is given is called the principal debtor.

EXAMPLE:

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

(b)               A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

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.

NATURE AND EXTENT OF SURETY’S LIABILITY

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. The phrase co-extensive with that of principle debtor’ shows the quantum of the surety’s liability. The quantum of obligation of surety is the general it will be neither more nor less; the surety’s liability can be made less than that of the principle debtor but never greater with special 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.

1.  SPECIFIC GUARANTEE:

            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:

            G guarantees K for the payment of 5 bags of wheat purchased C.C makes payment. Later on C again purchases 5 bags of wheat. C did not pay for that. K used g. Held, G’s guarantee is specific guarantee and G is not liable.

2.  CONTINUING GUARANTEE:

            According to section 129, a guarantee, which extends to a series of transaction, is called continuing guarantee. In other words a guarantee which covers a number of transactions over a period of time is called continuing guarantee. It is just like a standing offer, which is accepted by the creditor every time a subsequent transaction take lace. Being a sanding offer it may be revoked at any time by the surety as to further transactions.

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.

DISTINCTION BETWEEN INDEMNITY AND GUARANTEE

            The following are the points of distinction between the two:

|  |  |
| --- | --- |
| INDEMNITY | GUARANTEE |
| 1.     Number of PartiesIn a contract of Indemnity, thee are two Parties the indemnifier and the indemnity holder. | In a contract of guarantee, there are three parties. The creditor, the principal debtor, and the surety. |
| 2.     Number of ContractIn indemnity there is only one contract between the indemnifier and the indemnified. | 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. |
| 3.     Number of LiabilityThe liability of indemnifier is primary and independent. | The liability of surety is secondary. It means that surety is liable only if the principal debtor fails to perform his obligations. |
| 4.     RequestIn the contract of indemnity, the indemnifier acts without the request of the debtor. | In a contract of guarantee the liability already exists and its performance is guarantee by the surety. |
| 6.     PurposeA contract of indemnity is for the reimbursement of loss. | A contract of guarantee is for the security of a debt. |

    A surety has the following rights:

1.                  Against the creditor.

2.                  Against the principle debtor.

3.                  Against the co-sureties.

1.  SURETY’S RIGHTS AGAINST THE CREDITOR:

(a) RIGHT TO SECURITIES:

            According to Section 141, the surety, at the time of payment, can demand the securities, which the creditor has received from the principal debtor at the time of creation of contract.

            Whether the surety knows of the existence of such securities or not is immaterial. If creditor by negligence loses any security held by him, the surety is discharged to that extent from the payment of guaranteed sum. But if the security is lost due to unavoidable act, the surety would not be discharged.

            Surety can recover the securities only after making full payment. He cannot claim the benefit of a part of the securities if he has paid a part of the debt.

EXAMPLE:

(a)               C advance B Rs.2000 on the guarantee of A, C has also a further security for Rs.2000 by a pledge of B’s furniture. C cancels the pledge. B becomes insolvent and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b)               C’vs advance to B is secured by a decree. He receives also a guarantee for the advance from A.C afterwards takes B’s goods in execution under the decree and then without the knowledge of A withdraws the execution. A is discharged.

(c)                A as surety for B makes a bond jointly with B to C to secure a loan from C to B. Afterwards C obtain from B a further security for the same debt. Subsequently C gives up the further security. A is not discharged.

(b) RIGHT TO CLAIM SET-OFF, IF ANY:

            The surety is also entitled to the benefit of any set-off or counter claim, which the principal debtor has against creditor.

EXAMPLES:

            A, the creditor is in possession of his principal debtor, B’s car for which B could have counter-claimed. C, the surety of B can claim set-off in respect of that car against B.

2.  SURETY’S RIGHT AGAINST THE PRINCIPAL DEBTOR:

            The surety enjoys the following rights against the principal debtor.

A.  Right of Subrogation:

            According to Section 140 when the surety has paid the guaranteed debt on default of the principal debtor, the surety is entitled to all the remedies, which are available to creditor against debtor.

EXAMPLE:

            A direct of a company guaranteed and paid the rent due from the company before the date of liquidation. It was held that he was entitled to stand in the place of the creditor and use all remedies in the name of the creditor.

B.  RIGHT TO INDEMNITY:

            In every contract of guarantee there is an implied promise by the principle debtor to indemnity the surety and the surety is entitled to recover from the principal debtor what eve sum he has rightfully paid under the guarantee but not sums which he had paid wrongfully.

            In other words the surety can recover from the principal debtor, the amount which he has rightfully paid to the creditor.

EXAMPLE:

            B is indebted to C and A is surety for the debt. C demands payment from A and on his refusal sues him for the amount. A defends the unit, having reasonable grounds for doing so but is compelled to pay the amount of debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

3.  SURETY’S RIGHT AGAINST CO-SURETIES:

            Where a debt is guaranteed by more than one sureties, they are called co sureties. In such a case all the sureties are liable to make the payment to the creditor according to the agreement among them. If there is no agreement and one of the co-sureties is compelled to pay the entire debt, he has a right to contribution from the so-sureties. Sections 146 and 147 provide the rules in connection.

(a) SIMILAR AMOUNT:

            Where thee are sureties for the same debt and the principal debtor has committed a default each party is liable to contribute equally to the extent of the default.

EXAMPLE:

            A, B and C are sureties to D for the sum of Rs.3000 let to E. E makes default in payment. A, B and C are liable as between themselves to pay Rs.1000 each. If C is insolvent and could pay only Rs.500 then A and B will contribute equally to make good his loss.

(b) DIFFERENT AMOUNT:

            Where there are sureties for the same debt for different sums, they are bound to contribute equally subject to the limit fixed by their guarantee. They will not contribute proportionately.

EXAMPLE:

(a)               A, B and C as sureties for D guarantee for different sums. A Rs.10,000 B Rs.20,000 C Rs.40,000 D makes default in payment to the extent of RS.30,000 liability of A, B and C is Rs.10,000 each.

(b)               If D makes default to the extent of Rs.40,000 then liability shall be used as of A Rs.10,000 B and C will pay equal share of the balance of 15,000 each.

(c)                If D makes default to the extent of Rs.70,000 then A, B and C will pay full amount of guarantee.

DISCHARGE OF SURETY FROM LIABILITY:

            A surety is said to be discharged from liability when his liability comes to an end. I can be revoked by notice of the liability has not been incurred. But a continuing guarantee may at any time, be revoked by the surety as to future transaction by giving a notice to the creditor. The liability of surety comes to an end regarding the future transactions after the surety has served the notice of revocation. The surety remains liable for transaction entered into prior to the notice.

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.

1.  DEATH OF SURETY:

            In specific guarantee the surety is not discharged form his liability on his death if the liability has already occurred. But in case of a continuing guarantee, the death of surety discharges him from liability regarding the transactions after his death unless there is a contract to the contrary. The decreased surety’s estate will not be liable for future transactions entered into after the death of the surety even if the creditor has not notice for the death.

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.

2.  CHANGE IN TERMS OF CONTRACT:

            According to Section 133, when any change is made in the terms of the contract by the principal debtor and the creditor without the surety’s consent, the liability of the surety terminates as to future transactions.

3.  RELEASE OR DISCHARGE OF PRINCIPAL DEBTOR:

            According to section 134 the following two ways discharge the surety from liability:

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.

4.  RELEASE FOR DISCHARGE OF PRINCIPAL DEBTOR:

            According to section 134 the following two ways discharge the surety from liability:

            The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is a released. Any release of the principal debtor is a release of the surety also.

            The surety is also discharged by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

EXAMPLE:

(a)               A contracts to build a house for B. C guarantees for the performance of the contract by A if B release A from the performances of the contract, the liability of C as a surety shall come to an end.

(b)               A contract with B to build house for B within a stipulated time. B is liable to supply the necessary timber. C guarantees A’s performance of the contract. B fails to supply the timber. C is discharged from his surety ship.

