# UNIT I

**PAPER IV - BUSINESS LAW**

Law: Rights, Duties and Liabilities – Legal Personality – Law and Fact – Cases and Legislation Mercantile Law and commercial Law – Sources.

# UNIT – II

Law of Contracts – Contracts – Essentials of a valid Contract – Proposal – Acceptance Communication Revocation – Consideration – Capacity of Parties – Consent – Misrepresentation – Fraud – Undue Influence – Coercion – Mistake – Void and Voidable Contract – Discharge of Contract – Breach.

# UNIT – III

Special Contracts – Indemnity and Guarantee – Rights and Liabilities of Surety – Bailment and Pledge – Duties of Bailor and Bailee – Bailer’s Lien – Pledge – Pawner and Pawnee.

# UNIT – IV

Agency – Contract of Agency – Kinds of Agency – Duties and Rights of the Agent – Scope of Agent’s Authority - liabilities of Principal and Agent to Third Parties – Termination of Agency.

# UNIT – V

Law of Sales of Goods – Contract of Sale – Conditions and Warranties – Transfer of Property and Title to Goods – Rights and Duties of Seller and Buyer – Rights of Unpaid seller. Law relating to Negotiable Instruments: Important Provisions regarding Cheque

– bill of exchange and Promissory Note.

# Unit Structure:

**U N I T – I CONCEPT OF LAW**

Lesson – 1.1 - Law and its origin

Lesson – 1.2 - Mercantile Law and its Sources

# LESSON – 1.1 LAW AND ITS ORIGIN

Some knowledge of law is necessary for all persons. The day-to-day survival of each member of our society must proceed to a greater extent in conformity with recognized rules and principles. Just as a game of football or cricket could not be played judiciously without rules and regulations to govern the players, life in general and the business world in particular could not survive without law to regulate and the conduct of people and to protect their property and rights. Without law, life and business would become a matter of the survival of the fittest. So, to protect the individuals from exploitation, sufficient amount of rules and regulations are necessary.

# WHAT IS LAW?

It is not possible to give one complete accurate definition of law. In the legal sense ‘Law’ includes all the rules, regulations and principles which regular our relations with other individuals and with the State. The State regulates the conduct of its people by a set of rules. Such rules of conduct, if recognized by the State and enforced by it on people, are termed as ‘Law’.

In this sense, *Holland*, a jurist/defines law as “rules of external human action enforced by the State.”

According to Anson, rules regarding human conduct are necessary for peaceful living as well as for progress and development. Anson observes as follows:

“The object of law is order, and the result of order is that men are enabled to look ahead with some sort of security as to the future. Although human action cannot be reduced to the uniformities of nature, men have yet endeavoured to reproduce by law something approaching to this uniformity”.

# SOCIETY AND LAW

The term ‘society’ is used to mean a community or a group of persons living in any region, who are united together by some common interest (or) bond. The word common bond can otherwise be called as social rules (or) rules of social behavior. These rules are made by the members of the society. Disobedience of these rules is followed by punishment in the form of social disapproval.

According to Salmond, “Law is the body of principles recognized and applied by the state in the administration of justice”.

Woodrow Wilson has defined law as “that portion of the established habit and thought of mankind which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of the government.”Law in this sense, is a bundle of rules and regulations and also a social machinery for securing justice in the community.

Law is not too rigid. As the conditions in a society change, laws are modified to fit the needs of the society. At any point of time, law prevailing in a society must be in conformity with the general feelings, customs, traditions and aspirations of its people.

In the changing economic scenario, the main object of law is considered to be “to establish socio-economic justice and remove the existing imbalance in the socio-economic structure”. Law, in this sense, has to play a crucial role in the task of achieving the various Socio-economic objectives as enacted in our constitution.

In a social set up like ours, a great part of law is designed primarily to bring about all-round improvement and well-being of the public individually and collectively from material and cultural view points, But ‘Law’ unlike social rules is enforced by the State, The objective of law is to bring order in the society with a view to enable its members to progress and develop with some sort of security regarding the future.

The State makes laws. Disobedience of state laws involves penalty which is enforced by the government through the sovereignty of the State. Whatever is not

enforceable is not law. Law of the state are applicable to all without exception in identical circumstances. There can be only one law within the State.

# RULE OF LAW

In earlier times, certain classes and individuals possessed special privileges and were governed by special law. The modern view is to apply the same law over all persons in the State, and to give all persons equal rights and privileges for the protection of their human liberties. Democracy can remain only in a society of equals.

The concept of equality of all persons before law is the basis of what is called the Rules of laws. The Rules are summarized as follows:

* 1. No one shall be punished except for definite breach of law.
  2. No man is above law.
  3. Rule of law is the result of statues and judicial decisions determining the rights of private persons.

# MEANING OF LEGAL PERSONALITY

A person in law means any entity which is accepted by law as having certain defined rights and obligations. Such persons may be natural (human beings) or artificial (companies or corporations).

**Example*:*** The Company can be sued in its own name and sometimes be prosecuted for criminal offences like tax evasion etc. Similarly it can sue others in its own name.

# LAW AND FACT

Lawyers always distinguish between the law involved in a case and the facts which the court has to consider in reaching its decision.

**Example*:*** In a situation, the fact may be a murder. But the judge decides on points of law

* 1. whether the conduct of accused amounts to murder in the eyes of the law. Hence, it is the duty of the prosecutor to prove before the court such fact to show

(i.) that a murder has been committed, and

(ii.)That the accused was the person who committed the murder.

# LESSON – 1.2

**MERCANTILE LAW OR COMMERCIAL LAW AND ITS SOURCES**

**Definition**

The laws of a country relate to many subjects e.g .inheritance and transfer of property, relationship between persons, crimes and their punishment, as well as matters relating to industry, trade and commerce.

The term commercial law is used to include only the rules relating to industry, trade and commerce.

Commercial law or Mercantile law may therefore be defined as that part of law which regulates the transactions of the mercantile community.

The scope of commercial law is large. It includes the laws relating to contract, partnership, negotiable instruments, sale of goods, companies etc.

# SOURCES OF INDIAN COMMERCIAL LAW

The commercial law of India is based upon statues of the Indian legislature, English mercantile law and Indian maritime usages, modified and adapted judicial decisions.

We are stating below the sources from which the rules of commercial law of India have been derived.

# Statutes of the Indian legislatures

The Statue law means Acts of Parliament. These are the most efficient and the most usual way of bringing about changes in law today. The legislature is the main sources of law in modern times. In India, the Central and State legislatures possess law making powers and have exercised the powers extensively. The greater part of Indian Commercial Law is statutory. The Contract Act, 1872 , the Sale of Goods Act, 1930, the Partnership Act, 1932, the Companies Act, 1956, are instances of the Statute law.

# English Mercantile Law

Many rules of English Mercantile law have been incorporated into Indian Law through statutes and judicial decisions. Indian mercantile law is, in the main, an adaptation of the English Law. It is incorporated in a number of Acts, which follow to a considerable extent the English mercantile law with some reservations and modifications necessitated by the peculiar conditions prevailing in India. To ascertain the sources of Indian Mercantile law, we have, therefore, to trace the sources of the English Mercantile law. The

sources of English Mercantile law are (a) Common Law (b) Equity (c) The Law Merchant, and (d) The Statute Law.

1. **The Common Law**: The common law consists of principles based on immemorial customs and principles enforced by courts. It is traditionally unwritten law, developed in English courts during the period beginning with the thirteenth century and brought to our country by the British rule of India. In simple, we can say Common Law is nothing but Rules developed by custom in England.
2. **Equity**: Equity Law is also unwritten and grew as a system of Law supplementary to the Common Law. It is based upon concepts of justice developed by judges. As the Common Law was too stereotyped and very harsh the Law of Equity was developed in English courts. In a sense, Equity covered the deficiencies of Common Law, especially where the Common Law worked very rigidly.

**(c ) The Law Merchant:** The Law Merchant or ‘Les Mercatoria’ was independent body of customs and usages governing commercial transaction of the Merchants and Traders of 14th and 15th centuries, which have been ratified by the decisions of the Courts of Law. During this period the body commercial usages was practically uniform throughout Europe. In its earliest stages, therefore, the Law Merchant was a kind of Private International Law administered by tribunals consisting principally of the merchants themselves. The Law Merchant is the origin of much of the law relating to negotiable instruments, trademarks, partnerships, contracts of Insurance etc. In India the Law Merchant is codified, and the courts are left only with the task interpreting the languages of the Acts. But where some principles of the Law Merchant (Indian trade customs and usages) are not covered by those Acts, the Indian courts generally apply the English Law on the subject.

**(d) Statute Law:** The Statute Law refers to the Law passed in the Parliament. It is superior to any rule of the Common Law of Equity. The authority of the Parliament being supreme. It can pass any law it pleases, and is not bound by any of its previous Acts.

The other sources of the English Mercantile Law are:

**(i) Roman Law:** If for any particular case the existing law fails to suit, a reference to Roman law is made.

**(ii ) Case Law:** This law is build upon previous judicial decisions. i.e. on the principle that what has been decided in an earlier case is binding in a similar future case, unless there is a change in the circumstances.

# Judicial Decision or Precedents

This is source of law based upon previous judicial decisions which have to be followed in similar future cases. Judges interpret and explain statues. Rules of equity and justice are incorporated in law through judicial decision. Whenever the law is silent on a point, the judge has to decide the case according to his idea of what is equitable.

# Customs and Usages

A customary rule is binding where it is ancient, reasonable, and not opposed to any statutory rule. A custom becomes legally recognized when it is accepted by a court and is incorporated in a judicial decision.

# QUESTIONS

1. Define “Law” and discuss the theory of “Rules of Law”.
2. “Change of Law depends upon the change of society”. Discuss.
3. What do you understand by Rule of Law?
4. “All are equal in the eyes of law”. Discuss.
5. Discuss the relationship between law and society.
6. What are the sources of commercial law in India?
7. What is meant by legal personality?
8. Distinguish between law and fact.

# U N I T – II

**LAW OF CONTRACTS**

Lesson – 2.1- The Indian Contract Act Lesson – 2.2 - Offer and Acceptance

Lesson – 2.3 - Consideration and Capacity of Parties Lesson – 2.4 - Free Consent

Lesson – 2.5 - Discharge of Contracts and Void Agreements

# Introduction

**LESSON – 2.1**

**THE INDIAN CONTRACT ACT**

The Indian Contract Act which was passed on 25th April,1872, came into effect from 1st Sep. 1872. It was passed with an object to define and amend certain portions of the laws relating to contracts. It lays down general principles of law relating to contracts. It applies to the whole of the country except the State of Jammu and Kashmir. It does not affect the provisions of any Statue, Act or Regulation. Originally, the Act contained provisions relating to sale of goods and partnership. In 1930, rules relating to sale of goods were taken out from this Act and incorporated in a new Act, namely “Sale of Goods Act”. Similarly in 1932, provisions relating to partnership were codified as a separate Act and The Indian Partnership Act, 1932 was passed in the parliament. The Indian Contract Act in its present status contains the general principles of contracts, (Section 1 to 75) and special types of contract (Sec 124-238)

# Object and Scope

Law of Contract constitutes the most important branch of mercantile law. It is the nerve centre of trade and commerce. It is not only the business community which is concerned with the law of contract, but it plays its role on every one’s walks of life. Every one of us enters into a number of contracts from dawn to dusk. When a person brings newspaper or rides a bus or goes to a hair-cutting saloon or purchases vegetables or borrows a loan from a friend etc., he enters into a contract through he may not be conscious of it. Such contracts create legal rights and obligations.

The object of the law of contracts is to introduce definiteness in commercial and other transactions. How this is done can be illustrated by an example, X entered into a

contract to deliver 10 tons of iron ore on a particular date. Since such a contract is enforceable by the courts, Y can plan his activities on the basis of getting iron ore on the fixed date. If the contract is broken, Y will get damages from the court and will not suffer any loss.

Sir William Anson observes in this regard that the law of contract is intended “to ensure that what a man has been led to except shall come to pass and what has been promised to him shall be performed”.

# Agreement and Contract

The Law deals with agreements which can be enforced through court of law. A contract has been defined by Sir John Salmond as “an agreement creating and defining obligations between the Parties”.

Sec.2(h) of the Indian Contract Act, provides that “An agreements enforceable by law is a contract. “An agreement is thus regarded as a contract only when it is enforceable by law. There are various social religious and moral obligations which are not enforceable by law as contracts.

**Example:** A husband promised to pay his wife a household allowance of $30 every month. Later, the parties separated and the husband stopped the payment. The wife sued for the allowance, Held, agreements such as were termed, are mere social obligations and do not create legal relationship. As such they are not contracts. (Balfour Vs Balfour- 1919 ; 2 K.B.571)

In the words of **Lord Ackin,** “the most usual forms of agreements which do not constitute a contract are the agreements between husband and wife. They are not contracts because the parties do not intend that they should be attended by legal consequences”.

A Contract must specify two conditions (1) there shall be an agreement and, (2) such an agreement should be enforceable by law which creates legal obligation.

An agreement is defined under Sec.2(e) as “every promise and every set of promises, forming consideration for each other”. A promise is defined under Sec.2(b) thus: “When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted, becomes promise” In a nutshell, an agreement is an accepted proposal. Therefore, to form an agreement, there must be a proposal or offer by one party and acceptance by the other.

# Definitions

The word contract is derived from the Latin word contractum meaning “drawn together”. It therefore denotes a drawing together of two or more minds to form a common intention giving rise to an agreement.

According to Sir John Salmond, a contact means “An agreement creating and defining obligations between parties”.

*Sir William Anson* defines a contract as “A Legal binding agreement between two or more persons by which rights are acquired by one or more acts or forbearance on the part of the other or others”.

According to *Pollock,* an “Every agreement and promise enforceable at law is contract”.

The Indian Contact Act 1872, Sec 2(h) defines a contract as follows:

“An agreement enforceable by law is a contract”.

# ESSENTIALS OF A VALID CONTRACT

We have seen that all agreements are not contracts. The law of contract is the law of those agreements which create legal relationships and not simply moral or social ones. An agreement, which creates legal obligations in order to be valid and binding must possess certain basic essentials.

Sec.10 of the Contracts Act has laid down certain basic essentials for a valid contact. According to this Section, “All agreements are contracts if they are made by the free consent of parties, competent to contract, for a lawful consideration and with a law object and are not hereby expressly declared to be void”.