5.  ARRANGEMENT WITHOUT SURETY’S CONSENT:

            According to Section 135,where the creditor with out the consent of surety makes an arrangement with the principal debtor for composition or promises to give him time or no to sue him, the surety will be discharged. Section 136 provides that where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor the surety is not discharged.

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.

6.  CREDITOR’S ACT OR OMISSION:

            Section 139 provides that if the creditor does any act which is inconsistent with the right of the surety or omits to do any act which his duty to the surety requires him to do and the eventual remedy of the surety himself against the principal debtor is thereby impaired the surety is discharged.

            It is the duty of the creditor to do every act necessary for the protection of the rights of the surety and if he fails in this duty, 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.

BAILMENT AND PLEDGE

CONT`RACT OF BAILMENT

MEANING AND DEFINITION:

            The term bailment is derived from a French word “bailor’ which means to deliver. It denotes a contract resulting from delivery. It involves change of possession of goods from one person to another and not transfers of ownership.

            According to Section 148, “a bailment is the delivery of goods by one persons to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed off according to the direction of the person delivering them.”

            A bailment arises when one person transfers possession of goods to another person on condition that he will  return them after the accomplishment of purpose.

PARTIES

            There are two parties to a contract of bailment:

BAILOR:    The person delivering the goods is called the bailor.

BAILEE:    The person to whom the goods are delivered is called the bailee.

EXAMPLES

(a)               A delivers a piece of cloth to B to make a suit. There is a contract of bailment between A and B.

(b)               A lends a book to B for examination. There is contract of bailment between A and B.

(c)                A delivers a watch to B for repair. There is a contract of bailment.

(d)               A sells certain goods to B, who leaves them in the possession of A. A becomes the bailee and B becomes bailor.

ESSENTIAL FEATURES

            The following are the essential features of a bailment.

1.  CONTRACT

            A bailment is based on a contract between bailor and bailee. The delivery of goods should be made for some purpose under a contract that when the purpose is accomplished, the goods shall be returned to the bailor. If the goods are delivered without any contract i.e. by mistake, thee is no bailment. It should also possess all the essentials of a valid contract. The contract may be express or implied.

EXAMPLES

(a)               A gives a piece of cloth to T, a tailor for making a suit. There is a contract of bailment between A and T.

(b)               B’s ornaments, have been stolen, and recovered by the police, and disappeared from police custody. Held the state was liable.

2.  SPECIFIC PURPOSE

            The bailment of goods is always made for some purpose and is subject to the condition that when the purpose is accomplished the goods will be returned to the bailor or disposed of according to the directions of the bailor. If the person to whom the goods are delivered is not bound to return them to the person delivering them, there is no bailment.

EXAMPLES

            A gives his watch to B for repair. There is a bailment.

3.  DELIVERY OF GOODS

            The most important feature of bailment is the delivery of moveable goods from one person to another. Mere custody does not create relationship of bailor and bailee. A servant who receives goods from his master to take to a third person has only custody. The possession remains with master, so the servant cannot be called bailee.

EXAMPLES:

(a)               A buys a T.V. from B. The T.V. is ready for immediate delivery. A ask B to keep it with him for one hour so that A may buy other things from the market. B is now holding the T.V. as bailee.

(b)               U entered a restaurant for dinning; H the waiter took his coat and hung it on a hook behind it. When U rose to leave, the coat was gone. Held, the owner of the restaurant was liable for loss.

4.  NO CHANGE OF OWNERSHIP

            Under bailment, it is only the possession that passes from the owner to the other and not the ownership; Mere custody without possession is not bailment, e.g. (a servant holding his master’s goods). If there is a change of ownership the transaction may be a sale or exchange but is not a bailment.

EXAMPLE

            A delivers his car to B for repair. The possession of car transfers from A to B but ownership remains with A.

5.  RETURN OF SAME GOODS

            It is essential for bailment that when the purpose is accomplished, the goods must be returned in original form or in changed form or disposed of according to the directions of bailor. If the bailee has an option of paying money or of returning different property, there is no bailment.

EXAMPLES

            A lends his cycle to B for 2 days. B is liable to return the same cycle.

CLASSIFICATION OF BAILMENT

Bailment may be classified as follows:

(1)               According to benefit.

(2)               According to reward.

1.  BENEFIT

            According to benefit, bailment can be grouped into three classes.

(a) FOR THE BENEFIT OF THE BAILOR

            Where the goods are delivered for safe custody to a neighbor, relative, or friend without any compensation to be paid.

(b) FOR THE BENEFIT OF THE BAILEE

            Where goods are delivered to the bailee to be used by him without any compensation to be charged from him. For EXAMPLE. A borrows B’s pen to use in the examination hall, the bailment is for the sole benefit of A, the bailee.

(c) FOR T HE BENEFIT OF THE BAILOR AND BAILEE

            Where the goods are delivered for the benefit of both the bailor and bailee. For EXAMPLE, bailment for repair, hire, etc.

2.  REWARD:

            Bailment may also be classified into two classes according to reward.

(a) BAILMENT WITHOUT REWARD

            It is bailment in which neither the bailor nor the bailee is entitled to any remuneration. It is also called gratuitous bailment. For EXAMPLE, lending of a book to a friend, depositing of goods for safe custody without any charges.

(b) BAILMENT FOR REWARD

            It is a bailment where the bailor or the bailee is entitled to remuneration. It is also called non-gratuitous bailment. For EXAMPLE, motorcar let out for hire, cloth given for tailoring on charges.

DUTIES OF BAILOR

            A bailor is the person who delivers the goods. His duties are as under:

1.  DUTY TO DISCLOSE FAULTS

            According section 150, a gratuitous bailor is bound to disclose to the bailee all those faults in the goods bailed which are known to him and if he fails to do so, he will be liable to pay such damages to the bailee arising from such faults.

            A bailor for reward is responsible for all defects in the goods bailed whether he is aware of the defects or not. If he does not disclose them to the bailee, he will be liable for damages, which may arise due to those faults.

EXAMPLES:

(a)               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 and B is thrown and injured. A is responsible for damages sustained.

(b)               A hires a carriage of B. The carriage is unsafe thought B is not aware of it, and A is injured. B is responsible to A for the injury.

2.  DUTY TO REPAY NECESSARY EXPENSES

            In case of gratuitous bailment, where goods are to be kept or to be carried by the bailee for the bailor, it is the duty of the bailor to repay all the necessary expenses incurred by the bailee for the purpose of the bailment.

EXAMPLE

            A delivers a horse to B for safe custody. The horse becomes sick and B spends Rs.50 on medical and Rs.20 on feeding. A is liable to pay B Rs.70.

3.  DUTY TO REPAY EXTRA-ORDINARY EXPENSES

            In case of any kind of bailment, it is the duty of the bailor to bear extraordinary expenses, if any, incurred by the bailee regarding the goods bailed.

EXAMPLE:

            B hires A’s horse for his carriage. The horse becomes sick and B spends Rs.50 on medical and Rs.20 on feeding. A is liable to pay to B Rs.50 the extraordinary expenses only.

4.  DUTY TO INDEMNIFY FOR DEFECTIVE TITLE

            Where the title of the bailor to the goods is defective and as a result the bailee suffers a loss. The bailor is responsible to indemnify the bailee for such loss.

EXAMPLE

            A gives his neighbor’s scooter to B for use without the neighbor’s permission. The neighbor uses B and receives compensation. A is bound to indemnify B for losses.

5.  DUTY TO RECEIVE BACK THE GOODS

            It is the duty of the bailor to receive back the goods when the bailee returns them after the accomplishment of the purpose of bailment. If the bailor refuses to take delivery of goods at proper time, “the bailee can claim compensation for all necessary expenses incurred in connection of safe custody.

EXAMPLE

            A bails his cow to B for feeding for 2 months. A does not take his cow back after 2 months. B has to spend more on feeding. A is liable to compensate B.

DUTIES OF BAILEEE

            A bailee is the person to whom the goods are delivered. His duties are as follows:

1.  DUTY TO TAKE REASONABLE CARE

            “In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.”

            If the bailee does not take such a care of the goods bailed and the goods are damaged by his negligence, he would be responsible for the loss.

EXAMPLE

(a)               A sends some ornaments to B, a goldsmith. B keeps it locked. The ornaments are stolen. B is not liable for loss.

(b)               A bails car to B. B omits to lock up the car. The car is stolen. B is liable for car.

2.  DUTY NOT TO MAKE UNAUTHORIZED USE

            It is the duty of he bailee to use the goods strictly according to the terms of the bailment. If the bailee makes an unauthorized use of the goods bailed, he is liable to make compensation to the bailer for any damage arising to the goods due to such use.

EXAMPLE

(a)               A, hires a car from B to visit Multan. A allows his son to use the car for learning driving. B is entitled to terminate the bailment.

(b)               A goldsmith accompanied by his wife went to village to attend a marriage. He took some ornaments entrusted to him by customers. The object was to enable his wife to wear the ornaments at the marriage. On the way, robbers snatched ornaments. The goldsmith was held liable to the customers for loss.

3.  DUTY NOT TO MIX THE GOODS

            It is also the duty of a bailee that he should not mix his own goods with those of the bailor, without the bailor’s consent.

EXAMPLE

            A, bails a bag of superior flour worth Rs.45 to B. B, without A’s consent, mixes the flour with inferior flour of his own, worth only Rs.25 per bag. B must compensate A for the loss of his flour.

4.  DUTY TO RETURN THE 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 wee bailed has expired, or the purpose for which they wee bailed has been accomplished.

EXAMPLE

            A, hires a horse from B for one week. But A does not return the horse on the due date. The horse dies one day after the expiry of the period of bailment without any fault on A’s part. A is liable for the price of the horse to B.

5.  DUTY TO RETURN INCREASE

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

EXAMPLE

            A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as the cow to A.

RIGHTS OF BAILEE

            The duties of the bailor are the rights of the bailee. These rights are as under:

1.  RIGHT TO CLAIM DAMAGES:

            In case of bailment without reward the bailee is entitled to know the faults in the goods bailed to him of which the bailor is aware. A bailee has a right to claim compensation from the bailor for any loss or damaged arising directly from such faults in the goods bailed.

            However, in case of bailment for reward the bailee is entitled to claim compensation for even those faults of which bailor was not aware.

EXAMPLE

            A lends a horse to B which he knows to be vicious; He does not disclose the fact that the horse is vicious. The horse while B is on his back runs away. B is thrown and injured. A is responsible to B for damages sustained.

2.  RIGHT TO RECOVER EXPENSES:

            The bailee can recover all necessary expenses incurred by him for the purpose of the bailment, from the bailor.

EXAMPLE

            A delivers his horse to B for safe custody. The horse becomes sick and B’s spends Rs.200 on medical expenses. B is entitled to recover such expenses from A.

3.  RIGHT TO DELIVER GOODS:

           Where goods have been bailed by several joint owners, the bailee has a right to 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.

EXAMPLE

            A, B & C jointly bail a car to X for 5 days. X can return the car to any one of them.

4.  RIGHT TO COMPENSATION:

            If the bailor has no right to bail the goods or to receive them back or to give directions regarding them and as a result the bailee suffers a loss, the bailee is entitled to receive such loss from bailor.

EXAMPLE

            A bails his friend, C’s scooter to B with his permission. B has right to return the scooter to A. He is not liable to C.

5.  RIGHT TO STOP DELIVERY:

            If a person other than the bailor claims goods bailed, the bailee may apply to the court to stop delivery of the goods to the bailor and to decide the title to the goods.

EXAMPLE

            A bails the goods to B. X claims that he is the owners of those goods and demands from B. B can stop the delivery of goods to A and request the court to decide about the ownership of goods.

6.  RIGHT TO USE:

            If a third person wrongfully deprives the bailee of the use or possession of the goods bailed or causes the injury to the goods, bailee is entitled to use such person.

            The bailor can also bring an action against such third person in respect of such goods bailed.

EXAMPLE

            A gives a piece of cloth to T, a tailor to make a suit. M forcefully takes the coat from T. A or T can file a suit against M.

7.  RIGHT OF LIEN:

            Lien means the right to retain possession of the property or goods belonging to another until some debt or claim is paid.

            Bailee has the right to retain that particular property in respect of which he has rendered some services and his charges are due.

EXAMPLE

            A delivers rough diamond to B, a jeweler, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he rendered.

RIGHTS OF THE BAILOR

            The duties of the bailee are the rights of the bailor. The rights of the bailor are as under:

1.  RIGHT TO CLAIM DMAGES:

            The bailor can recover damages from the bailee if any caused to the goods bailed due to the bailee’s negligence.

EXAMPLE

            A bailed some goods to B. B did not kept the goods locked. The goods were stolen. A can recover loss from B.

2.  RIGHT TO DEMAND RETURN OF GOODS:

            The bailor is entitled to demand the return for the goods bailed as soon as the purpose of bailment is accomplished. If the bailee makes default in returning the goods at the proper time and place, the bailor is entitled to compensation arising from such situation.

EXAMPLE

            A gives a car to B on rent for 5 days. A can demand the return of car after 5 days. If B does not return the car after 5 days. A can claim damages.

3.  RIGHT TO CLAIM INCREASE:

            He is entitled to claim any increase  or profit, which may have accrued from the goods bailed.

EXAMPLE

            A bailed a cow to B for safe custody. The cow gave a birth to a child. A can demand cow along with child.

4.  RIGHT TO TERMIANTE BAILMENT:

            The bailor has a right to terminate the bailment if the bailee does any act, which is against the terms of the contract though the term of bailment has not expired or the purpose of bailment has not been accomplished.

EXAMPLE

            A gives on hire to B a horse for his own riding. B drives the horse in carriage. A can terminate the contract.

5.  RIGHT TO USE:

            The bailor may use the bailee for breach of contract if the goods are not returned or disposed of as directed by the bailor.

EXAMPLE

(a)               A gives his T.V. to B for repairs X gets the possession of T.V. from B. A can sue X.

(b)               A gives a piece of wood to B, a carpenter to make some tables. B does net take care of that woods. The fire breaks out and destroys a wood. A can use B for loss.

TERMIANTION OF BAILEMENT

            A contract of bailment terminates under the following circumstances:

1.  EXPIRTY OF TIME:

            When the contract of bailment is for a specified period, the bailment terminates after the expiry of specified period.

EXAMPLE

            A stores some oranges in the cold storage of B for one month. After one month, the bailment terminates.

2.  ACCOMPLISHMENT OF PURPOSE:

            If the bailment is for a specific purpose, the bailment terminates as soon as the purpose is accomplished.

EXAMPLE

            M gives his radio to N for repairs N repairs and returns the radio, the bailment is over.

3.  UNAUTHORIZED USE:

            If the bailee does any act, which is inconsistent with the terms of the bailment, the bailment may be terminated by the bailor even though the term of bailment has not expired or the purpose of bailment has not been accomplished.

EXAMPLE:

            A bails a car to B for 5 days for his personal use. B allows his friend, X to use the car. A can terminate bailment before 5 days.

4.  ON DEATH:

            A gratuitous bailment is terminated by the death of either the bailor or the bailee.

EXAMPLE

            M borrows a book from his friend, N for 10 days. M dies. The bailment terminates.

5.  TERMIANTION BY BAILOR:

            A gratuitous bailment can be terminated by the bailor at any time, even before the stated time if the termination causes no loss to the bailee. In case the bailee suffers a loss due to termination, the bailor is liable to make good the loss.

EXAMPLE:

            S lends a book to T for one month x can demand return of book before the expiry of bailment period.

6.  DESTRUCTION OF SUBEJCT MATTER:

            A bailment is terminated when the subject matter of the bailment is destroyed or due to change in its natural becomes incapable of use for the purpose of bailment.

EXAMPLE:

            S lends a book to T for one month. X can demand return of book before the expiry of bailment period.