From the rule stated in Sec.10 the essential elements necessary constitute a valid contract are the following:

(i.) Free consent of Parties (S.13) (ii.) Competency of Parties (S.11,12) (iii.) Lawful consideration (SS.23,24) (iv.) Lawful object (SS.23,24)

(v.) Not declared to be void by any law(24,30)

(vi.) They should also fulfill legal formalities presented by another law if any, viz., writing, registration etc.

According to English law, there is further requirement, namely “an intention to create legal obligation. “This principle is followed in India also. This may be treated as the seventh requisite element.

Now we shall discuss in detail the various essential elements of a valid contract.

# Proposal or offer by one party and acceptance of the proposal or offer by another party resulting in an agreement.

A contract is a legally binding agreement. This agreement results when one person, the offeror or promisor, makes a proposal or offer and a person to whom the offer is made, the offered or promise, accepts it. For an agreement to arise, there must be two or more parties to the transaction. As it is imperative that there be a concurrence of at least two minds, it is impossible for one person to make an agreement with himself.

**Example:** When a person in his official capacity as general manager of a company makes a promise to himself as an individual, no agreement is formed by an acceptance in the latter capacity. That there must be more than one person is an essential characteristic of an agreement. These persons must come to an understanding with a view to creating a right in one party and a corresponding duty on the other.

**Consensus-Ad-Idem (or) Meeting of Minds:** To constitute an agreement or a contract, there must be a meeting of the minds of the parties and both must agree to the same thing in the same sense. If in a particular agreement we find a meeting of minds or identity of wills of the parties in full and final then we can conclude that there must be consensus-ad- idem.

**Example:** Mr.Aravind who owns two Maruti cars of different colours namely red and white intends to sell his red car. But Miss, Athiral thinks she is purchasing the white car. In this situation, there is no consensus-ad-idem and consequently there is no contract.

The terms of the offer and acceptance must be legal which means that they should conform to the rules laid down in the Contract Act regarding the valid offer and valid acceptance i.e. the terms of the offer must be definite and the acceptance of the offer must also be absolute and unconditional. The acceptance must also be according to the mode prescribed and must be communication to the promisor.

# Intention to create Legal Relationship:

The parties to the agreement must intend to create legal relations between them. Mere social or domestic agreements are not contracts because they are not intended to be

binding i.e., an agreement to have a cup of tea at a friend’s house is simply a social

obligation.

**Example: “X”** offers to play cards with “**Y**” for pleasure and “**Y**” accepts. If later on, “**X**” refuses to do so,”**Y**” cannot go to the court for enforcing the promise.

# Lawful Consideration:

Subject to certain exceptions an agreement legally enforceable only when each of the parties to it gives something and gets something. An agreement to do something for nothing is generally not enforceable at law. The something given or obtained is called consideration. The Consideration may be an act (doing something) (or) forbearance (not doing something) or a promise to do or not to do something. Consideration may be past, present or future. But it must be real and lawful.

# Example:

“**X**” agrees to sell his car to “**Y**” for Rs.1,00,000. For “**X**”’s promise, the consideration is Rs.100,000. For “**Y**”’s promise the consideration is the car.

# Capacity of Parties:

The parties to an agreement must be legally capable entering into an agreement; otherwise it cannot be enforced by a court. Want of capacity arises from minority, lunacy, idiocy, drunkenness are similar other factors. If any of the parties to the agreements suffers from any such disability, the agreement is not enforceable by law, except in some special cases.

# Free Consent:

The two parties to a contract must have agreed as to the particular subject matter in the same sense. By Section 13 “two or more sections are said to consent when they agree upon the same thing in the same sense “Such a meeting of minds creating an identity of opinion or will is carried to by using the term ‘Consensus-ad-idem’. The consent of parties not be affected by any flaw. The consent is said to be free when it is not used by coercion, undue influence, fraud, mistake or misrepresentation.

**Example: ’A’** threatens to beat **“B”** if he does not sell his land for a low price agrees to do so. The agreement has been brought about by coercion.

# Legality of Object:

An agreement is unlawful and therefore unenforceable when the object for which the agreement is made is forbidden by law, or if permitted would defeat the provisions of any of the existing law or is fraudulent or involves an injury to the property of another or in the eyes of the court, is immoral, or opposed to public policy (Sec.23).

Thus an agreement will not become a contract or will remain unenforceable, if it is made for an unlawful consideration and with an unlawful object.

**Example: ‘A’, ’B’** and **‘C’** enter into an agreement for the division among them of gains acquired or to be acquired by them by fraud. The agreement is void.

# Certainty of the Terms of the contract:

The terms of the agreement must be definite and certain and it must not contain any ambiguous information.

**Example: ‘A’** agrees to sell to **‘B’** a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreement is void for want of certainty.

# Possibility of Performance:

The terms of the agreement must also be such as are capable of performance. An agreement to do an act which is impossible in practice cannot be enforced.

**Example:** When A agrees with B to find a treasure the agreement is void as it is impossible of performance.

# Void agreements:

The agreements must not have been expressly declared to be void. Following agreements are expressly declared to be void under the Indian Contract Act:

* 1. Agreement in restraint to marriage (Sec.26)
  2. Agreement in restraint to trade (Sec.27)
  3. Agreement in restraint to legal proceedings (Sec.28)
  4. Agreement having uncertain meaning (Sec.29)
  5. Wagering agreement (Sec.30)

# Legal formalities:

The agreement may either be oral or in writing. But there are certain agreements which are required to be in writing e.g., lease, gift, sale, mortgage of immovable property, negotiable instruments, certain matters under the Companies Act, 1956. Such agreements must be in

writing, attested and registered, if so required by law. Registration of agreements or deeds is compulsory in cases of documents falling within the scope of Sec. 17 of the Indian Registration Act, 1980. If the agreement does not comply with these legal formalities it cannot be enforced by law.

# CONTRACTUAL RIGHTS AND OBLIGATIONS

The law of contract consists of a number of limiting factors subject to which the parties may create rights and duties for themselves which the law will enforce.

It deals with two rights:

1. Rights in Personam
2. Rights in Rem

# RIGHTS IN PERSONAM

**Example:** If **‘X’** has a right to get back a sum of Rs.5000 from **‘Y’** that right can be exercised only by **‘X’** but not by others because the right **‘X’** has against **‘Y’** is a right in personam. **‘X’** cannot enforce that right against anyone else except **‘Y’**.

# RIGHYTS IN REM

If **‘A’** owns a plot of land and **‘B’** is the adjacent owner, the right of **‘A’** to have uninterrupted possession and employment of that land is available not only against **‘B’** but against every member of the public. Similarly everyone except **‘A’** is under an obligation not to interfere with **‘A’s** possession or enjoyment, because the rights of **‘A’** in respect of that land are Rights in rem. The rights to property are all “Rights in Rem”.

# CLASSIFICATION OF CONTRACTS

For the sake of convenience we can classify contracts according to their (1) Validity, (2) Formation and (3) Performance. Let us examine them in detail.

1. **Classification according to validity:** When we closely analyse the definition of a contract, it is found that the contract is based on agreement. An agreement enforceable at law is a contract. To make the agreement enforceable at law. The essentials stipulated in Sec. 10 of the element is missing then the contract may either be void, voidable, illegal, or unenforceable.
   1. **void agreements:** “An agreement not enforceable by law is said to be void”- Sec. 2(g). A void agreement has no legal effect. It confers no rights on any person and creates no obligations.

**Examples:** An agreement made by a minor, agreements without consideration (except certain cases). Certain agreements against public policy; etc., are void from the beginning.

**Void Contract:** There are certain agreements which are valid in the beginning and subsequently it becomes void due to impossibility of performance, change of law or other reasons. When it becomes void the agreements ceases to have legal effect. This we call as void contract as per Sec 2(j) **Example:** A contract to export coffee to USSR. It may subsequently become void if the exporting country bans the product from being exported.

**Illegal agreement:** An illegal agreement is one which is against a law in force in India.

**Example:** An agreement to commit murder, theft or cheating.

**Voidable contract:** A voidable contract is one which can be avoided by some of the parties to the agreement. Until it is avoided, it is a good contract. An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract as per Sec.2(i) **Examples of voidable contracts:** Contracts brought about by coercion, under undue influence, misrepresentation etc.

**Illustration: ‘P’** threatens **‘Q’** to enter into a contact for the sale of **‘Q’s** landed property to **‘P’**. This contract can be avoided by **‘Q’**. **‘P’** cannot enforce the contract. But **‘Q’**, if he so desires, can enforce it against **‘P’.**

**Unenforceable agreement:** The term unenforceable agreement is used in English law. It means an agreement which cannot be forced in a court of law by one or both of the parties, because of some technical defect. E.g. want of registration or non-payment to requisite stamp duty or for want of written form.

# Difference between void and voidable contract

|  |  |  |
| --- | --- | --- |
|  | **Void** | **Voidable** |
| 1 | Not enforceable by law | Enforceable by law at the option of one of the parties to the contract. |
| 2 | It has no legally binding effect | It continues to be legal unless avoided by the party. |
| 3 | In a void contract, the defects are incurable | In a voidable contract, the defect is curable |
| 4 | A third party who purchased goods which had been the subject of a void contract will not acquire good title | But in voidable contract third party will acquire good title. |

**Difference between void contract and illegal contract**

|  |  |  |
| --- | --- | --- |
|  | **Void** | **Illegal** |
| 1 | All void contracts are not necessarily illegal | All illegal contracts are void |
| 2 | All collateral contracts to a void contract are not void | But all collateral contracts to a illegal contract are void |
| 3 | Ground for the voidness has to proved. | Court will, of its own motion, in be case of an illegal contract, refuse to enforce it, even though the illegality has not been pleaded. |

**Valid contract:** An agreement enforceable at law is a valid contract. An agreement becomes a contract when all the essentials of a valid contract stipulated in Sec. 10 are complied with.

1. **Classification on the basis of Formation:** A contract may be created in three different methods:
2. It may be in writing.
3. It may be made orally, and
4. It may be inferred from the circumstances of the case.

**Contracts can be classified according to the mode of their formation as** Express, Implied and Quasi contracts

Express contracts are those in which the fact of the agreement can be proved by words written or spoken which express the intention of the parties. Thus contracts in writing and oral (by spoken words) can be collectively called “express contracts.”

In case of implied contracts or tacit or inferred contracts agreements would be inferred from conduct of the parties and the general circumstances of each case.

**Examples:** Mr. A takes a public bus or enters into a restaurant for a cup of coffee or obtains a ticket from an automatic machine.

Unlike other contracts, the quasi-contract does not fulfil such requirements and in that strict sense, is not a contract at all. It rests on the ground of equity that,

“A person shall not be allowed to enrich himself unjustly at the expense of another.” In such a contract, rights and obligations arise not by any agreement between the parties but by operation of law.

**Example: ‘A’** a shopkeeper supplied groceries to **‘B’** by mistake. **‘B’** used the items as his own. **‘B’** is bound to pay.

In the above case there is no consensus, no offer, no acceptance; still the law implies a contract. This is known as quasi-contract.

1. **Classification according to performance:** Contracts can again be classified depending upon the extent to which it has been performed i.e. Executed and Executory contracts.

An executed contract is one wherein both the parties have performed their obligations under the contract.

**Example: ‘A’** agrees to sell his motorbike to ‘B’ for Rs.20,000. In this situation ‘A’ has given the motorbike and got the money from ‘B’. When both the parties perform their part of the obligation under the contract the contract is said to be executed.

An executor contract is one where both the parties are yet to perform their

obligations. Thus in the above example, if ‘A’ has not yet delivered his motorbike and ‘B’

has not paid the price, the contract is executed as to ‘A’ and executory as to ‘B’. Another

classification of contracts on the basis of performance is as follows:

**Unilateral or one-sided and Bilateral or two sided contract:** In case of a unilateral or one-sided contract, one party to the contract has performed his part even at the time of its formation and an obligation is outstanding only against the other.

**Example:** The promise to give a reward to the person who finds out a lost thing forms a unilateral contract when the thing is actually found out. It creates an one-sided obligation.

In the Bilateral contract at the time of its formation, there are two outstanding obligations.

**Example: ‘A’** promises to paint a picture in one month in return for which ‘B’ promises to pay Rs. 1000. Here there are two promises and each party is a promisor in respect of one promise and a promisee in respect of the other and as such each can hold the other liable for the breach of his promise.

# Introduction

**LESSON – 2.2**

**OFFER (PROPOSAL) AND ACCEPTANCE**

As discussed earlier, a contract is defined as a promise or agreement enforceable by law. So, two elements namely, agreement and enforceability are essential for a valid contract. All contracts are made by the process of a lawful offer by one party and the lawful acceptance of the offer by the other party.

**Example:** If ‘X’ says to ‘Y’ “will you buy my house for Rs. 5,00,000”? It is an offer. If ‘Y’ says “Yes”, the offer is accepted and a contract is formed.

An ‘offer’ involves the making of a proposal. The term proposal is defined under Sec 2(a) in the Contract Act as follows: “when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal”

A proposal is also called an offer. The promisor or the person making the offer is called the offeror. The person to whom the offer is made is called the offeree.

**Promise and Acceptance:** Sec.2(b) of the Act defines promise as “when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise” Promisor and promise are defined under Sec 2(c) as “The person making the proposal is called the ‘promisor’ and the person accepting the proposal is called the ‘promisee’ – Sec. 2(c).

A proposal or acceptance may be made in any of the following manners:

* + By express words spoken,
  + In writing.
  + By conduct.

# Examples:

1. When A says to B: “will you buy this building for Rs.20 lakhs”? It is an express

oral offer.

1. When A writes to B stating the above offer, then it is an express written offer.
2. When a transport company runs a bus on a particular route, it is termed as an implied offer or an offer by conduct.

# RULES REGARDING VALID OFFER

1. **An offer may be express or may be implied from the circumstances:** In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise in words, the promise is said to be implied (Sec. 9).
2. **An offer may be made to a definite person; to some definite class of persons; or to the world at large:** An offer made to a definite persons or a definite class of person is called a specific offer. An offer sent to all persons (the world of public at large) is called a General offer or Public offer.

**Examples:** Specific offer: ‘X’ offers to sell his motor cycle to ‘Y’ for Rs.10,000. This is a specific proposal. This proposal is specifically given to ‘Y’. Only ‘Y’ can accept this proposal.