CONTRACT OF PLEDGE

PLEDGE OR PAWN

DEFINITION

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

            A pledge or Pawn is a special kind of bailment. Under Pledge one person transfers possession of some goods to another to secure the payment of debt or the performance of a promise. In case of pledge the goods are deposited as security go get a loan. If there is no transfer of possession of goods, there is no pledge.

EXAMPLE:

            A borrows Rs.1000 from B and keeps his watch as security for payment of the debt. The bailment of watch is called a pledge.

DIFFERENCE BETWEEN PLEDGE AND BAILMENT

            The following are the points of different the two:

|  |  |
| --- | --- |
| PLEDGE | BAILMENT |
| 1.     PURPOSEIn 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.     RIGHTSIn 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 GOODSIn 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 GOODSIn 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.     LIENIn pledge, lien can be exercised even for non-payment of interest. | In bailment, lien can be exercised only for the labour and skill spend. |

UNIT - IV

CONTRACT OF SALES OF GOODS

SALE OF GOODS ACT:

            The law relating to sale of goods is contained in the Sale of Goods Act, 1930. This law came into force on 1 July 1930. The Act contains 66 Sections and extends to the whole of Pakistan.

            It is like any other contract. In order to be valid, it must also possess all the essentials of a valid contract.

DEFINITION OF CONTRACT OF SALE:

            Section 4(1) of the Sale of Goods Act defines a contract of sale of goods as “a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.”

            In other words, a contract to transfer the ownership of goods from the seller to the buyer is known as contract of sale.

ESSENTIALS OF A CONTRACT OF SALE:

            The above definition provides the following essentials of a contract of sale of goods.

1.  BUYERS AND SELLER:

            There should be two parties to a contract of sale, i.e. a buyer and a seller. One person cannot act as a buyer and seller because a person cannot buy his own goods and similarly a person cannot sell his goods to himself.

EXAMPLES

            A sells his computer to B for Rs.40,000. A is a seller and B, is a buyer.

2.  TRANSFER OF PROPERTY:

            Transfer of property is the second essential of contract of sale. Property here means ownership. A mere transfer of possession of the goods cannot be termed as sale.

EXAMPLE

            A sells his A.C. to B for Rs.20,000. The ownership and the possession of the A.C. will transfer from A to B.

3.  GOODS:

            The subject matter of the contract of sale must be goods. According to section 2(7), “goods means every kind of movable property other than actionable claims and money; and includes electricity, water, gas, stock and shares, growing crops, grass and thing attached to our forming part of the land which are agreed to be severed before sale or under the contract of sale.”

EXAMPLE:

            A sells his car to M for Rs.3 Lac. It is a contract of sale because here the subject matter i.e. a car is a moveable thing.

4.  PRICE

            According to section 2(10), the consideration in a contract of sale must be the price. When goods are sold or exchanged for other goods, the transaction is barter, and not a contract of sale of goods. If goods are sold partly for goods and partlyfor money, the contract is sale.

EXAMPLES:

(i)                 A sells his chair to B for Rs.2,000. It is contract of sale.

(ii)               X sells his horse to B against B’s promise to give 100 mounds of wheat. It is not a contract of sale.

5.  SALE AND AGREEMENT TO SELL

            The terms contract of sale includes, both sale and an agreement to sell. Where under a contract of sale the property (ownership) in the goods is transferred from the seller to the buyer, at the time of making the contract the contract is called as sale. Where under a contract of sale the transfer of ownership in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

EXAMPLES:

(i)                 A buys a book from S and pays the whole price on a counter. It is a sale.

(ii)               A agree to buy B’s car for Rs.200,000, if his mechanic approves the car. It is an agreement to sell.

6.  OTHER FORMALITIES:

            There is no specific procedure to make a contract. Apart from the above, all other essentials of a valid contract like capacity of the parties, free consent, legality of object etc. should also be there in a contract of sale. It may be oral or in writing.

EXAMPLE:

            A verbally promises to sell his radio to B for Rs.2,000. It is a contract of sale if both the parties are competent to contract and have given their consent freely, etc.

DISTINCTION BETWEEN SALE & AGREEMENT TO SELL

            The following are the points of the distinction between the two:-

|  |  |
| --- | --- |
| SALE | AGREEMENT TO SELL |
| 1.   Transfer of PropertyIn a sale, the ownership in goods passes to the buyer immediately at the time of making the contract. | In an agreement to sell, there is no transfer of ownership to the buyer at the time of the contract. The ownership transfers at a certain date or subject to fulfillment of some condition. |
| 2.     Type of GoodsA sale can only be in case of existing and specific goods. | A agreement to sell is mostly in case of future and contingent goods. |
| 3.     Nature of RightsIn sale, the buyer becomes and so gets the rights against the goods. Moreover, if the seller refuses to deliver the goods, the buyer may sue for recovery of goods. | In an agreement to sell, the buyer cannot get the rights against the goods. He gets the rights against the seller only so he can sue for damages for breach of agreement and not for recovery of goods |
| 4.     Right of ResaleIn a sale, he ownership is with the buyer and so the seller cannot resell the goods, even though the goods are in the possession of seller. | In an agreement to sell, the ownership in goods remains with the seller and so he can resell those goods to the new buyer. The original buyer can use for breach of contract only and the subsequent buyer gets at good title to the goods. |
| 5.     Nature of ContractA sale is an executed contract, because the ownership has passed from seller to the buyer | An agreement to sell is an executory contract, as the property has to pass in future. |

KINDS OF GOODS

            According to Sale of Good Acts the goods may be classified into following kinds.

·                     Existing Goods.

·                     Specific Goods.

·                     Future Goods.

·                     Contingent Goods.

1.  EXISTING GOODS:

            The goods which are owned and possessed by the seller, at the time of entering the contract of sale are called existing goods. In other words the goods which are physically in existence and in seller’s ownership or possession, at the time of entering the contract of sale are called existing goods.

2.  SPECIFIC GOODS:

            According to section 2(14), the goods which are identified and agreed upon at the time of contract of sale are called Specific goods. Where there is a contract for specific goods, the seller can complete the contract only by delivering tie goods agreed upon.

EXAMPLE:

(i)                 A agrees to sell to B a particular radio bearing a distinctive number; there is a contract of sale of Specific goods.

(ii)               X owns a number of cows, and promises to sell one of them; the contract is not for specific goods. But if the cow to be sold has been singled out, the contract is for specific goods.

3.  FUTURE GOODS:

            According to section 2(6), the goods which a seller does not possess at the time of contract but which will be manufactured, produced or acquired by the seller after making the contract of sale are called future goods. As a rule, a person may make a contract about the goods of which he is not the owner. He hopes to acquire such goods. He can just make an agreement sell about future goods.

            The reason is that he cannot transfer the ownership of the goods before the goods come into existence. Thee can be no sale of future goods because the ownership cannot pass on to the buyer at the time of contract.

EXAMPLE:

            X agrees to sell to Y all the mangoes, which will be produced in his garden next year. It is a contract of future goods.

4.  CONTINGENT GOODS:

            According to section 6(2), the goods which are also not in existence at the time of contract of sale are called contingent goods. These are like future goods. In this case, the acquisition by the seller depends upon an uncertain contingency. In case of contract of contingent goods, the ownership does not pass to the buyer at the time of contract, like future goods.

            A contract of sale of contingent goods is enforceable only if the event on the happening of which the performance of the contract is dependent happens, otherwise the contract becomes void.

EXAMPLE:

            A agrees to sell to B a specific there painting provided the is able to purchase it from its present owner. This is a contract for the sale of contingent goods.

FIXATION OF PRICE:

            The money consideration for a sale of goods is known as ‘price’. According to Section 2(10) Price is an essential element in every contract of sale of goods. A valid sale cannot take place without a price. The price should be paid or promised to be paid in legal tender money in Pakistan, i.e., unless otherwise agreed.

MODES OF FIXING THE PRICE:

1.  PRICE:

            This is the most usual mode of fixing the price. The parties are free to fix any price. The price may be stated in a contract by the parties to the contract. The price should be definite, if an alternative price is fixed, the agreement is void.

2.  AGREED MANNER:

            There may be an agreement among the parties that the buyer would pay the market price prevailing on a particular date or it may be fixed by a third party, i.e. valuer appointed by the consent of parties.

            Remember that if no rice is fixed the contract is not void for uncertainty because in that case law usually allows market price prevailing on the date of supply of goods.

3.  COURSE OF DEALING:

            If the buyer has been previously paying to a particular seller the price prevailing on the date of placing the order, the, it is clear that the buyer will pay the price prevailing on the date, of any subsequent order.

4.  REASONABLE PRICE:

            If the price is not capable of being fixed in accordance with any of the above modes, the buyer is bound to pay to the seller a ‘reasonable price.’ What is a reasonable price is a question of fact and depends upon the circumstances of each case. Generally, the market price is considered as reasonable price.

CONDITION AND WARRANTIES

            A contract of sale of goods contains various terms or stipulations regarding the quality of the goods, the price, the mode of payment, the delivery of goods the time of performance and the place where the goods are to be sent etc.

            Some of there stipulations may be major terms while others may be minor terms. In law of sales major, terms are called conditions and minor terms are called warranties.

DEFINITION OF CONDITION:

            According to section 12(2) a “condition is a stipulation essential to the main purpose of the contract the breach of which gives the aggrieved party a right to repudiate the contract itself.”

            In other words, a condition is essential for the main purpose of the contract. It is regarded as the very basis of the contract. Its non-fulfillment causes irreparable loss to the aggrieved party. In case of violation of condition the aggrieved party gets a right to cancel the contract. The party can refuse to accept the goods. If the injured party has already paid the price, he can recover it.

EXAMPLE:

            A contract to deliver 100 Pak fan to B. But A delivers Climax fans. It is breach of condition on the part of A. B is entitled to reject the fans or accept them and claim damages.

DEFINITION OF WARRANTY:

            According to Section 12(3) “ a warranty is a stipulation collectral to the main purpose of the contract the breach of which gives the aggrieved party a right to use  for damages only, and not to avoid the contract itself.”

            In other words a warrantee is not essential for the main purpose of the contract. It is subsidiary or collectral to the main purpose of the contract. It is not regarded as the basis of the contract.

            It is of secondary importance. The breach of warranty gives the injured party a right to recover damages only. It does not give right to reject the goods and treats the contract as repudiated.

            There is no hard and fast rule as to know which stipulation is a condition and which one is a warranty. The only suitable method to distinguish between these two terms is that if the stipulation is such that its breach would be very harmful for the rights of the aggrieved party, then such a stipulation is a condition and where it is not so the stipulation is only a warranty.

EXAMPLE:

            A promise to deliver to B 100 washing machines at his showroom. But A delivers them at the home. It is a breach of warranty on the part of A. B cannot reject them. He can claim damages only.

DISTINCTION BETWEEN CONDITION AND WARRANTY

            The following are the points of distinction between a condition and a warranty:

|  |  |
| --- | --- |
| CONDITION | WARRANTY |
| 1.     ValueA condition is a stipulation, which is Essential to the main purpose of the Contract. | A warranty is a stipulation, which is not essential to the main purpose of Contract. |
| 2.     BasisIt forms the basis of a contract and goes direct to the root of the contract. | It does not form the basis of a contract and does not go direct to the root of the contract |
| 3.     BreachThe breach of a condition gives the aggrieved party the right to reject the contract. | The breach of warranty does not give aggrieved party a right to reject the contact. |
| 4.     TreatmentA breach of condition may be treated as a breach of warranty. | A breach of warranty cannot be treated as a breach of condition. |
| 5.     OptionIn case of breach of condition, the Aggrieved party has an option to Claim damages instead of rejecting. | In case of breach of warranty the aggrieved party has no option to reject the contract. He can only claim damages. |

EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES

            Conditions and warranties may be express or implied. The conditions and warranties which are included in clear words the contracts are called express. The conditions and warranties which are not included in the contract but the law presume their existence in the contract is called implied.

IMPLIED CONDITIONS:

            Unless otherwise agreed, the law includes the following conditions into a contract of sale of goods.

1.  CONDITIONS AS TO TITLE:

            In a contract of sale, there is an implied condition on the part of the seller that in the case of sale he has a right to sell goods and that in the case of agreement to sell; he will have a right to sell the goods at the time when the property is to pass. The seller has the right to sell the goods as the owner or as owner’s agent.

            As a result of this condition if the seller’s title proves to be defective the buyer can reject the goods and the recover his price. In this case the buyer has no option to treat the breach of condition as breach of warranty and accept the goods and use the seller for damages He must return the goods to the true owner. He can recover the price form seller because the consideration has failed.

EXAMPLE:

(a)               A purchased a car from B. After few months the car is seized by the police as a stolen one. A can recover the price from B.

(b)               R purchased a motor from D and used for several months. D had no title to the car and, therefore, R was compelled to return the car to the true owner. R used D to recover the price, which he had already paid. He was held entitled to recover the whole of the price paid by him.

2.  SALE BY DESCRIPTION:

            Where there is a contract of sale of goods by description; there is an implied condition that the goods shall correspond with the description. If the goods are not according to the description, the buyer can reject the goods. In a sale by description, the seller cannot perform the contract by supplying another.

EXAMPLE:

            A advertised a car for sale as ‘Corolla, 2008 Model. ‘B after buying the car, found it of an earlier model. B could return the car.

3.  SALE BY SAMPLE:

            In case of sale by sample, the goods must be supplied according to sample agreed upon. And the bulk shall correspond with the sample in quality.

EXAMPLE:

            Two parcels of wheat were sold by sample. The buyer examined the bulk a week after. One parcel was shown to him but the seller refused to show the other parcel, which was not thee in the warehouse. It was held, that the buyer was entitled to rescined the contract.

4.  SALE BY SAMPLE AS WELL AS BY DESCRIPTION:

            When goods are sold by sample as well as by description, there is an implied condition that the bulk of the goods wshall correspond both with the sample and with the description, if the goods supplied correspond only with the sample and not with the description or vice-versa, the buyer can reject the goods. The bulk of goods must correspond with both.

EXAMPLE:

            N agreed to sell G some oil described as ‘foreign refined oil’, was similar to sample only. The oil supplied, though corresponded with the sample, was mixed with local oil. Held, that since the oil supplied was not in accordance with the description, the buyer was entitled to reject the same.

5.  CONDITION AS TO FITNES OR QUALITY:

            Where the buyer informs to the seller about the particular purpose for with the goods are require, there is an implied condition tha the goods shall be reasonably fit for such purpose.

EXAMPLE:

            A enters into an agreement with B to buy 100 oil filters to be used for Suzuki cars. The oil filters were unfit. A can reject them.

6.  CONDITION AS TO MERCHANTABILITY:

            Where goods are bought by description from seller who deals in goods of that description, there is implied condition that the goods shall be of mercantable quality. Merchantability quality means that the goods mush be saleable in the market as goods of that description.

EXAMPLE:

            A sold a Radio to B. The Radio was defective. It did not work in spite of repairs. B could return the Radio and claim refund.

7.  CONDITION AS TO WHOLESOMENESS:

            Wholesomeness means conducive to health. This condition applies only in contract of sale of eatables and provisions. In such cases goods supplied must be merchantable and wholesome also.

EXAMPLE:

(a)               F bought milk A, a dairy owner. The milk contained germs of typhoid fever. F’s wife, on taking the milk, became infected and died of it. A, was held liable in damages.

(b)               C bought a bun containing a stone, which broke one of C’s teeth. Held C could recover damages.

IMPLIED WARRANTIES:

            Unless otherwise agreed, the law includes the following warranties into a contract of sales of goods.

1.  QIET POSESSION:

            In every contract of sale, it is implied warranty on the part of seller that the buyer shall have and enjoy quiet possession of the goods. It is an implied assurance to the buyer that he shall have the possession and enjoyment of the goods sold to him without disturbance by the seller of any other person. If this right of buyer is disturbed by a person having a superior right than that of the seller, the buyer can claim damages from seller.