General offer: Carlill Vs Carbolic Smoke Ball & Co (1893) The patent medicine company advertises that it would give a reward of $100 to anyone who contacted influenza after using the medicine namely smoke ball of the company for a certain period according to the specifications. Mrs. Carlill purchased the smoke ball and contacted influenza in spite of using it as per the specifications. She claimed the reward of $100. The claim was refused by the company on the ground that the offer was not made to her and that in any case she had not communicated her acceptance of the offer. She filed a suit for the recovery of the reward.

It was held that she could recover the reward as she had accepted the general offer made by the company after complying with the terms of the offer.

1. **Offer must be capable of creating legal relationship:** The offer must be one which is capable of creating a legal relationship. An invitation to a birthday party or an invitation to play cards will not crate legal relationship. Therefore an offer for such social events will not constitute a contract.

**Example:** Balfour Vs Balfour (1919): A husband promised to send money to his wife, so long as she remained away from him. It was held that if the husband fails to pay, the wife

could not sue for the amount on the ground that the promise made by the husband was never intended to give rise to legal consequences.

1. **The terms of the offer must be definite and certain:** The terms of the offer must be definite, unambiguous and certain and not loose and vague. To constitute a valid contract, it is essential that the proposal must be so certain, that the rights and obligations of the parties arising out of the contract can be exactly fixed. If the terms of an offer are uncertain, its acceptance cannot create any contractual relationship. According to Sec. 29 of the Act, agreements, the meaning of which is not certain or capable of being made certain are void.

**Example: ‘X’** says to **‘Y’** “I will give you some money if you marry ‘Z’”. This is not an

offer which can be accepted because the amount of money to be paid is not certain.

1. **A mere statement of intention is not an offer:** Every expression of willingness to enter into a contract may not amount to an offer in the legal sense. It may be only a first and preliminary step in the formation of a contract. Thus it becomes necessary to distinguish between the offer on the one hand and (i) a mere declaration of intention (ii) an invitation to make an offer, and (iii) auction sale, on the other hand.

A distinction is usually made between an ‘offer’ and “a statement of intention”. Price lists and catalogues and enquiries from customers are merely statements of intention. They are not regarded as offers but as invitation to others to make offers.

**Harvey Vs Facey**: Harvey telegraphed to Facey asking to inform him whether he would sell Bumper Hall pen and if so at what price? Facey informed Harvey that the lowest price was $900 but did not say that he was willing to sell at that price. Harvey telegraphed that he would buy at that price. Facey gave no reply to the telegram. Held, there was no contract because facey did not say that he was willing to sell or not. Mere mentioning of price is not an offer.

Similarly, in an auction sale, articles displayed in auction sale are displayed with an intention that the bidders present during the auction sale may bid for them. i.e. may make an offer for them. In an auction sale, a bid is an offer. It can therefore, be taken back at any time before acceptance is made by the auctioneer is effected by the fall of the hammer.

1. **An offer must be communicated to the offeree:** A person cannot accept an offer unless he knows of the existence of the offer.

**Example: ‘P’** offers a reward to anyone who finds his lost dog. **‘Q’** on finding the dog brings it to **‘P’** without having heard of the offer. Held he was not entitled to the reward.

**Lalman Vs Gauri Dutt**: ‘G’ sent his servant ‘L’ in search of his missing nephew, subsequently ‘G’ announced a reward for information concerning the boy. ‘L’ brought back the missing boy, without having the knowledge of the reward. Held, there was no contract between L and G and the reward cannot be claimed.

1. **An offer may have certain conditions:** A proposer is at liberty to make an offer subject to certain conditions. It is immaterial if the terms are hard or ridiculous. Conditions attached to the offer must clearly be communicated to the offeree. The offeree must fulfil all the conditions mentioned in the offer.
2. **Offer must not thrust the burden of acceptance:** Offer should not contain the term “the non-compliance of which may be assumed to amount to acceptance”. Thus a man cannot say that if he fails to hear from the other party within a week he would consider the offer as being accepted. Similarly, if ‘A’ writes to ‘B’. “I will sell you my house for Rs.5 lakhs. If you do not reply. I shall assume that you have accepted the same. There is no contract even if ‘B’ does not reply.

# LEGAL RULES AS TO ACCEPTANCE

An offer unless accepted cannot become an agreement. Acceptance is essential to convert an offer into an agreement. The acceptance of an offer to be legally effective must satisfy the following requirements:

1. **It must be absolute and unqualified:** An acceptance to be effective must be absolute and unqualified of all the terms of the offer. A conditional acceptance is not an acceptance at all. If there is any variation, even of an unimportant point, there is no contract. An acceptance with a variation is no acceptance but is a mere “counter offer” which is for the original offeror to accept or not.

**Example:** Mr.’X’ informed ‘Y’ his willingness to buy ‘Y’s’car for Rs.75,000. On receipt of the offer ‘Y’ informed ‘X’ that he is willing to sell his car for Rs.1,00,000. In this

example, ‘Y’s’ acceptance is not unconditional or unqualified. This is not an acceptance. It is only a counter offer. If ‘X’ accepts for Rs.1,00,000, then it will become a contract.

1. **The mode of acceptance must be in some usual manner:** Except where the offer prescribed a particular mode of acceptance, the acceptance must be made in such manner that it may come to the knowledge of the proposer. If the proposer prescribes a mode of acceptance, the acceptance must be given accordingly.

**Example:** If the proposer says “Telephonic reply” and the reply was sent by post, then

there is no acceptance of the offer.

If the offeree fails to follow the prescribed mode of acceptance, the offeror may, within a reasonable time alter the acceptance as communicated to him, insist that the proposal be accepted in the prescribed manner. If he does not inform the offeree he is deemed to have accepted the acceptance although it is not in the desired manner [Sec. 7.(2)].

1. **Acceptance must be by the party named in the offer:** An offer made to a particular person is to be accepted by him only. It cannot be assigned to anybody else. It cannot be accepted by another without the consent of the offeror. However, in case of general offer, any member of the public may accept it.
2. **An acceptance must be communicated to the offeror:** Just as the offer should be communicated to the acceptor should do something to inform his intention to accept.

In certain cases the offeror may prescribe a particular mode of acceptance, then all that the acceptor has to do is to follow that mode.

1. **Acceptance must be within a reasonable time:** The acceptance must be made while offer is still in force. (i.e) before the offer lapses. Acceptance made after the offer has been withdrawn is invalid. If any time limit is prescribed in the offer, it should be accepted within that time. But if no time is prescribed it must be accepted within “a reasonable time”. What is a ‘reasonable time’ depends upon the circumstances of each case.
2. **Acceptance cannot be made in ignorance of the offer:** Acceptance cannot precede the offer nor does an acceptance in total ignorance of an offer result in a contract.
3. **Clarification:** The seeking of clarification of offer neither amounts to the acceptance of the offer nor to the making of a counter offer.
4. **Mental acceptance or uncommunicated assent does not result in a contract:** No contract is formed if the offeree remains silent and does nothing to show that he has accepted the offer.

**Example:** F offered to buy ‘B’s horse for $30 saying. “If I hear no more from you, I shall consider the horse as mine at $30.” ‘B’ did not reply. Held there was no contract because the other party was not informed (Felthouse Vs Bindley)

1. **When acceptance is complete:** Sec. 4 of the contract act lays down that the communication of an acceptance is complete as against the proposer, when it is put in a course of transmission to him; so as to be out of the power of the acceptor; and as against the acceptor, when it comes to the knowledge of the proposer.

# Examples

* 1. ‘A’ proposes by letter to sell a house to ‘B’ at a certain prince. The communication of the proposal is complete when ‘B’ receives the letter.
  2. ‘B’ accepts ‘A’s proposal by a letter sent by post. The communication of the acceptance is complete as against ‘A’. When the letter is posted, as against ‘B’, when the letter is received by ‘A’.

# COMMUNICATION OF OFFER AND ACCEPTANCE

An offer may be communicated to the offeree or offerees by word of mouth, by writing or by conduct. A written offer may be contained in a letter or a telegram.

**Sec. 4 states**: “The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.”

The acceptance must be expressed in some usual or reasonable manner. The offeree may express his acceptance by word of mouth, telephone, telegram or by post.

Mr. G applied for shares in a company. A letter of allotment was posted but the letter did not reach ‘G’. held there was a binding contract and ‘G’ was shareholder of the company (Household Fire Co. Vs. Grant)

# REVOCATION OF OFFER AND ACCEPTANCE

**Revocation of an offer:** An offer comes to an end and is no longer open to acceptance under the following cases-Sec.6

1. Lapse of time.
2. After expiry of reasonable time.
3. An offer lapses by the failure of the acceptor to fulfil a condition precedent to acceptance, where such a condition has been prescribed.
4. An offer lapses by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.
5. When the counter-offer is given, the original offer lapses.
6. A proposal once refused is dead and cannot be revived by its subsequent acceptance.

**Example: ‘A’** offers to sell his farm to ‘B’ for Rs.1,00,000.’B’ replies offering to pay Rs.90,000. ‘A’ refuses. Subsequently ‘B’ writes accepting the original offer. There is no contract because the original offer has lapsed.

1. **By notice:** If the offeror gives notice of revocation to the other party, an offer may be revoked anytime before acceptance but not afterwards. Once an offer is accepted there is a binding contract.

The acceptance of an offer becomes binding on the offeror as soon as the acceptance is put in course of communication to the offeror so as to be out of the power of the acceptor. But anytime before this happens, the offer may be revoked.

**Example:** A proposal is sent by ‘X’ to ‘Y’ and accepted by ‘Y’ by letter. The proposal might have been revoked anytime before the letter of acceptance was posted but it cannot be revoked after the letter is posted.

The notice of revocation does not take effect until it comes within the knowledge of the offeree.

**Revocation of Acceptance:** An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor but not afterwards.

**Example: ‘A’** proposes by a letter sent by post to sell his house to ‘B’. ‘B’ accepts the proposal by letter sent by post. ‘A’ may revoke his proposal at any time before or at the moment when ‘B’ posts his letter of acceptance but not afterwards. ‘B’ may revoke his acceptance at any time before or at the moment when the letter communicating it reaches ‘A’ but not afterwards.

# LESSON - 2.3

**CONSIDERATION AND CAPACITY OF PARTIES CONSIDERATION**

**Meaning**

Consideration is an essential element in a contract. It is the sign and symbol of every bargain subject to certain exceptions. An agreement made without consideration is void. Consideration is the necessary evidence required by law of the intention of the parties to effect their legal relations. All contracts require consideration to support them. Consideration means the valuable considerations (i.e) the price paid for the other party’s promise. Contract results where one party promises to do in exchange for something in return. Consideration is otherwise known as “something in return.” In a nutshell, consideration is the price paid by the promise for the obligation of the promisor.

# Example

* 1. ‘P’ agrees to sell his land for Rs.2,00,000 to ‘Q’. for ‘P’s promise, the consideration is Rs.2,00,000. For ‘Q’s promise, the consideration is the house.
  2. ‘X’ promises not to file a suit against ‘Y’ if ‘Y’ pays him Rs.10,000 on a particular date. ‘X’s act of not filing a case against ‘Y’ is the consideration for ‘Y’ and Rs.10,000 is the consideration for ‘X’. if there is no consideration there is no contract.

In an Allahabad case, a person subscribed Rs.500 to rebuild a mosque. It was held that the promise was without consideration and the subscriber was not liable. (Abdul Aziz V. Masum Ali)

# Definitions

Sec. 2(d) of contract act defines consideration as follows:

“when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstains from doing, such act or abstinence or promise is called a consideration for the promise.”

In the English case Currie V. Misa (1875) consideration was defined as, “some right, interest, profit or benefit accruing to one party for some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.”

**Example: ‘X’** engages **‘Y’** as a steno in his office for Rs.2000 per month. The monthly wage is the consideration received by **‘Y’**. the services of **‘Y’** is the consideration for **‘X’**.

The consideration may consist of either:

* + 1. An act (which one is legally bound to perform)
    2. An abstinence or forbearance from doing
    3. A return promise.

# TYPES OF CONSIDERATION

Consideration may be classified as

1. Past consideration
2. Present consideration, and
3. Future consideration.

**Past consideration:** When the consideration of one party was given before the date of the promise, it is said to be past.

**For Example, ‘X’** does some work for ‘Y’ in the month of January and ‘Y’ promised him to pay some money during February. The consideration of ‘X’ is past consideration. Under English law past consideration will make the contract invalid. But under Indian law a past consideration is good consideration because the definition of consideration in Sec.2(d) includes the words “has done or abstained from doing.”

**Present consideration:** Consideration which moves simultaneously with the promise is called present consideration or executed consideration.

**Future Consideration:** When the consideration is to move at a future date it is called future consideration or executory consideration.

# ESSENTIALS OF VALID CONSIDERATION

1. **Consideration Must Move at the Desire of the Promisor:** The act done or loss suffered by the promise must have been done or suffered at the desire of the promisor. An act done without any request is a voluntary act and does not come within the definition of consideration.

The collector of a district asked ‘D’ to spend money on the improvement of a market and he did so. ‘D’ cannot demand payment from the shopkeepers using the market for having improved the market. (Durga Prasad Vs Baldeo)

1. **It must be a real consideration:** The consideration must have some value in the eyes of law. It must not be illusory. The impossible acts or non-existing goods cannot

support a contract. A contribution to charity is without consideration. A promise to pay an existing debt within due date if the creditor gives a discount is without consideration and the discount cannot be enforced.

1. **Public Duty: “**Where the promise is already under an existing public duty, an express promise to perform or performance of that duty will not amount to consideration.

**Example:** A contract to pay a sum to a witness who has already received some money to appear at a trial is invalid.

1. **Promise to a stranger:** A promise made to a stranger to perform an existing contract, is enforceable because the promisor undertakes a new obligation upon himself which can be enforced by the stranger.

‘X’ wrote to his nephew ‘B’, promising to pay him an annuity of 150 pounds in consideration of his marrying ‘C’. ‘B’ was already engaged to marry ‘C’. Held that the fulfilment of B’s contract with ‘C’ was consideration to support X’s promise to pay the annuity. (Shadwell Vs Shadwell)

1. **Consideration need not be adequate:** Explanation 2 under Sec. 25 provides that “An agreement to which the consent of the party is freely given is not void merely because the consideration is inadequate.” Law requires the presence of consideration, but does not inquire into the adequacy.