EXAMPLE:

            A bought a motor car from B and used it for some months, after some months if appeared that B had no title to it and A was compelled to surrender it to the true owner. A was entitled to recover the purchase price form B.

RIGHTS OF UNPAID SELLER

DEFINE OF UNPAID SELLER:

            According to Section 45(1) the seller of goods is deemed to be an unpaid seller:

1.                  When the whole of the price has not been paid or tendered; or

2.                  when a bill of exchange or other negotiable instrument has been received as a conditional payment and the same has been dishonored.

FEATURES OF UNPAID SELLER:

            The following are the features of unpaid seller;

1.                  He must sell goods on cash basis and he must be unpaid.

2.                  If he sells the goods on credit, he is not an unpaid seller.

3.                  He is unpaid seller if the term of credit has expired and the price has not been paid.

4.                  He must be unpaid either wholly or partly. If only a part of the price remains unpaid he is deemed to be an unpaid seller.

EXAMPLE:

(a)               A sells goods to B on 5 months credit. A is not an unpaid seller. But if B becomes insolvent after 2 months A becomes an unpaid seller.

(b)               A sells goods to B for Rs.5 thousand. B has paid Rs.3 thousand and the remaining are still to be paid. A is an unpaid seller.

(c)                A sells 50 books to B. A gets a cheque form B for a period of 10 days. On the date of maturity, the cheque is dishonored. A becomes an unpaid seller.

(d)               A sells a mixer to B. B tenders the payment to take delivery. But A refuses to accept payment. A is not unpaid seller.

RIGHTS OF AN UNPAID SELELR:

            An unpaid seller has the following rights:

(1)               Right of unpaid seller against the goods.

(2)               Right of unpaid seller against the buyer personally.

We shall examine these rights in detail one by one.

1.  RIGHTS OF UNPAID SELLER AGAINST THE GOODS:

            An unpaid seller has the following three rights in spite of the fact that the ownership in the goods has passed to the buyer.

(a)               Right of lien;

(b)               Right of Stoppage of goods in transit;

(c)                Right of resale.

(a) RIGHT OF LIEN:

            Lien is the right to retain possession of goods and refuse to deliver them to the buyer until the price due in respect of them is paid or tendered. An unpaid seller in possession of the goods can exercise his right of lien on the goods in the following cases.

(i)                 Where the goods have been sold without any stipulation as to credit;

(ii)               Where the goods have been sold on credit, but the term of credit has expired;

(iii)             Where the buyer becomes insolvent even though the period of credit may not have yet expired.

RULES REGARDING LIEN:

            The rules regarding lien are as under:

(i)                 The right of lien can be exercised only when the goods are in possession of seller.

(ii)               It can be exercised by the unpaid seller if he is in possession of goods as agent or bailee of the buyer.

(iii)             It can be exercised even if the document of title has been delivered but the goods are in the possession of the seller.

(iv)             It can be exercised for price and not for other expenses.

(v)               If seller delivers some goods, he can retain the remainder.

(vi)             If the seller delivers the goods under the circumstances as to show in agreement to waive the lien, the seller cannot retain the remainder.

EXAMPLE:

            A sells the goods to B for Rs.1 Lac B pays 50 thousand and promises to pay the remaining after sometime. A has a right to exercise a lien on the goods.

TERMIANTION OF LIEN:

            The unpaid seller losses his lien in the following cases:

(i)                 When he delivers the goods to a carrier or other bailee for the purposes of transmission to the buyer without reserving the right to disposal of the goods.

(ii)               When the possession of the good is obtained lawfully by the buyer or his agent.

(iii)             When the seller waives his right of lien on the goods.

(iv)             It may be noted that right of lien if once lost, will not revive if the buyer delivers the goods to the seller for any particular purpose.

EXAMPLE:

            Where a refrigerator after being sold was delivered to the buyer and since it was not functioning properly the buyer delivered back the same to the seller for repairs, it was held that the seller could not exercise his lien over the refrigerator.

(b) RIGHT OF STOPPAGE OF GOODS IN TRANSIT:

            The second right of the unpaid seller is to stop the goods in transit. Goods in transit mean that the goods must be neither with the seller, nor with the buyer nor with their agent. They should be in the custody of a carrier. He can regain possession of the goods as long as they are in course of transit and retain them until payment or tender of the price.

RIGHT OF STOPPAGE:

            The unpaid seller can exercise this right under the following circumstances.

   (i)         When the buyer becomes insolvent;

(ii)        When the buyer or his agent takes delivery of the goods before their arrival at the appointed destination.

(iv)             when the buyer requests the carrier to carry the goods to a new destination after the original destination is reached.

(v)               When the carrier wrongfully refuses to deliver the goods to the buyer or his agent.

(vi)             When part delivery of the goods has been made to the buyer or his agent with the intention of delivering the whole of the goods.

EXAMPLE:

            A sells 20 bags of cement to B. a gives the delivery of the cement to carrier to carry to B. Later on A gets news that B has becomes insolvent. A can stop delivery of cement in transit to B.

(c) RIGHT OF RESSALE:

            The third right of unpaid seller is resale. He can resell the goods in the following cases:

(i)                 Where the goods are of perishable nature; or

(ii)               Where there is express provision regarding such right in the contract; or

(iii)             Where the seller gives a notice to the buyer of his intention to resell and the buyer does not pay or tender the price within a reasonable time.

SALE WITH NOTICE:

(i)                 If on a resale there is a loss to the seller, he can recover it from the defaulting buyer.

(ii)               If the resale results in profit, the seller can retain it.

SALE WITH NOTICE:

(i)                 If the unpaid seller sells without giving notice to buyer he will not be entitled to recover damages from buyer.

(ii)               In case of profit on resale, the buyer will be entitled to profit.

EXAMPLE:

(a)               X sells some vegetables to Y on credit. Y does not pay. X can resut to any other person.

(b)               M sells 100 blankets to N for Rs.1 Lac and gives him one week for payment N does not pay. M can resell those blankets to any other person.

(3) RIGHTS OF UNPAID SELLER AGAINST THE BUYER PERSONALLY:

            The unpaid seller, in addition to his rights against goods has the following rights against the buyer personally:

(a) SUIT FOR PRICE:

            Where the ownership in goods has passed to the buyer and the buyer refuses to pay the price according to the terms of the contract, the seller can use the buyer for price, irrespective of delivery of goods.

EXAMPLE:

            A sells the goods to B for Rs.1 Lac refuse to pay the price. A can use for the price.

(b) SUIT FOR DAMAGES FOR NON-ACCEPTANCE:

            Where the buyer refuses to accept and pay for the goods the seller may use him for damages for non-acceptance. The seller can recover damages only. He cannot recover full price.

EXAMPLE:

            A sells the goods to B. B refuses to take the goods and pay the price. A can use B to compel to take the goods.

(c) SUIT FOR SPECIAL DAMAGES AND INTEREST:

            The seller can use the buyer for special damages also where the parties are aware of such loss at the time of contract the unpaid seller can recover interest at a reasonable rate on he total unpaid price of goods sold, from the time it was due it is actually paid.

EXAMPLE:

            X sells some goods to Y. Y does not pay the price. X can use for damages and interest on unpaid price if the parties are aware of such circumstances.

BUYER’S RIGHTS AGAISNT SELLER:

            The buyer has the following rights against the seller for breach of contract:

1.  SUIT FOR DAMAGES FOR NON-DELIVERY:

            Where the seller wrongfully neglects or refuses to deliver the goods to the buyer the buyer may use the seller for damages for non-delivery.

EXAMPLE:

            A sells iron to B at Rs.50 thousand a ton. A does not supply the iron on a stated date. The price of iron increases to 60 thousand a ton. B can use for damages arising due to non-delivery.