**Example:** ‘P’ agrees to sell a house worth Rs.5,00,000 for Rs.1,00,000. P’s consent to the

agreement was freely given. The agreement is valid in spite of inadequate consideration.

# The consideration must not be illegal, immoral or opposed to public policy:

If the consideration of the object of the agreement is illegal, immoral or opposed to public policy, the agreement to contract is invalid.

**Example: ‘X’** agreed to pay Rs.50,000 to ‘Y’ if he kills ‘C’.

# The consideration may be past, present and future

In the past promise, consideration has already been taken place. In the present consideration, it simultaneously moves with promise. In the future consideration, it passes subsequently.

# The consideration may move from the promise or from any other person:

A person has given some properties to his wife ‘C’ directing her at the same time to pay an annual allowance to his brother ‘R’. ‘C’ also entered into an agreement with ‘R’ promising him to pay the allowance. This agreement can be enforced by ‘R’ even though no part of consideration received by ‘C’ moved from ‘R’

# “NO CONSIDERATION NO CONTRAACT” – EXCEPTIONS TO THIS RULE

Consideration is essential for the validity of a contract. “A promise without consideration is a gift; one made for a consideration is a bargain” (Salmond and Windfield)

A promise without consideration is a gratuitous undertaking and cannot create a legal obligation. Under Roman law an agreement without consideration was called a ‘nudum pactum’ and was unenforceable. Under English law simple contracts must be supported by consideration but special contracts require no consideration. Under Indian law, the presence of consideration is a rule essential to the validity of contracts.

# Exceptions:

* 1. **Natural love and affection:** An agreement without consideration is valid under Section 25(1) only if the following requirements are complied with:

1. The agreement is made by a written document
2. The demand is registered according to the law relating to registration in force at that time.
3. The agreement is made on account of natural love and affection.
4. The parties to the agreement stand in a near relation to each other.

**Examples:** An agreement entered into by a husband with his wife during quarrels and disagreement, whereby the husband promised to give some property to his wife. The agreement is void because, under the circumstances, there is no natural love and affection between the parties. (Rajlukhy Debee V.Bhootnath ;1900)

* 1. **Voluntary Compensation:** Sec.25(2) applies when there is a voluntary act by one party and there is a subsequent promise (by the party benefited) to pay compensation to the former. The term ‘voluntary’ signifies that the act was done, “otherwise than at the desire of the promisor.” This kind of promise without any

consideration is valid. **Example:** ‘D’ finds B’s baggage and gives it to him. ‘B’ promises to give ‘D’ Rs.100. this is a valid contract.

* 1. **Time-barrred debt: ’A’**s promise to pay, wholly or in part, a debt which is barred by the law of limitation can be enforced if the promise is in writing and is signed by the debtor or his authorised agent. [Sec. 25(3)] **Example: ‘D’** owes ‘B’ Rs.10,000 but the debt is barred by the limitation act. ‘D’ signs a written promise to pay ‘B’ Rs.5000 on account of the debt. This is contract.
  2. **Agency:** No consideration is required to create an agency. (Sec. 185).
  3. **Completed Gift:** According to Sec. 25 ‘No consideration no contract’ rule does

not apply to completed gifts.

If a person transfers certain property to another by a written and registered deed according to the provisions of Transfer of property Act, he cannot subsequently claim back that property on the ground of lack of consideration.

**Can a person who is stranger to consideration sue upon it?** Normally, the rule is that the consideration must move from the promise and the party to a contract can sue. In other words, a stranger to a consideration cannot sue. Under English law, a stranger to a consideration cannot sue.

**Examples:** Suppose ‘A’, a doctor, agrees to treat ‘B’, but as ‘A’ will not accept payment, ‘B’ promises ‘C’ (A’s son) that he will pay him Rs.5,000, ‘C’ cannot maintain a suit on the promise because he is a stranger to the consideration and the fact of C being the son of A will not alter the position.

Under Indian law consideration may move from the “promisee or any other person”. So it is clear that the consideration can move from any person.

There are certain differences between the rights of a stranger to a contract and stranger to consideration. A stranger to contract i.e. one who is not a party to it, cannot file a suit to enforce it. A contract between ‘P’ and ‘Q’ cannot be enforced by ‘R’.

But a stranger to consideration can sue to enforce it provided he is a party to the contract. A contract between ‘P’, ‘Q’ and ‘R’ whereby ‘P’ pays money to ‘Q’ for delivering goods to ‘R’ can be enforced by ‘R’ although he did not pay any part of the consideration.

# CAPACITY OF PARTIES

**Capacity defined:** According to

. 10, an agreement becomes a contract if it is entered into between the parties who are competent to contract. ‘capacity’ referred to here, means competence of the parties to enter into a valid contract. Capacity includes physical and mental capacity.

**According to Sec.11:** Every person is competent to contract 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.

From this definition we come to the conclusion that the following are not competent to contract:

1. A person who has not attained the age of majority.
2. A person who is of unsound mind, e.g. lunatic or an insane person.
3. Any other person who has been disqualified from contracting under any law, e.g. a person who has been adjudicated an insolvent.

**Minor:** Under Section 3 of the Indian Majority Act, 1875, a minor is one who has not completed eighteenth year of age. It may be stated here that a minor whose property has been entrusted to a guardian by a court, attains the age of majority when he completes twenty one years of life. In England, minority continues up to the completion of 21st year.

# THE LEGAL RULES REGARDING MINOR’S AGREEMENT

1. **Minor’s agreement is Void-ab-initio: (void from the very beginning):**

Today an agreement with or by minor is void and inoperative. Formerly, the position was not clear. The Indian Contract Act, does not expressly state whether a contract made by a minor is void or voidable. Sec.11 of the Act simply states that a minor is not competent to contract. Following the English law, it was held formerly that a minor’s contract was voidable but not void. The issue came up again in the case of Mohori Bibee Vs Dharmadas Ghose (1903)

In this case, a minor executed an agreement for Rs.20,000 and received Rs.8,000 from a mortgagee by way of earnest money. H sued for setting aside the mortgage. The lender wanted refund of the sum which he had actually paid. Held an agreement by a

minor was absolutely void and therefore, the question of refunding the money did not arise. Had the agreement been only voidable, the benefit received would have been refunded under Sections 64 and 65 of the Act.

1. **A Minor can be a Promisee or a Beneficiary:** During his minority, a minor cannot bind himself by a contract, but there is nothing in the contract act which prevents him from making the other party to the contract to be bound to the minor. Thus, a minor is incapable of making mortgage, or a promissory note. But he is capable of becoming a mortgagee, a payee or endorsee. He can derive benefit under the contract.
2. **A minor’s Agreement cannot be Ratified by the Minor on his attaining Majority:** A minor cannot ratify the agreement on attaining the age of majority as the original agreement is totally void from the beginning, and, therefore, validity cannot be given to it later on.

**Example:** Indira Ramasamy V Anthiappa Chettiar. ‘A’ a minor makes a promissory note in favour of ‘B’. on attaining majority, he makes out a fresh promissory note in place of the old one. Neither the original nor the fresh promissory note is valid.

1. **If a Minor has Received any Benefit Under a Void Contract he Cannot be Asked to Refund the same:** We have already mentioned the facts in Mohiri Bibee’s case. In that case, the lender could not recover the money paid to the minor. Also the property mortgaged by the minor in favour of the lender could not be sold by the latter for the realisation of his loan.
2. **A Minor is Always Allowed to plead Minority:** He is not prevented from this right even where he had procured a loan or entered into some other contract by falsely representing that he was of full age. Thus, an minor who has deceived the other party to the agreement by representing himself as of full age is not prevented from later asserting that he was minor at the time he entered into agreement.

Examples: Leslie V Shiell (1914) In this case ‘S’, a minor, borrowed ₤ 400 from L, a money lender, by fraudulently misrepresenting that he was of full age. On default by ‘S’, ‘L’ sued for return of ₤ 400 and damages for the crime. Held, ‘L’ could not recover ₤ 400, and his claim for damages also failed. Even on equitable grounds, the minor could not be asked to refund ₤ 400, as the money was not traceable as the minor had already spent it.

In the case of a fraudulent misrepresentation of his age by the minor, inducing the other party to enter into a contract, if money could be traced. The court may award compensation to that other party under Sections 30 and 33 of the Specific Relief Act,1963.

1. **A Minor Cannot be a Partner in a Partnership Firm:** He cannot become a partner but for the benefit of the partnership with the consent of all the partners he can be admitted as a partner. Other partners cannot file a case against the minor partner if the latter commits any offence.
2. **A Minor’s Estate is Liable to a Person Who Supplies Necessaries of Life to a Minor:** However there is no personal liability on a minor for the necessaries of life supplied.

The term ‘necessaries’ is not defined in the Indian Contract Act, 1872. but the English Sale of Goods Act defines necessaries as “goods suitable to the condition in life of the minor and to his actual requirements at the time of sale and delivery”.

From the above definition it is very clear that in order to entitle the supplier to be

reimbursed from the minor’s estate, the following conditions must be fulfilled:

* The goods are necessaries for that particular minor having regard to his status. For example, Purchase of a car may be a necessity for a particular minor and may not hold good for the other person.
* The minor needs the goods both at the time of sale and delivery.

**Example:** Nash V Inman (1908): A minor, was studying B.C.S., in a college. He ordered 11 fancy coats for about ₤ 45 with N, the tailor. The tailor sued him for the price. His father proved that his son had already number of coats and had clothes suitable to his condition in life when the clothes made by the tailor were delivered. Held, the coats supplied by the tailor were not necessaries and therefore, tailor cannot get the price.

The minor’s estate is liable not only for the necessary goods but also for the necessary services rendered to him. The lending of money to a minor for the purpose of defending a suit on behalf of a minor in which his property is in jeopardy or for defending him in prosecution, or for saving his property from sale in execution of decree is deemed to be a

service rendered to the minor. Other examples of necessary services rendered to a minor are: provision of education, medical and legal advice, provision of a house on rent to minor for the purpose of living and continuing his studies.

1. Minor’s parents or guardians are not liable to a minor’s creditors for the breach of contract by the minor, whether the contract is for necessaries or not. But the parents are liable where the minor is acting as an agent of the parents or the guardian.
2. A minor can act as an agent and bind his principal by his acts without incurring any personal liability.
3. **No specific performance:** An agreement by a minor being void, the court can never direct specific performance of such an agreement by him.
4. **No Insolvency:** A minor cannot be declared insolvent even though there are dues payable from the properties of the minor.
5. **Company’ shares to a minor:** A minor cannot apply for and be a member of a company. If a minor has, by mistake, been recorded as a member, the company can rescind the transaction and remove the name from the register. But where a minor was made a member and, after attaining majority, he received and accepted dividends, he will be stopped from denying that he is a member. (Fazalbhoy V The Credit Bank of India)

# PERSONS OF UNSOUND MIND

**Definition of “Sound Mind”** for a valid agreement it is necessary that each party to it should have a sound mind. What is sound mind for the purpose of contracting is laid down in Sec. 12 of the Indian contract act.

**Section 12:** A person is said to be of sound mind for the purpose of making a contract if at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interests.

A person usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind. However, when he is of sound mind he is capable of becoming a party to a contract.

# Illustrations

* 1. A patient in lunatic state of mind, who is at intervals of sound mind, may make a contract during these intervals.
  2. A sane man who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgement as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts. Unsoundness of mind may arise from insanity or lunacy, idiocy, drunkenness and similar factors.

**Idiocy:** The term idiot is applied to a person whose mental powers are completely absent. Idiocy is a congenital defect caused by lack of development of the brain.

**Insanity or Lunacy:** This is a disease of the brain. A lunatic is one whose mental powers are so deranged that he cannot form a rational judgement on any subject. Lunacy can sometimes be cured. Idiocy is incurable.

**Drunkenness:** Drunkenness produces temporary incapacity. The mental faculties are clouded for sometime, so that no rational judgement can be formed.

# Effects of Agreements Made by Persons of Unsound mind

Agreements by persons of unsound mind are void. But an Agreement entered into by a lunatic or a person of unsound mind for the supply of necessaries for himself or for persons whom he is bound to support (e.g. his wife, children) is valid as a quasi-contract under Section 68 of the Act. Only the estate of such a person is liable. There is no personal liability.

The guardian of a lunatic can bind the estate of the lunatic by contracts entered into on his behalf. The mode of appointments of such a guardian and his powers are laid down in the Lunacy Act.

**Example:** Inder Singh V Parmeshwardhari Singh (1957)

A person agreed to sell a property worth Rs.25,000 for Rs.7000. his mother proved that he was a congenital idiot and she pleaded for cancellation of the contract. The court held the agreement to be null and void.

# DISQUALIFIED PERSONS

**Aliens:** An alien means a citizen of a foreign state. Contracts with aliens are valid. An alien living in India is free to enter into contracts which citizens of India. But the government may impose certain restrictions. Certain types of transactions with aliens may be prohibited. A contract with an alien becomes unenforceable if war breaks out with the country of which the alien concerned is a citizen.

**Foreign Sovereigns:** Foreign sovereigns or governments cannot be sued unless they voluntarily submit to the jurisdiction of the local court (Mighell V Sultan of Johore)

**Professional Persons:** in England, barristers and members of the Royal College of Physicians are prohibited by the etiquette of their profession form suing for their fees. But they can sue and be sued for all the claims other than their professional fees. In India, there is no such restrictions on barristers and physicians.

# LESSON – 2.4 FREE CONSENT

**Definition of free consent**

An agreement is valid only when it is the result of free consent of all the parties to it. Sec. 13 of the Act defines the meaning of the term ‘consent’ and Sec. 14 of the Act specifies under what circumstances consent is “free”.

**Sec. 13** “Two or more persons are said to consent when they agree upon the same thing in

the same sense”.

Consent involves a union of the wills and an accord in the minds of the parties. When the parties agree upon the same thing in the same sense, they have consensus-ad- idem. For a valid contract the parties must have “identity of mind”.

**Sec. 14** lays down that consent is not free if it is caused by

1. Coercion.
2. Undue influence,
3. Fraud,
4. Misrepresentation and
5. Mistake.

# COERCION

**Definition:** Coercion is defined by Sec. 15 of the Act as follows: “Coercion is (1) the committing or threatening to commit, any act forbidden by the Indian penal code, or (2) Unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

# Examples:

1. A Hindu widow is forced to adopt ‘X’ under threat that her husband’s dead body would not be allowed to be removed unless she adopts ‘X’. the adoption is voidable as having been induced by coercion. (Ranganayakamma Vs Alwar setti)

2. ‘A’ threatens to kill ‘B’ if he does not transfer all his property in ‘A’s favour for

a very low price. The agreement is voidable for being the result of coercion.

It is not necessary that coercion must have been exercised against the promisor only, it may be directed at any person.

# Examples:

1. ‘A’ threatens to beat ‘B’ (C’s son) if ‘C’ does not let his house to ‘A’ the

agreement is caused by coercion.

1. ‘X’ threatens to kill ‘Y’ if he does not sell his house to ‘B’ at a very low price. The

agreement is caused by coercion though ‘X’ is a stranger to the transaction.

Further, it is immaterial whether the Indian penal code is or is not in force in the place where the coercion is employed.

**Example:** ‘A’ on board an English ship on the high seas, causes ‘B’ to enter into an agreement by an act amounting to criminal intimidation under the Indian penal code. ‘A’ afterwards sues ‘B’ for breach of contract at Calcutta. ‘A’ has employed coercion, although his act is not an offence by the law of England, and although the Indian penal code was not in force at the time or place where the act was done.

# Threat to commit suicide – is it coercion?

As per Section 15 “committing or threatening to commit any act forbidden by the Indian Penal Code is coercion.” As the act of suicide is forbidden by the IPC, a threat to commit suicide must be treated as coercion.

**Example:** Ammiraju Vs Seshamma

In this case, ‘A’ obtained a release deed from his wife and son under a threat of

committing suicide. The transaction was set aside on the ground of coercion.

**Duress:** The English equal of coercion is Duress. Duress has been defined as causing, or threatening to cause, bodily violence or imprisonment, with a view to obtain the consent of the other party to the contract. Duress differs from coercion on the following points:

1. ‘coercion’ can be employed against any person whereas ‘duress’ can be employed

only against the other party to the contract or members of his family.

1. ‘Coercion’ may be employed by any person, and not necessarily by the promisee.

‘Duress’ can be employed only by the party to the contract or his agent.

1. ‘Coercion’ is wider in its scope and includes unlawful detention of goods also. ‘Duress’ on the other hand does not include unlawful detention of goods. Only bodily violence or imprisonment is duress.

**Consequences of coercion: Sec.19:** When consent to an agreement is caused by coercion the agreement is contract voidable at the option of the party whose consent was so

obtained. In other words, the affected party can have the contract cancelled or if he so desires to insist on its performance by the other party.

**Sec. 72:** A person to whom money has been paid or anything delivered under coercion must repay or return it.

**Example:** A railway company refuses to deliver certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

# UNDUE INFLUENCE

**Definition:** A contract is said to be induced by undue influence where,

1. One of the parties is in a position to dominate the will of the other, and
2. He uses the position to obtain an unfair advantage over the other Sec. 16(1) ***Sec. 16(2) provides that undue influence may be presumed to exist in the following cases:***
   1. Where one party holds a real or apparent authority over the other or where he stands in a fiduciary relationship to the other. Fiduciary relationship means a relationship of mutual trust and confidence, such a relationship is supposed to exist in the following cases – father and son; guardian and ward; solicitor and client; doctor and patient; saint and disciple; trustee and beneficiary etc.
   2. Where a party makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.

**Example: ‘F’** having advanced money to his son ‘B’ during his minority, upon B’s coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum advanced. ‘F’ employs undue influence.

**Consequences of Undue influence:** An agreement caused by undue influence is a contract voidable at the option of the party whose consent was obtained by undue influence (Sec. 19-A).

**Example:** a money-lender, advances Rs.100 to ‘B’ an agriculturist, and by undue influence induces ‘B’ to execute a bond for Rs.200 with interest at 6 percent per month. The court may set the bond aside, ordering ‘B’ to repay Rs.100 with such interest as may seem just.

**Burden of proof [Sec. 16(3)]:** If a party is proved to be in a position to dominate the will of another and the transaction appears on the face of it or on the evidence adduced to be unconscionable, the burden of proving that the contract was not induced by undue influence, lies on the party who was in a position to dominate the will of the other.

Undue Influence is suspected in the following cases.

1. Inadequacy of consideration.
2. Fiduciary relationship between the parties.
3. Inequality between the parties as regards age, intelligence, social status, etc.
4. Absence of independent advisors for the weaker party.
5. Unconscionable bargains: Unconscionable bargain is one which is against the conscience of reasonable persons and what shocks the public. If excessive profit is made it will also fall within this term.

**High rates of Interest:** It is usual for money lenders to charge ‘High rates of interest’ from needy borrowers can the court presume the existence of undue influence in such cases?

**Illustration: ‘A’** applies to a banker for a loan at a time when there is an acute shortage in the money market. The banker declines to sanction the loan at the prevailing rate of interest. ‘A’ accepts the loan for a very high interest rate Held, this is a transaction in the ordinary course of business and the contract is not induced by undue influence.

So a transaction will not be set aside merely because the rate of interest is high. But if the rate is so high that the court feels it is unconscionable, the burden of proving that there was no undue influence lies on the creditor.

**Pardanishin Women:** Women, who observe the custom of Parda i.e. seclusion from contact with people outside her own family, are peculiarly susceptible to undue influence. Therefore, Indian courts have held that a contract made by or with a pardanish in lady may be set aside by her unless the other party to the contract satisfied the court that the terms of the contract were fully explained to her and that she understood their implications.

**Difference between Undue Influence and Coercion:** In both undue influence and coercion, one party is under the influence of another.

* 1. In coercion the influence arises from committing or threatening to commit an offence punishable under the IPC or detaining or threatening to detain property unlawfully. In undue influence, the influence arises from the domination of the will of one person over another.
  2. Cases of coercion are mostly cases of the use of physical forces. But in undue influence it is a question of mental pressure.

# MISREPRESENTATION

Representation is a statement or assertion, made by one party to the other, before or at the time of the contract, regarding some fact relating to it. Misrepresentation arises when the representation made is inaccurate but the inaccuracy is not due to any desire to defraud the other party. There is no intention to deceive.

## Sec.18 of the Contract Act classifies cases of misrepresentation into three groups as follows:

1. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.

**Example: ‘X’** learns from ‘A’ that ‘Y’ would be director of a company to be formed. ‘X’ tells this to B’ in order to induce him to purchase shares of that company and ‘B’ does so. This is misrepresentation by ‘X’ though he believed in the truthiness of the statement and there was no intent to deceive as the information was derived not from ‘Y’ but from ‘A’ and was mere hearsay.

1. Any breach of duty which, without an intent to deceive, gives an advantage to the person committing it, (or anyone claiming under him) by misleading another to his prejudice or to the prejudice of anyone claiming under him. Under this heading would fall cases where a party is under a duty to disclose certain facts and does not do so and thereby misleads the other party. In English law such cases are known as cases of “constructive fraud”.
2. Causing however, innocently, a party to an agreement to make a mistake as to the substance of a thing which is the subject of the agreement.

**Consequence of Misrepresentation:** In cases of misrepresentation the party aggrieved can,

1. Avoid the agreement, or
2. Insist that the contract be performed and that he be put in the position in which he would have been if the representation made had been true.

**Example: ‘A’** informs ‘B’ that his estate is free from encumbrance. B’ thereupon buys the estate in fact unknown to ‘A’, the estate is subject to mortgage. ‘B’ may either avoid the contract or may insist on its being carried out and the mortgage debt be redeemed.

In case of misrepresentation the aggrieved party cannot claim compensation or damages from the other person. This however, is subject to certain exceptions.

These are:

1. **Breach of Warranty of authority by an agent:** Where an agent believes that he has the authority to represent his principal while in fact he has no such authority, the agent is liable for damages even though he is only guilty of innocent misrepresentation. (Collen V. Wright)
2. **Misstatement in prospectus:** The directors of a company are liable for damages under Sec. 62 of the companies Act, 1956 for innocent misrepresentation made in the prospectus.
3. **Negligent representation** made by one person to another between whom confidential relationship exists. E.g. solicitor and client.

However, if the aggrieved party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence, he has no remedy.

# FRAUD

**Definition:** The term ‘fraud’ includes all acts committed by a person with a view to deceive another person. To “deceive” means to “induce a man to believe that a thing is true which is false”

Sec. 17 of the contract act states that ‘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 another party thereto or his agent; or to induce him to enter into a contract.

1. **False statement:** “The suggestion as to a fact, of that which is not true by one who

does not believe it to be true.” If a false statement is intentionally made it is fraud.

1. **Active concealment:** “The active concealment of a fact by one having knowledge or belief of the fact.” Mere non-disclosure is not fraud where the party is not under any duty to disclose all facts. But active concealment is fraud.

# Examples

* 1. **‘B’** having discovered a vein of ore on the estate of ‘A’ decided to conceal the existence of ore from ‘A’ with ‘A’s ignorance, ‘B’ contracted with ‘A’ to buy the estate at an under value. The contract is voidable at the option of ‘A’.
  2. **‘A’** sells by auction to ‘B’ a horse which ‘A’ knows to be unsound. ‘A’ says nothing to ‘B’ about the horses’ unsoundness. This is not because ‘A’ is under no duty to disclose the fact to ‘B’ but if between ‘A’ and ‘B’ there exists a fiduciary relationship (if ‘B’ is ‘A’daughter) here arises the duty to disclose and non- disclosure amounts to fraud.

1. **Intentional non-performance:** “A promise made without any intention of performing

it” (e.g. purchase of goods without any intention of paying for them) is fraud.

# Any other act fitted to deceive

1. **Fraudulent act or omission:** “Any such act or omission as the law specially declares to be fraudulent”. This clause refers to provisions in certain acts which make it obligatory to disclose relevant facts. E.g. under **Sec. 55** of the Transfer of Property Act, the seller of immovable property is bound to disclose to the buyer all material defects. Failure to do so amounts to fraud.

# From the analysis of the above we can say that for fraud to exist there must be:

1. A representation or assertion, and it must be false.
2. The representation or assertion must be of a fact.

**Example: ‘A’** a seller of a horse says that the horse is a ‘Beauty’ and is worth Rs.5000. it

is merely ‘A’s opinion. It is not a matter of fact.

1. The representation or statement must have been made with a knowledge of its falsity or without belief in its truth or recklessly.

## Example: Reese River silver Mining Co., Vs Smith

A company issued a prospectus giving false information about the unbounded wealth of Neveda. A share broker who took shares on the faith of such information wanted to avoid the contract. Held he could do so since the false representation in the prospectus amounted to fraud.

1. The representation must have been made with the intention of including the other party to act upon it.
2. The representation must in fact be to deceive.

**Example: ‘A’** by misrepresentation leads ‘B’ erroneously to believe that 500 kilos of indigo are made annually at ‘A’s factory. ‘B’ examines the accounts of the factory, which shows that only 400 kilos have been made. After this ‘B’ buys the factory. The contrast is not voidable on account of ‘A’s misrepresentation.

1. The party subjected to fraud must have suffered some loss.

# Can Silence be Fraudulent?

* 1. The general rule is that mere silence is not fraud.

**Example:** Ward Vs Hobbs

‘H’ sold to ‘W’ some pigs which were to his knowledge suffering from swine fever. The pigs were sold “With all faults” and ‘H’ did not disclose the fever to ‘W’ held, there was no fraud.

* 1. Silence is fraudulent “if the circumstances of the case are such that regard being had to them, it is the duty of the person keeping silence to speak.” Whenever there is a duty to disclose, silence amounts to fraud.
  2. Silence if fraudulent where the circumstances are such. Silence is in itself equivalent to speech.

# Consequences of fraud

A party who has been induced to enter into an agreement by fraud has the following remedies open to him: (Section 19)

* + 1. He can avoid the performance of the contract.
    2. He can insist that the contract shall be performed and that he shall by put in the position in which he would have been if the representation made had been true.
    3. The aggrieved party can sue for damages.

# Distinction between Fraud and Misrepresentation

* + - 1. In case of fraud the party making a false representation makes it with the intention to deceive the other party to enter into a contract. Misrepresentation on the other hand is innocent i.e., without any intention to deceive or to gain an advantage.
      2. In case of fraud, the aggrieved party can sue the person who made the false statement, for damages. But in case of misrepresentation except in certain cases, the only remedy is recession and restitution.
      3. In case of fraud the person who made the false statement cannot argue that the aggrieved person had the means of discovering the truth or could have done so with ordinary diligence.

# MISTAKE

**Definition:** Mistake may be defined as an erroneous belief concerning something.

Consent cannot be said to be ‘free’ when an agreement is entered into under a mistake.

## Mistake is of two kinds:

1. Mistake of law
2. Mistake of Fact

**Mistake of law:** Mistake on a point of Indian law does not affect the contract. Mistake on a point of law in force in a foreign country is to be treated as mistake of fact

**Example: ‘A’** and ‘B’ make a contract based on the erroneous belief that a particular debt is barred by the Indian law of limitation. This is a valid contract. The reason is that every man is presumed to know the law of his own country and if he does not he must suffer the consequence of such lack of knowledge. But if in the above case, the mistake is related to the law of limitation of a foreign country, the agreement could have been avoided (Sec. 20)

**Mistake of Fact:** An agreement induced by mistake of fact is void. Mistake of fact may be

1. a bilateral mistake
2. a unilateral mistake

**Bilateral Mistake:** When both the parties to the agreement are under a mistake of fact essential to the agreement, the mistake is called a bilateral mistake of fact and the agreement is void (Sec. 20). For the application of Sec. 20 the following two conditions are to be fulfilled.

1. The mistake must be mutual
2. The mistake must relate to a matter of fact essential to the agreement.

# Example: (1) and example (2)

* 1. ‘A’ agrees to buy from ‘B’ a horse. It turns out that, the horse was dead at the time of bargain, though neither party was aware of the fact, the agreement is void.
  2. ‘A’ agrees to sell to ‘B’ a specific cargo of goods supposed to be on its way

from England to Bombay. It turns out that, before the day of the bargain, the

ship carrying the cargo has been washed away and the goods lost. Neither party was aware of the fact. The agreement is void.