2.  SUIT FOR SPECIFIC PERFORMANCE:

            Were there is breach of a contract for the sale of specific goods the buyer may life a suit for specific performance. This remedy is granted only when damages would not be adequate remedy. It is granted when subject-matter of the contract is rare goods, say, a picture by a dead painter.

EXAMPLE:

            A Promise to sell B a rare painting. A refuse to give painting. B can use for specific performance.

3.  SUIT FOR DAMAGES FOR BREACH OF WARRANTY:

            Where there is breach of warranty by the seller, the buyer is entitled to use for damages if he has paid the price to seller. But if the buyer has not yet paid the price he may ask the seller for a reasonable reduction in price.

EXAMPLE:

            A promises to sell and deliver tables to B on 1st March 2000. But A delivers on 10th March. B can claim damages.

4.  SUIT FOR CANCELLATION AND DAMAGES FOR BREACH OF CONDITION:

            Where thee is a breach of condition by the seller, the buyer can avoid the contract and claim damages.

EXAMPLE:

            A Promise to sell to B Sony TV. A sends Sharp TV to B. B can avoid the contract and claim damages.

UNIT - V

NEGOTIABLE INSTRUMENTS

            A Negotiable instrument may be defined as one the property in which is acquired by every person who takes it bonafide and for value, notwithstanding any defect of title in the person form whom he took it. A negotiable instrument may also be defined as a contractual obligation, in writing and signed by the party executing it, containing an unconditional promise or order of a specified person.

            According to section 13(a) negotiable instrument means a promissory note, bill of exchange or cheque not payable either to order to bearer, whether word order or bearer appear on the instrument or not.

            From the above definitions it is clear that negotiable instrument is a written promise or order to pay money, such as promissory note, bills of a exchange and cheque which, when in proper form, may be transferred from hand to hand as a substitute of money.

Introduction to Negotiable Instruments

In the world of [business](https://www.toppr.com/guides/business-studies/nature-and-purpose-of-business/concept-and-characteristics-of-business/) and finance, negotiable instruments are a very important tool. They provide the parties with an ease of doing business. And they can also be a source of [finance](https://www.toppr.com/guides/business-studies/sources-of-business-finance/meaning-nature-and-significance-of-business-finance/) when in need of funds. Let us learn more about negotiable instruments and their advantages.

Definition Negotiable Instruments:

A negotiable instrument is actually a written document. This document specifies payment to a specific person or the bearer of the instrument at a specific date. So we can define a bill of exchange as “a document signifying an unconditional promise signed by the person giving [promise](https://www.toppr.com/guides/business-laws/indian-contract-act-1872-part-ii/performance-of-reciprocal-promise/), requiring the person to whom it is addressed to pay on demand, or at a fixed date or time, a certain sum to or to the order of a specified person, or to bearer.”

Features of Negotiable Instruments

Easily Transferable: A negotiable instrument is easily and freely transferable. There are no formalities or much paperwork involved in such a transfer. The [ownership](https://www.toppr.com/guides/legal-aptitude/jurisprudence/kinds-of-ownership/) of an instrument can transfer simply by delivery or by a valid [endorsement](https://www.toppr.com/guides/business-laws-cs/negotiable-instruments-act/endorsement-of-instruments/).

Must be Written: All negotiable instruments must be in writing. This includes handwritten notes, printed, engraved, typed, etc.

Time of Payment must be Certain: If the order is to pay when convenient then such an order is not a negotiable instrument. Here the time period has to be certain even if it is not a specific date. For example, it is acceptable if the time of payment is linked with the death of a specific individual. As [death](https://www.toppr.com/guides/accountancy/retirement-or-death-of-a-partner/adjustment-of-partners-capital-and-death-of-a-partner/) is a certain event.

Payee also must be certain: The person to whom the payment is to be made must be a specific person or persons. Also, there can be more than one payee for a negotiable instrument. And “person” includes artificial persons as well, like body corporates, trade unions, chairman, secretary etc.

Types of Negotiable Instruments

Let us take a look at some of the most common types of negotiable instruments.

[Promissory Note](https://www.toppr.com/guides/principles-and-practice-of-accounting/bills-of-exchange-and-promissory-notes/promissory-notes/): In this case, the debtor is the one who makes the instrument. And he promises unconditionally to the creditor (or the bearer of the document) a certain sum of money on a specific date.

Bills of Exchange: This is an order from the creditor to the debtor. This instrument instructs the drawee (debtor) to pay the payee a certain amount of money. The bill will be made by the drawer (creditor)

Cheque: This is just another form of a bill of exchange. Here the drawer is a bank. And such a cheque is only payable on [demand](https://www.toppr.com/guides/business-economics/theory-of-demand/meaning-and-determinants-of-demand/). It is basically the depositor instructing the bank to pay a certain amount of money to the payee or the bearer of the cheque.

Others: There are other instruments such as government promissory notes, railway receipts, delivery orders, etc. These can be negotiable instruments by custom or practice of the trade.

The advantages of a negotiable instrument:

One of the biggest advantages of bills of exchange is that the consideration between the debtor and the creditor is presumed. So we will assume that the purchaser is in debt of the seller, the seller need not prove this fact. Since the bill has been accepted by the debtor the court will assume that such debt legitimately exists.

The creditor does not have to wait for the maturity period to get the money. He can immediately opt for bill discounting. Or he can endorse the bill to a creditor of his. So his money does not get locked in.

Accommodation bills enable the businessmen to obtain [funds](https://www.toppr.com/guides/business-studies/sources-of-business-finance/classification-of-sources-of-funds/) at a low rate of [interest](https://www.toppr.com/guides/quantitative-aptitude/si-and-ci/simple-interest/) to meet any temporary financial shortfalls that may arise from [time](https://www.toppr.com/guides/quantitative-aptitude/work-and-time/work-and-time-practice-questions/) in business.

According to Section 13 of the Negotiable Instruments Act,

“A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer.”

The Act, thus, mentions three kinds of negotiable instruments, namely notes, bills and cherubs and declares that to be negotiable they must be made payable in any of the following forms:

**A) Payable to order:**

A note, bill or cheque is payable to order which is expressed to be “payable to a particular person or his order”.

But it should not contain any words prohibiting the transfer, e.g., “Pay to A only” or “Pay to A and none else” is not treated as “payable to order” and therefore such a document shall not be treated as the negotiable instrument because its negotiability has been restricted.

There is, however, an exception in favor of a cherub. A cheque crossed “Account Payee only” can still be negotiated further; of course, the banker is to take extra care in that case.

#### ****B) Payable to bearer:****

“Payable to bearer” means “payable to any person whom so ever bears it.” A note, bill or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

The definition given in Section 13 of the Negotiable Instruments Act does not set out the essential characteristics of a negotiable instrument. Possibly the most expressive and all-encompassing definition of negotiable instrument had been suggested by Thomas who is as follows:

**“A negotiable instrument is one which is, by a legally recognized custom of trade or by law, transferable by delivery or by endorsement and delivery in such circumstances that (a) the holder of it for the time being may sue on it in his own name and (b) the property in it passes, free from equities, to a bonfire transferee for value, notwithstanding any defect in the title of the transferor.”**

### ****Characteristics of Negotiable Instruments:****

An examination of the above definition reveals the following essential characteristics of negotiable instruments which make them different from an ordinary chattel:

#### ****Easy negotiability:****

They are transferable from one person to another without any formality. In other words, the property (right of ownership) in these instruments passes by either endorsement or delivery (in case it is payable to order) or by delivery merely (in case it is payable to bearer), and no further evidence of transfer is needed.

#### ****The transferee can sue in his own name without giving notice to the debtor:****

A bill, note or a cheque represents a debt, i.e., an “actionable claim” and implies the right of the creditor to recover something from his debtor. The creditor can either recover this amount himself or can transfer his right to another person. In case he transfers his right, the transferee of a negotiable instrument is entitled to sue on the instrument in his own name in case of dishonor, without giving notice to the debtor of the fact that he has become the holder.