Mistake so as to render the agreement void, must relate to some essential matter, some typical cases of mistake invalidating the agreement are given below:

# Mistake as to the subject matter:

1. Mistake as to the Existence of Subject-matter: If both the parties believe that the subject-matter of the contract to be in existence, which in fact at the time of the contract is non-existent, the contract is void.

**Example: ‘A’** agreed to purchase ‘B’s car which was lying in ‘B’s garage. Unknown to either party the car and the garage were completely destroyed by fire a day earlier. The agreement is void.

1. **Mistake as to identity of the subject-matter:** where the parties agree upon different things, i.e. one party intends to deal in one thing and the other intends to deal in another.

**Example: ‘A’** who owns three maruti cars of different colours, other to sell his white colour car Rs.1,00,000. ‘B’ accepts the other thinking ‘A’ is selling his green colour car. There is a mistake as to the identity of the subject-matter and hence no contract.

1. **Mistake as to Tile to the Subject Matter:** where the parties believe that the seller is the owner of the thing which he purports to sell, but in fact, he has no title to it, the contract is void on the ground of mistake.

**Example:** A person took a lease of a fishery which, unknown to either party already belonged to him. Held, the lease was void [Cooper V. Phibbs.(1861)]

1. **Mistake as to the quality of the Subject-matter:** If the subject matter is something different from what the parties thought it to be, the agreement is void.

**Example:** Table napkins were sold at an auction by a description, “with the crest of Charles I and the authentic property of that monarch.” In fact napkins were Georgian. Held, the agreement was void as there was a mistake as to the quality of the subject-matter [Nicholson Venn V. Smith Marriott].

# (e) Mistake as to the quantity of the subject-matter Example: Henkel V. Pape (1870)

‘P’ wrote to ‘H’ enquiring the price of rifles and

Suggested that he might buy as many as 50. On receipt of the information, he telegraphed

“Send three rifles”. But because of the mistake of the telegraph authorities the message

transmitted was “send the rifles”. ‘H’ despatched 50 rifles. Held, there was no contract between the parties. However, ‘P’ could be held liable to pay for three rifles on the basis of an implied contract.

(f) **Mistake as to the price of subject-matter:** Where a contract of lease of a house was agreed to at a lease of $230 but in written agreement, the figure $130 was inserted by mistake, the contract was held to be void.

But an erroneous opinion as to the value of the subject matter of the agreement is not to be deemed a mistake as to a matter of fact.

**Example**: ‘A’ buys an article thinking it is worth Rs.10,000 while it is actually worth Rs.500 only. The agreement cannot be avoided on the ground of mistake

# Mistake as to the possibility of performing the contract :

If both the parties believe that an agreement is capable of being performed when in fact this is not the case. The agreement, in such a case is void on the ground of impossibility.

Impossibility may be

1. **Physical impossibility:** Example: A contract for the hire of a room for witnessing the coronation procession of Edward VII was held to be void because, unknown to the parties the procession had already been cancelled [Griffith V. Braymer(1903)].
2. **Legal Impossibility:** A contract is void if it provides that something share be done which cannot, as matter of law, be done.

**Unilateral Mistake:** In case of unilateral mistake i.e where only one party to a contract is under a mistake, the contract, generally speaking is not invalid. Sec. 22 reads, “A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.”

**Exception:** To the above rule, there are certain exceptions.

* 1. **Where the unilateral mistake is as to the nature of the contract:** A contract is void when one of the parties to it does not intend to enter into it, but through the fault of another and without any fault of his own, makes a mistake as to the nature of the contract. ***Example: Foster Vs V. Mackinnon (1869)*** An old illiterate man was made to sign a bill of exchange by means of a false representation that it was a guarantee. Held, the contract was void.
  2. **Mistake as to quality of the promise:** In Scriuen Vs Hindley case an auction was held for the sale of some lots of hemp (quality natural fibre) and some lots of tow

(broken inferior fibre). Mr. B thinking that hemp was being sold, bid for a lot of tow for an amount which was not of propertied to it, and was only fair price for hemp. Held, contract could be avoided.

* 1. **Mistake as to the identity of the person contracted with:** where ‘A’ intends to contract with ‘B’ but by mistake enters into a contract with ‘C’ believing him to be ‘B’ the contract is void on the grounds of mistake. ***Example: Cundy Vs Lindsay & Co (1878)***: Mr. ‘X’ of Blenkarn, by imitating the signature of a reputed firm called Blenkiron and Co, induced another firm ‘Y’ to supply goods to him on credit. The goods were then sold to ‘X’ of Blenkarn. Held, there was no contract between ‘X’ of Blenkarn and ‘Y’ because ‘Y’ never intended to supply to Blenkarn. Therefore ‘X’ of Blenkarn obtained no title to the goods. But if the goods are sold for cash then that is a valid contract.

**Consequences of Mistake:** Mistake renders a contract void and as such in case of a contract which is yet to be performed the party complaining of the mistake may avoid it,

* 1. need not perform it. If the contract is executed, the party who received any advantage must restore it or make compensation for it, as soon as the contract is discovered to be void.

# LESSON – 2.5

**VOID AGREEMENTS AND DISCHARGE OF CONTRACTS VOID AGREEMENTS**

The contract act specifically declares certain agreements to be void. A void agreement is one which is not enforceable by law [Sec.2 (g)]. Such an agreements does not give rise to any legal consequences and is totally void from the very inception.

# The different kinds of void agreements under the Indian Contract Act, 1872 are given below:

* + 1. Agreements made by incompetent persons.(Sec. 11)
    2. Agreements made where there is a mutual mistake as to a matter of fact (Sec.20)
    3. Agreements made where there is a mistake as to any law in force in India(Sec.21)
    4. Agreements of which consideration or object is unlawful (Sec.23)
    5. Agreements of which consideration or object is partly unlawful (Sec. 24)
    6. Agreements without consideration (Sec. 25)
    7. Agreements in restraint of marriage (Sec. 26)
    8. Agreements in restraint of trade (Sec. 27)
    9. Agreements in restraint of legal proceedings (Sec. 28)
    10. Agreements the meanings of which are uncertain or not capable of being made certain (Sec. 29)
    11. Agreements by way of wager (Sec. 30)
    12. Agreements contingent on the happening of an event (Sec. 32)
    13. Agreements contingent on the impossible events (Sec.36)
    14. Agreements to do an impossible Act (Sec. 56)
    15. In case of reciprocal promises to do things legal and also to do other things illegal, the first set of promises is a contract, but the second set of reciprocal promises is a void agreement (Sec. 57)

It may be stated here that the agreement from 1 to 13 are void ab-initio. i.e., from the very inception while the remaining 14 to 15 become void by subsequent events.

# WAGERING AGREEMENTS OR WAGER (Sec. 30)

**Definition of Wager:** “A contract between two parties to the effect that if a given event is determined in one way, one of them shall pay a sum of money to the other, and in the contrary event the later shall pay to the former.” It is a promise to give money or money’s worth upon the determination or ascertainment of an uncertain event. (Sir William Anson) **Example: ‘A’ and ‘B’** may wager regarding an uncertain event as to whether it would rain or not on a particular day. ‘A’ promising to pay ‘B’ Rs.100 if it rains and ‘B’ promising

Rs.100 if it does not rain. Such agreements are void and are not enforceable at law. No suit can be initiated for recovering anything alleged to be won on any wager (Sec. 30) **Essential Elements of a Wager:**

* + - 1. Intention of both the parties to the wagering contract is to gamble.
      2. The gain of one party is the loss of the other party.
      3. Neither party should have any interest in the happening or non-happening of the event other than the sum he will win or lose.
      4. The event on the happening of which the amount is to be paid is uncertain.
      5. The mind of the parties to the agreement may be uncertain in regard to the fact.
      6. The event on which the betting is placed should not necessarily be unlawful.

# The following contracts are not wager:

1. A cross word competition involving a good measure of skill for its successful solution.
2. Games of skill e.g. picture puzzles or athletic competitions.
3. A subscription towards any prize or sum of money of the value of Rs. 500 or above to be awarded to any winner of a horse race.
4. Share market transactions
5. Contracts of insurance is not a contract of wager because of the following reasons:
   1. In case of Insurance the assured has an insurable interest in the subject- matter.
   2. Both the parties are interested in protection of the subject matter.
   3. Except life insurance, the other contracts of insurance is a contact of indemnity.
   4. It is beneficial to the public.
   5. It is based on scientific and actual calculation of risks.

**Effects of Wagering Agreements:** Wagering agreements have been expressly declared to be void in India. In certain States in India, they have been declared to be illegal. No suit can be initiated for recovering anything alleged to be won on any wager.

Since the wagering agreements are void, transaction are void, transactions collateral to them are not affected. So excepting in the states of Maharashtra and Gujarat collateral transactions are valid.

# CONTINGENT CONTRACTS

**Definition:** [Sec.31]: A Contingent Contract is a contract to do or not to do something, if some event, collateral to such contract does or does not happen.

***Example:*** ‘A’ contracts to pay ‘B’ Rs. 10,000 if B’s house is burnt. This is a contingent

contract.

## Essentials of a Contingent Contract:

1. The performance of a contingent contract is made dependent upon the happening or non-happening of some event.
2. The event on which the performance is made to depends is an event collateral to the contract. i.e it does not form part of the reciprocal promises which constitute the contract.
3. The contingency is uncertain. If the contingency is bound to happen, the contract is due to be performed in any case and is not therefore a contingent contract.

# Examples

* 1. Life insurance, indemnity and guarantee are examples of contingent contract.
  2. Where ‘A’ agrees to deliver 100 bags of rice and ‘B’ agrees to pay the price only afterwards, the contract is a conditional contract and not contingent, because the event on which B’s obligation is made to depend is a part of the promise itself and not a collateral event.

1. The contingent event should not be the mere will of the promisor.

**Example**: ‘A’ promises to pay ‘B’ Rs.1000. if he so choose, it is not a contingent contract. If the event is within the promisor’s will but not merely his will, it may be a contingent contract.

**Example: ‘A’** promises to pay ‘B’ Rs.10,000, if ‘A’ left Delhi or Bombay; it is a contingent contract, because going to Bombay is an event, no doubt within A’s will but is not merely his will.

# Rules Regarding Enforcement of Contingent Contracts:

1. Contracts contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event has happened. And if the event becomes impossible such contract becomes void (Sec. 32)

# Examples

* 1. ‘A’ makes a contract with ‘B’ to buy ‘B’s house if ‘A’ survives ‘C’. This

contract cannot be enforced by law unless ‘C’ dies in A’s life-time.

* 1. ‘A’ contracts to pay ‘B’ a sum of money when ‘B’ marries ‘C’ ‘C’ dies without being married to ‘B’. the contract becomes void.

1. Contracts contingent upon the non-happening of an uncertain future event can be enforced when the happening of that event becomes impossible, and not before (Sec. 33)

**Example: ’A’** agrees to pay ‘B’ a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

1. When the event to be deemed is impossible

**Examples: ‘A’** agrees to pay ‘B’ a sum of money if ‘B’ marries ‘C’. ‘C’ marries ‘D’. the marriage of ‘B’ to ‘C’ must now be considered impossible although it is possible that ‘D’ may die and that ‘C’ may afterwards marry ‘B’.

1. **a. The happening of an event within a fixed time:** Contracts contingent upon the happening of an event within a fixed time become void if, at the expiration of the fixed time, such event has not happened or if before the fixed time, such event becomes impossible. **Example: ‘A’** promises to pay ‘B’ a sum at a certain ship returns within a year. The contract may be enforced if the ship returns within a year, and becomes void if the ship is burnt within the year.

**b. The non-happening of an event within a fixed time example: ‘A’** promises to pay ‘B’ a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the yea, or is burnt within the year.

1. **Impossible event:** Contingent agreements to do or not to do anything if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreements at the time when it is made (Sec. 36)

**Example: ‘A’** agrees to pay ‘B’ Rs.10,000 if two straight lines should enclose a space.

The agreement is void.

# Difference between Contingent Contract and Wagering Agreements

* 1. A contingent contract is valid, a wagering agreement is void.
  2. When a contingent contract depends on the happening or non-happening of an event, the contract is valid, but the wagering agreement is void.
  3. Contingent contract may not contain reciprocal promises; wagering agreement consists of reciprocal promises.
  4. In contingent contract both parties may have an interest in the subject matter; in a wagering agreement the parties have no interest except getting or paying money.
  5. In a contingent contract the future event is only collateral and valid; a wagering agreement is void.

# QUASI-CONTRACTS

‘Quasi’ is a Latin word which means “to resemble”. Contracts which are not full- fledged contracts are called quasi contracts. i.e., when all the essentials of a valid contract are not there they are called quasi-contracts.

***According to Dr. Jenks***, quasi-contract is “a situation in which law imposes upon one person, on grounds of natural justice, an obligation similar to that which arises from a true contract, although no contract express or implied has in fact been entered into by them”.

**Example: ‘X’** supplies goods to his customer ‘Y’ who receives and consumes them. ‘Y’ is bound to pay the price. ‘Y’s acceptance of the goods constitutes an implied promise to pay. This kind of contract is called a tacit contract.

In the above example, if the goods are delivered by the servant of ‘X’ to ‘Z’ mistaking ‘Z’ for ‘Y’, then ‘Z’ will be bound to pay compensation to ‘X’ for the value. This is Quasi-contract (or) Implied contract (or) Constructive contract.

The principle underlying a quasi-contract is that no one shall be allowed unjustly to enrich himself at the expense of another, and the claim based on a quasi-contract is generally for money.

***Sec. 68-72 of the Contract Act*** describes the cases which are to be deemed Quasi- contracts.

1. Claim for necessaries supplied to a person incapable of contracting on his own account. **Example: ‘A’** supplies ‘B’ a lunatic (or) to his family with necessaries suitable to his condition in life. ‘A’ is entitled to be reimbursed from B’s property.
2. Reimbursement of person paying money due by another in payment of which he is interested. **Example: ‘B’** holds land in Bengal on a lease granted by ‘A’ the Zamindar. The revenue payable by ‘A’ to the government being in arrear, his land is advertised for sale by the government. Under the revenue law, the consequence of such sale will be the cancellation of B’s lease. ‘B’, to prevent the sale and the consequent cancellation of lease, pays the government the sum due from ‘A’. ‘A’ is bound to make good to ‘B’ the amount so paid.
3. Obligation of a person enjoying benefits of non-gratuitous act: **Example: ‘A’** a tradesman, leaves goods at B’s house by mistake. ‘B’ treats the goods as his own. ‘B’ is bound to pay for them.
4. Responsibility of Finder of goods**:** Generally, a person is not bound to take care of goods of others, left on a road or other public places by accident or negligence, but if he takes them into his custody, an agreements is implied by law. The finder is for certain purposes, deemed in law to be a bailed and must take care of the goods. As per Sec. 71. “A person who finds the goods belonging to another and takes them into his custody, or anything delivered by mistake or under coercion, must pay for it.” **Example:** ‘A’ and ‘B’ jointly owe Rs.10,000 to ‘C’. ‘A’ alone pays the amount to ‘C’ and ‘B’ not knowing this fact pays Rs.10,000 again to ‘C’. ‘C’ is bound to repay the amount to ‘B’.