#### ****The better title to a bonfire transferee for value:****

A bonfire transferee off a negotiable instrument for value (technically called a holder in due course) gets the instrument “free from all defects.” He is not affected by any defect of title of the transferor or any prior party. Thus, the general rule of the law of transfer applicable in the case of ordinary chattels that “nobody can transfer a better title than that of his own” does not apply to negotiable instruments.

##### **Examples of Negotiable Instruments:**

The following instruments have been recognized as negotiable instruments by statute or by usage or custom:

* Bills of exchange;
* Promissory notes;
* Cheques;
* Government promissory notes;
* Treasury bills;
* Dividend warrants;
* Share warrants;
* Bearer debentures;
* Port Trust or Improvement Trust debentures;
* Hindus, and;
* Railway bonds payable to bearer, etc.

##### **Examples of Non-negotiable Instruments:**

These are:

* Money orders;
* Postal orders;
* Fixed deposit receipts;
* Share certificates, and;
* Letters of credit.

## ****Types of Negotiable Instrument****

As discussed above, there are many types of negotiable instruments in the market. They are as given below:

### ****Commercial bill****

This deals in commercial markets. They are drawn either by the seller or the drawer and it is drawn by the drawer of the goods of the buyer in place of the value for the goods delivered.

They are also called trade bills. When these bills are accepted by the commercial banks, they are called commercial bills.

### ****Promissory note****

This is considered as a legal document between the borrower and the lender. Through this document, the lender agrees to certain conditions regarding the money which is borrowed.

Whenever someone borrows the money from commercial banks then they have to sign a promissory note. Thus, these notes can also be bought and sold. This only happens in some countries and it is issued by large companies.

### ****Cheque****

There are many forms of cheque available as the negotiable instruments in the market. The cheque is also known as the bill of exchange. It orders the bank to pay a specified amount to a person’s account from a person who has issued the cheque. Blank cheque, order cheque, bearer cheque, etc are the different types of the cheque.

### ****Commercial paper****

Commercial paper is also issued in the form of promissory note. It can be sold directly by the issuer to the investors. It can also be transferred to the borrowers through agents.

These instruments can only be issued in multiples of 5 lakhs and thereafter. The maturity period varies from one week until one year.

### ****Treasury bills****

Treasury bills are also known as T-bills. It is a short-term instrument for borrowing for the government. For these bills, the tender is issued in the money market and various government departments.

Thus, for this, tenders are invited weekly from brokers and bankers. It provides the government a very cheap way to borrow the money in the times of fluctuating cash and further it also provides the security for the transaction. Furthermore, the RBI which is the banker for government provides these bills at a discount rate.

### ****Bank draft****

These are also the bills of exchange. So, in this, the bank’s orders one its branch to repay the money to a person or to his order. For this, the banks charge a nominal fee.

#### ****Endorsement:****

Section 15 defines endorsement as follows: “When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as negotiable instrument, he is said to endorse the same, and is called the endorser.”

Thus, an endorsement consists of the signature of the holder usually made on the back of the negotiable instrument with the object of transferring the instrument. If no space is left on the back of the instrument for the purpose of endorsement, further endorsements are signed on a slip of paper attached to the instrument. Such a slip is called “along” and becomes part of the instrument. The person making the endorsement is called an “endorser” and the person to whom the instrument is endorsed is called an “endorse.”

##### **Kinds of Endorsements:**

Endorsements may be of the following kinds:

1. **Blank or general endorsement:** If the endorser signs his name only and does not specify the name of the indorse, the endorsement is said to be in blank. The effect of a blank endorsement is to convert the order instrument into a bearer instrument which may be transferred merely by delivery.
2. **Endorsement in full or special endorsement:** If the endorser, in addition to his signature, also adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the endorsement is said to be in full.
3. **Partial endorsement:**Section 56 provides that a negotiable instrument cannot be endorsed for a part of the amount appearing to be due on the instrument. In other words, a partial endorsement which transfers the right to receive only a partial payment of the amount due on the instrument is invalid.
4. **Restrictive endorsement:**An endorsement which, by express words, prohibits the indorse from further negotiating the instrument or restricts the indorse to deal with the instrument as directed by the endorser is called “restrictive” endorsement. The indorse under a restrictive endorsement gets all the rights of an endorser except the right of further negotiation.
5. **Conditional endorsement:** If the endorser of a negotiable instrument, by express words in the endorsement, makes his liability, dependent on the happening of a specified event, although such event may never happen, such endorsement is called a “conditional” endorsement.

### ****Features of Negotiable Instruments:****

**Negotiable Instrument**, in law, a written contract or another instrument whose benefit can be passed on from the original holder to new holders. The original holder (the transferor) must countersign the instrument (as in the case of a cheque) or merely deliver it (as in the case of a bank note) to the new holder; the new holder is then entitled to the benefit of the instrument (in the case of a cheque, to the money from the bank; in the case of the banknote, to the sum promised on the note).

**According to section 13 of the Negotiable Instruments Act, 1881, a negotiable instrument means,**

**“Promissory note, bill of exchange, or cheque, payable either to order or to bearer.”**

#### ****Easy Transferability:****

A negotiable instrument is freely transferable. Usually, when we transfer any property to somebody, we are required to make a transfer deed, get it registered, pay stamp duty, etc. But, such formalities are not required while transferring a negotiable instrument.

The ownership is changed by mere delivery (when payable to the bearer) or by valid endorsement and delivery (when payable to order). Further, while transferring it is also not required to give notice to the previous holder.

#### ****Title:****

Negotiability confers an absolute and good title on the transferee. It means that a person who receives a negotiable instrument has a clear and indisputable title to the instrument.

However, the title of the receiver will be absolute, only if he has got the instrument in good faith and for consideration.

Also, the receiver should have no knowledge of the previous holder having any defect in his title. Such a person is known as the holder in due course.

#### ****Must be in writing:****

A negotiable instrument must be in writing. This includes handwriting, typing, computer print out and engraving, etc.

#### ****Unconditional Order:****

In every negotiable instrument, there must be an unconditional order or promise for payment.

#### ****Payment:****

The instrument must involve the payment of a certain sum of money only and nothing else.

For example, one cannot make a promissory note on assets, securities, or goods.

#### ****The time of payment must be certain:****

It means that the instrument must be payable at a time which is certain to arrive. If the time is mentioned as “when convenient” it is not a negotiable instrument.

However, if the time of payment is linked to the death of a person, it is nevertheless a negotiable instrument as death is certain, though the time thereof is not.

#### ****The payee must be a certain person:****

It means that the person in whose favor the instrument is made must be named or described with reasonable certainty.

The term “person” includes individual, body corporate, trade unions, even secretary, director or chairman of an institution. The payee can also be more than one person.

#### ****Signature:****

A negotiable instrument must bear the signature of its maker. Without the signature of the drawer or the maker, the instrument shall not be a valid one.

#### ****Delivery:****

Delivery of the instrument is essential. Any negotiable instrument like a cheque or a promissory note is not complete until it is delivered to its payee.

For example, you may issue a cheque in your brother”s name but it is not a negotiable instrument until it is given to your brother.

#### ****Stamping:****

Stamping of Bills of Exchange and Promissory Notes is mandatory. This is required as per the Indian Stamp Act, 1899. The value of stamp depends upon the value of the pro-note or bill and the time of their payment.

#### ****Right to file suit:****

The transferee of a negotiable instrument is entitled to file a suit in his own name for enforcing any right or claim on the basis of the instrument.

#### ****Notice of transfer:****

It is not necessary to give notice of transfer of a negotiable instrument to the party liable to pay.

#### ****Presumptions:****

Certain presumptions apply to all negotiable instruments, for example, consideration is presumed to have passed between the transferor and the transferee.

#### ****Procedure for suits:****

In India, a special procedure is provided for suits on promissory notes and bills of exchange.

#### ****The number of transfer:****

These instruments can be transferred indefinitely until they are at maturity.

#### ****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.

#### ****Exchange:****

These instruments relate to payment of certain money in legal tender, they are considered as substitutes for money and are accepted in exchange of goods because cash can be obtained at any moment by paying a small commission.