# DISCHARAGE OF CONTRACT

When the obligation created by a contract comes to an end, the contract is said to be discharged or terminated.

## A contract may be discharged in any of the following ways:

1. **By performance of the promise or tender:** The common mode of discharge of a contract is by performance i.e. where the parties have done whatever was expected under the contract, the contract comes to an end. Thus where ‘A’ contracts to sell his car to ‘B’ for Rs.75, 000 as soon as the car is delivered to ‘B’. As soon as he delivered the car he received the price from ‘B’. The contract comes to an end by performance.

The offer of performance or tender has the same effect as performance. If a promisor tenders performance of his promise but the other party refuses to accept, the promisor stands discharged of his obligations.

1. **By Mutual Consent cancelling the agreement or substituting a new agreement in place of the old:** By agreement of all parties, a contract may be cancelled or its terms altered or a new agreement substituted for it. Whenever any of these things happen, the old contract is terminated.

“If the parties to a contract agree to substitute a new contract for it, or to rescind or

alter it, the original contract need not be performed” (Sec. 62)

Termination by mutual agreement may occur in an one of the following ways:

* 1. **Novation:** Novation occurs when a new contract is substituted for an existing contract, either between the same parties or between different parties. Novation may occur by two ways, i.e., change of parties and a substitution of a new contract in place of the existing one.

# Example

1. ‘A’ is indebted to ‘B’ and ‘B’ is indebted to ‘C’. by mutual agreement B’s debt to ‘C’ and A’s debt to ‘B’ are cancelled and ‘C’ accepts ‘A’ as his debtor. It is Novation.
2. ‘P’ lent ‘D’ Rs.20,000. afterwards the parties agreed that ‘D’ will repay to ‘P’ Rs.10,000 and certain grams of gold at a particular date. The former agreement is replaced by the latter. There is Novation.

b.**Recission:** Recission means cancellation of all or some of the terms of the contract. Where parties mutually decide to cancel the terms of the contract. The obligations of the parties there under terminates.

1. **Alteration:** If the parties mutually agree to change certain terms of the contract, it has the effect of terminating the original contract. There is, however, no change in the parties.
2. **Remission Sec. 63 deals with remission**: Remission is the acceptance of a lesser sum than what was contracted for or a lesser fulfilment of the promise made. **Example: ‘A’** owes ‘B’ Rs.5000. ‘A’ pays to ‘B’ who accepts in satisfaction of the whole debt Rs.2000 paid at the time and place at which the Rs.5000 were payable. The whole debt is discharged.
3. **Waiver:** Waiver means relinquishment or abandonment of a right. Where a party waives his right under the contract, the other party is released of his obligations. **Example: ‘A’** promises to paint a picture for ‘B’. ‘B’ afterwards forbids him to do so. ‘A’ is no longer bound to perform the promise.
4. **Merger:** A contract is said to have been discharged by way of ‘Merger’ where an inferior right possessed by a person coincides with a superior right of the same person. **Example:** A man, who is holding certain property under a lease, buys it. His rights as a lessee vanish.
5. **By subsequent impossibility (Sec. 56):** Impossibility in a contract may either be inherent in the transaction or it may happen later by the change of certain circumstances

material to the contract. If it happens at a later stage we call it subsequent impossibility. In England this is referred to as ‘Doctrine of Frustration’. A contract is deemed to have become impossible of performance and thus void under the following circumstances:

1. Destruction of subject-matter of the contract.
2. By death or disablement of the parties.
3. Subsequent illegality (e.g.) ‘A’ contracts to supply ‘B’ 100 bottles of wine. Before the contract is executed, dealings in all sorts of liquor are declared prohibited by the Government; the contract becomes void.
4. Declaration of war.
5. Non-existence or Non-occurrence of particular state of things. When certain things necessary for performance cease to exist, the contract becomes void on the grounds of impossibility.

**Example: ‘A’ and** ‘B’ contract to marry each other. Before the marriage, ‘A’ goes mad.

The contract gets discharged.

# Exceptions:

1. difficulty of performance does not amount to impossibility.
2. Commercial impossibility does not render a contract void.
3. Strikes, lock-outs and civil disturbances do not terminate contracts unless provided for in the contract.
4. Failure of one of the objects does not terminate the contract.
5. Non-performance of third party does not exonerate the promisor from his liability.
6. **By Operation of Law*: Discharge under this head may take place as follows***:
7. The death of the promisor results in termination of the contract in cases involving personal skill and ability.
8. The insolvency Act provides for discharge of contracts whenever the promisor becomes insolvent.
9. By merger.
10. By material alteration without seeking the consent of the other party

# BY BREACH OF CONTRACT

A contract terminates by breach of contract. Breach of contract may arise in two

ways:

1. Anticipatory Breach
2. Actual Breach.

Anticipatory breach of contract occurs when a party repudiates it before the time fixed for performance has happened or when a party by his own act disables himself from performing the contract. **Example: ‘A’** Contracts to marry ‘B’. Before the agreed date of marriage he marries ‘C’. ‘B’ is entitled to sue ‘A’ for breach of promise.

**Consequences of Anticipatory Breach:** In case of anticipatory breach, the promisee may either;

* 1. rescind the contract and treat the contract as at an end, and at once sue for damages, or
  2. he may elect not to rescind but to treat the contract operative and wait for the time of performance and then hold the other party liable for the consequences of non- performance.

# Example:

‘A’ agreed to load a cargo of wheat on ‘B’s ship at Odessa by a particular date but when the ship arrived ‘A’ refused to load the cargo. ‘B’ did not accept the refusal and continued to demand the cargo. Before the last date of the loading had expired the Crimean war broke out, rendering the performance of contract illegal. Held, the contract was discharged and ‘B’ cannot sue for damages. [Avery V. Bowen]

1. **Actual Breach of Contract:** Actual breach of contract occurs when during the performance of the contract or at the time when the performance of the contract is due; one party either fails or refuses to perform his obligations under the contract. The refusal of performance may be express or implied. **Example: ‘D’** agrees to deliver to ‘B’ 50 kilos of Ghee on 1st June. He fails to do so on 1st June.

## Cort V. Ambergate Railway Co. (1851)

‘A’ contracted with a Railway Co., to supply it certain quantity of railway chairs at a certain price. The delivery was to be made in instalments. After four instalments had been supplied, the railway company asked ‘A’ to deliver no more. Held, A could sue for breach of contract.

# REMEDIES FOR BREACH OF CONTRACT

When a breach of contract occurs, the aggrieved party or the injured party becomes entitled to the following remedies or reliefs:

1. **Rescission of the Contract:** When a breach of contract is committed by one party, the aggrieved party is relieved from all his obligations under the contract. **Example:** ‘A’ promises ‘B’ to supply 10 bags of sugar on a certain date and ‘B’ promises to pay the price

on receipt of the goods. ‘A’ does not deliver the goods on the appointed day. ‘B’ needs not pay the price.

**Party Rightfully Rescinding the Contract Entitled to Compensation (Sec. 75):** A person who rightfully rescinds the contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

1. **Damages for the Loss Suffered:** Damages, generally speaking, are of four kinds.
   1. **Ordinary damages:** Ordinary damages are those which naturally arose in the usual course of things from such breach. The measure of ordinary damages is the difference between the contract price and the market price on the date of breach. **Example: ‘A’** contracts to deliver 100 bags of wheat at Rs.800 a bag on a future date. On the due date he refuses to deliver; the price on that day is Rs.900 per bag. The measure of damages is the difference between the market price on the date of breach and the contract price i.e Rs.10,000.

The ordinary damages shall be available for any loss or damage which arises naturally in the usual course of things from the breach and as such compensation cannot be claimed for any indirect loss by reason of breach.

**Example:** A railway passenger’s wife caught cold and fell ill due to her being asked to get down at a place other than the railway station. In a suit by the plaintiff or affected person against the railway company, held, that damages for the personal inconvenience of the plaintiff alone could be granted, but not for the sickness of the plaintiff’s wife, because it was a very indirect consequence.

* 1. **Special Damages:** Special damages are claimed in case of loss of profit etc. when there are certain special or extraordinary circumstances present and their existence is communicated to the promisor, the non-performance of the promise entitles the promisee to not only the ordinary damages but also damages that may result from it.

**Example: ‘A’** a builder, contracts to erect and finish a house by the 1st of January so that ‘B’ may give possession of it at that time to ‘C’. to whom ‘B’ has contracted to let it. ‘A’ is informed of the contract between ‘B’ and ‘C’. ‘A’ builds the house so badly that, before the 1st January, it falls down and has too be rebuilt by ‘B’ who in consequence loses rent which he was to have received from ‘C’, and is obliged to make compensation to ‘C’ for

the breach of his contract. ‘A’ must make compensation to ‘B’ for the cost of rebuilding the house, for the rent lost, and for the compensation made to ‘C’.

# Notice of the Communication of the Special Circumstances is a Pre-requisite to the Claim for Special Damages.

**Example:** Hadley V. Baxendale (1854)

‘X’s Mill was stopped due to the breakdown of a shaft. He delivered the shaft to ‘Y’ a common carrier, to be taken to a manufacturer to copy it and make a new one. ‘X’ did not make known to ‘Y’ that delay would result in a loss of profits. By some negligence on the part of ‘Y’ the delivery of the shaft was delayed in transit beyond a reasonable time. As a result the mill remained idle for a longer time than otherwise would have been, had the shaft been delivered in time.

**Held: ‘Y’** was not liable for loss of profits during the period of delay as the circumstances communicated to ‘Y’ did not show that a delay in the delivery of shaft would entail loss of profit to the mill.

1. **Vindictive (or) Punitive or Exemplary Damages:** These damages are awarded

to punish the defaulter than to really compensate the plaintiff and have no place in the law of contracts. But in the following cases vindictive damages are awarded.

* 1. Breach of a contract to marry and
  2. Wrongful dishonour of a cheque by a banker.

1. **Nominal Damages:** This kind of damages is awarded when the injured party does not suffer any damages. Yet this damage consisting of a very small amount, say, a rupee or two, is awarded for violation of a legal right.
2. **Specific Performance:** Where damages are not an adequate remedy, the court may direct the party in breach to carry out his promise according to the terms of the contract. This is called ‘Specific performance’ of the contract some of the instances where court can direct specific performance are: a contract for the sale of a particular house or some rare article or another thing for which monetary compensation is not enough because the injured party will not be able to get an exact substitute in the market.

Specific performance will not be granted where:

1. Monetary compensation is an adequate relief.
2. The contract is of personal nature, e.g. a contract to marry
3. Where it is not possible for the court to supervise the performance of the contract, e.g. a building contract.
4. The contract is made by a company beyond its objective as laid down in its Memorandum of Association.
5. **Injunction:** Injunction means an order of the court. Where a party is in breach of a negative term of a contract (i.e. where he does something which he promised not to do) the court may, by issuing an order, prohibit him from doing.

**Example:** (i) Metropolitan Electric Supply Company V.Ginder (1901)

G agreed to buy the whole of the electricity required for his house from a certain company. He was therefore, restrained by an injunction from buying electricity from any other person.

(ii) N, a film star, agreed to act exclusively for a particular producer, for one year. During the year she contracted to act for some other producers. Held, she could be restrained by an injunction.

1. **Quantum Meruit:** The phrase ‘Quantum Meruit’ means as much as merited’ or ‘as much as earned’. The general rule of law is that unless a person has performed his obligations in full, he cannot claim performance from the other. But in certain cases, when a person has done some work under a contract, and the other party repudiated the contract, or some event happened which makes the further performance of the contract impossible, then the party who has performed the work can claim remuneration for the work he has already done.

**Example: ‘A’** contracts with ‘B’ to deliver to him 500 kilos of butter before 1st May. ‘A’ delivers 200 kilos only before that date and none after. ‘B’ retains the 200 kilos after the 1st May. ‘B’ is bound to pay ‘A’ for them

# QUESTIONS

1. When is an offer completed? How and when may an offer be revoked?
2. Define offer and acceptance. When are the offer and acceptance deemed to be complete if made through post?
3. Define consideration. Critically discuss the essential elements of consideration.
4. “A stranger to the consideration may sue on a contract but not a stranger to the contract”- Explain.
5. State the circumstances in which a contract without consideration may be treated as valid.
6. Who are competent to contract under the Indian law of Contract?
7. Explain the legal rules regarding contracts with a Minor.
8. When a consent is said to be free? Distinguish between coercion and undue influence.
9. Define and distinguish between misrepresentation and fraud. What remedies are available to the aggrieved party?
10. Explain the different types of mistake and give the relevant rules regarding contract with mistake.
11. When is an agreement said to be against public policy? Give examples of agreements which are against public policy.
12. Explain contingent contract and their rules.
13. State the circumstances under which a contract is said to be discharged.
14. What do you understand by Novation? What is the difference between Novation and Alteration?
15. Define Special damages; Exemplary damages and Nominal damages.
16. What are the consequences of breach of contract?
17. State the remedies allowed to the aggrieved person in case of breach of contract.
18. What is a quasi-contract? Give some examples of quasi-contract.

# UNIT – III SPECIAL CONTRACTS

**Lesson – 3.1** Indemnity and Guarantee

**Lesson – 3.2** Bailment and Pledges

# LESSON – 3.1 INDEMNITY AND GUARANTEE

**CONTRACTS OF INDEMNITY**

**Definition**

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

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

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

## There are a few requisites for a valid contract of indemnity. They are:

1. A contract of indemnity must satisfy all the essentials of a contract.
2. A contract of indemnity may arise either,
   1. by an express promise or
   2. by operation of law, e.g., the duty of a principal to indemnity an agent from consequences of all lawful acts done by him as an agent. Similarly, on a transfer of shares, the transferee, in law, undertakes to indemnity the transferor against all future loss.
3. Under contract of indemnity loss to promisee is essential. Unless promisee has suffered a loss, he cannot hold the promisor liable on the contract of indemnity.
4. As per Indian Contract Act, the loss must have been caused either by the conduct of the promisor or any other person. But this any other person does not include promisee and an act of god such as accidents, death, disability, destruction by fire, cyclone, etc.
5. As the Indian Contract Act is not exhaustive, at present Indian courts are following English law which covers promises to save a harmless person from loss caused by events such a accidents, death, disability destruction by fire, cyclone etc.

**Rights of indemnity-holder or indemnified:** The Indemnity-holder is entitled to recover from the promisor:

1. All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
2. All costs of suit which he may have to pay to a third party, [provided he acted prudently or with the authority of the indemnifier];
3. All sums which he may have paid upon compromise of such suit, (provided such compromise was prudent and was authorised by the indemnifier).

**Rights of Indemnifier:** The Act makes no mentions of the rights of an indemnified. It has been held in Aswant Singhji Vs State of Bombay case that, the indemnifier enjoys rights similar to the rights of a surety under Section 141, i.e., he becomes entitled to the benefit of all the securities which the creditor has against the principal debtor, whether he was aware of them or not.

# CONTRACT OF GUARANTEE

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

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

* The person who gives the guarantee is called the “Surety” – It is ‘R’ in the above

example.

* The person for whom the guarantee is given is called the “principal Debtor” – It is

‘Q’ in the example.

* The person to whom the guarantee is given is called the “Creditor” It is ‘P’ in the

example.

* In a contract of guarantee there are three parties namely, the creditor, the principal debtor and the surety.

# Kinds of Guarantees

1. A contract of guarantee may either be oral or in writing (Sec.126), though a creditor should always prefer to put in writing to avoid any disputes regarding the terms etc. in case of an oral agreement the existence of the agreement itself is very difficult to prove.
2. From the point of view of the scope of guarantee a contract of guarantee may either be specific or continuing.

**Specific Guarantee:** A guarantee is a ‘specific guarantee’, if it is intended to be applicable to a particular debt and comes to an end on its repayment. A specific guarantee once given is irrevocable.

**Example: ‘A’** guarantees the repayment of a loan of Rs.1,00,000 to ‘B’ by ‘C’ (a banker).

The guarantee in this case is a specific guarantee.

**Continuing Guarantee [Sec. 129]:** “A guarantee which extends to a series of transactions

is called a continuing guarantee”.

**Example:** Mr. ‘**P**’ guarantees payment to Mr. ‘B’, a tea-dealer, to the amount of Rs.1000 for any tea he may from time to time supply to Mr. ‘C’. Mr. ‘B’ supplies Mr. ‘C’ with tea to the value of Rs.1000 and Mr. ‘C’ pays Mr. ‘B’ for it. Afterwards Mr. ‘B’ supplies Mr. ‘C’ with tea to the value of Rs.2000. Mr. ‘C’ fails to pay. The guarantee given by Mr. ‘P’ was a continuing guarantee, and he is liable to Mr. ‘B’ to the extent of Rs.1000.

## A continuing guarantee is revoked under the following circumstances:

1. By notice of revocation by the surety.
2. By the death of the surety. The estate of the surety is liable for all transactions entered into prior to the death of the surety. It is not necessary that the creditor must have notice of the death.
3. By variation in contract.
4. Creditor’s act of omission.
5. Novation.
6. By discharge of principal debtor.

# Essentials of a valid contract of guarantee

1. All the three parties [i.e., the principal debtor, the creditor and the surety] must agree to make such a contract. A contract of guarantee may be oral.
2. The surety must make a clear promise that if the principal debtor does not perform his promise, he (surety) will perform that promise. So, the liability of the surety is secondary, i.e., the creditor must first proceed against the principal debtor and if the latter does not perform the promise, then only, he can proceed against the surety.
3. There must be consideration between creditors and the surety to make the contract enforceable.
4. The liability of the surety must be legally enforceable.

# RIGHTS AND LIABILITIES OF SURETY

1. **Rights of surety can be discussed under three sub-divisions, namely,**
   1. As against the Principal debtor
   2. As against the creditors and
   3. As against the co-sureties.

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

* 1. **Right of subrogation:** After paying the amount due to the creditor, the surety is subrogated to the right of the creditor, i.e., he has the same rights as those of the creditor and he can therefore, sue the principal debtor to exercise those rights.
  2. **Right of indemnity:** The surety is entitled to be indemnified against all payments properly made by him. The surety is entitled to receive only that amount which he had paid rightfully to the creditor (Sec. 145).
  3. **Right to be relieved earlier:** A surety can, even before making any payment, compel the debtor to relieve him from liability by paying off the debt, provided the liability is an ascertained and subsisting one.

# Right against the creditor

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

after the contract of guarantee was entered into [Sec. 141]. It is immaterial whether the surety was aware of such securities or not. He is entitled to all of them.

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

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

# Liabilities of a surety [Sec. 128]

Unless the contract provides otherwise, the liability of the surety is co-extensive with that of the principal debtor. In other words, the surety is liable for all those amounts, the principal debtor is liable for.

**Example: ‘A’** guarantees to ‘B’ the payment of a bill of exchange by ‘C’, the acceptor. The bill is dishonoured by ‘C’. ‘A’ is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

The liability of a surety is called as secondary or contingent, as his liability arises only on default by the principal debtor. But as soon as the principal debtor defaults, the liability of the surety begins and is co-extensive of the principal debtor, i.e., the surety will be liable for all those sums for which the principal debtor is liable. The creditor may file a suit against the surety without suing the principal debtor. Further, where the creditor holds securities from the principal debtor for his debt, the creditor need not first exhaust his remedies against the securities before suing the surety, unless the contract specifically so provides. The creditor is not bound to give notice of the default to the surety, unless it is expressly provided for.

# WHEN A SURETY IS DISCHARGED FROM LIABILITY

The liability of a surety under a contract of guarantee comes to an end under any one of the following circumstances:

* 1. **Notice of Revocation:** In case of a continuing guarantee, a notice by the surety to the creditor stating that he will not be responsible, will revoke his liability as regards all future transactions. He will remain liable for all transactions entered into prior to the date of the notice [Sec. 130]
  2. **Death of Surety:** In case of continuing guarantee the death of a surety discharges him from all liabilities as regards transactions, after his death unless there is a contract to the contrary [Sec. 131]
  3. **Variation of Contract:** Any variance, made without the surety’s consent in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance [Sec. 133]. **Example: ‘C’** contracts to lend Rs.10,000 on the 1st March. ‘A’ guarantees repayment ‘C’ pays Rs.10,000 to ‘B’ on the 1st January. ‘A’ is discharged from his liability, as the contract has been varied in as much as ‘C’ might sue ‘B’ for the money before 1st March.
  4. **Release or Discharge of Principal Debtor:** The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.[Sec 134]
  5. **Arrangement with Principal Debtor:** A contract between the creditor and the principal debtor, by which the creditor makes a composition with (or) promises to give time to or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract [Sec. 135].
  6. **By Creditor’s Act or Omission Impairing Surety’s Eventual Remedy [Sec.** 139]: If the creditor does any act which is his duty to the surety, and the eventual remedy of surety himself against the principal debtor is thereby impaired, the surety is discharged.
  7. **Loss of Security:** If the creditor loses or parts with any security given to him by the principal debtor at the time the contract to guarantee was entered into, the surety is discharged to the extent of the value of the security, unless the surety consented to the release of such security [Sec. 141].

# Difference between Indemnity and Guarantee

1. **Number of Parties:** There are two parties in a contract of indemnity i.e., indemnifier and indemnified, while in the case of a contract of guarantee, there are three parties, i.e., the principal debtor, the creditor and the surety.
2. **Contract in writing or oral:** Contract of indemnity need not be in writing but a contract of guarantee should by in writing.
3. **Number of contract:** In case of contracts of indemnity there is only one contract, i.e., a contract between the indemnifier and the indemnified while in the case of guarantee there are three contracts, i.e., one between principal debtor and the creditor and the second between the surety and the creditor, and the third one is between the principal debtor and the surety.
4. **Object:** The object of a contract of indemnity is to save the indemnity holder from a contingent risk while in a contract of guarantee the surety undertakes to discharge the liability of the principal debtor which is an existing one and is not contingent.
5. **Nature of liability:** In case of contract of indemnity, the liability of the indemnifier is primary while in the case of contract of guarantee, the liability of the surety is secondary, i.e., surety is liable only when the principal debtor commits a default.
6. **Right of indemnifier and surety:** In the case of contract of indemnity, the indemnifier after paying the indemnity, cannot sue the third party on whose conduct the loss was caused in his own name unless the right of the indemnity holder was assigned to him, while the surety after paying the creditor, can sue the principal debtor for the reimbursement in his own name.

# LESSON – 3.2 BAILMENT AND PLEDGES

**Definition of Bailment [Section 148]**

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

The person delivering the goods is called the “Bailor”. The person to whom they are delivered is called the “Bailee”. The transaction is called “Bailment”.

# Example

* 1. ‘P’ lends his book to ‘Q’
  2. ‘P’ delivers a pen to ‘Q’ for repair.
  3. ‘P’ gives ‘Q’ his watch as security for a loan.

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

# Requisites of a valid contract of Bailment

1. **Contract:** Bailment is the result of a contract between the owner of the goods and the other to whom they are delivered temporarily with condition that they shall be returned or disposed of according to the discretion of the person delivering them. Sometime the bailment arises from implied contract i.e., finder of goods.
2. **Delivery of goods:** The delivery of goods is made to convert the transaction into a contract of bailment. Sometimes, if the goods are already in possession of a person who agrees to hold them on behalf of the owner, a contract of bailment is thereby entered into although the goods were never delivered. In this case it is called constructive delivery. If the key of the gudown where the goods are lying given to the buyer, it will also amount to constructive delivery of goods

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

1. **Purpose:** The goods are delivered to another person for some specific purpose. The bailee will have to complete the purpose for which it is given to him before returning it to her bailor.
2. **Ownership:** In bailment the bailor continues to be the owner of the goods. Therefore bailment does not cause any charge of ownership.
3. **Movable goods:** Bailment is concerned with only movable goods. Money is not included in the category of movable goods i.e., a deposit of money is not bailment. The relationship between depositor and the bank is that of borrower and the lender.
4. **Possession:** A person already in possession of the goods becomes a bailee by subsequent agreements, express (or) implied.

**Different kinds of Bailment:** Bailment may by classified into

* 1. Voidable Bailment
  2. Gratuitous Bailment and
  3. Bailment for Reward.

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

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

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

1. The bailor may at any time ask the bailee to return the goods even though they might have been bailed for a specific time or purpose [Sec. 159].
2. The bailor must indemnify the gratuitous bailee,if the bailee is asked to return the goods before the expiry of the specified period or before the fulfilment of the purpose, for which the good were bailed provided the bailee in such a case suffers a loss greater than the benefit which he has derived from the gratuitous bailment for the goods (Sec. 159].
3. A gratuitous bailment is terminated by the death either of the bailee or of the bailor (Sec. 162].

**Bailment for Reward:** A bailment for reward is one where either the bailor or the bailee is entitled to remuneration.

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

# Bailment can also take the form of any one of the following:

* 1. Deposit
  2. Gratuitous
  3. Hire
  4. Pledge
  5. Carriage
  6. Given to complete a work

# DUTIES AND LIABILITIES OF THE BAILOR

**(1) Bailor’s Duty to Disclose Faults in Goods Bailed:** “The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which matrially interfere with the use of them, or expose the bailee to extraordinary risk, and if he does not make full disclosure, he is responsible for damages arising to the bailee directly from such faults [sesc. 150].

In case of bailment for reward (or) non-gratuitous bailment, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed”.

# Example:

1. ‘A’ lends a horse which he knows to be vicious, to’B’. He does not disclose the fact that the horse is vicious. The hors runs away. ‘B’ is thrown and injured. ‘A’ is responsible to ‘B’ for damages sustained.
2. ‘A’ hires a carriage of ‘B’. The carriage is unsafe, though ‘B’ is not aware of it, and ‘A’ is injured. ‘B’ is responsible to ‘A’ for the injury.
3. **To repay expenses to the bailee:** In case of gratuitous bailment all ordinary expenses are to be borne by the bailee while extraordinary expenses are to be borne by the bailor and if the bailee has incurred such expenses, the bailor must repay to the bailee all such expenses. On the otherhand, in the case of non-gratuitous bailment, the bailor must repay even the ordinary expenses incurred by the bailee [Sec. 158].
4. **To indemnify the bailee:** If the bailee has suffered any loss which arose from defective title of the bailor, the bailor has to compensate the bailee [Sec. 164]. **Example: ‘A’** gives B’s car to ‘C’ for use without B’s knowledge or permission.’B’ sues ‘C’ and receives compensation. ‘C’ is entitled to recover the losses from ‘A’.
5. In the case of non-gratuitous bailment, if the bailor demands back the goods bailed before the specified time or the f purpose for which they were bailed, he must indemnify the bailee for any loss which the bailee has suffered.

# Rights of the Bailor

* 1. To get back the goods after expiry of the time for which they were bailed (or) after the accomplishment of the purpose of bailment.
  2. To get back the goods from the goods from the bailee at any time if it is a gratuitous bailment. Even if the goods are bailed for a specific period, the bailee will have to be indemnified for any loss which might be more than the benefit he derived out of the gratuitous bailment and which he might suffer due to early termination of the contract of bailment [Sec. 159].
  3. To terminate the contract of bailment if the bailee is guilty of an act in respect of the bailed goods that is inconsistent with the terms of bailment.
  4. If the bailee has not been able to recover any compensation from the wrong doer of the goods bailed, the bailor shall be entitled to proportionate compensation according to the loss suffered by the bailor.
  5. The bailor may enforce the duties of the bailee.

# DUTIES AND LIABILITIES OF THE BAILEE

1. **Not to Make Unauthorised Use of Goods:** The bailee is responsible to the owner if he uses the goods bailed in a manner inconsistent with the conditions of the bailment and ask the bailee to return the goods [Sec.153].if the bailor has suffered any loss on account of any unauthorised use, the bailee must indemnify the bailor[Sec.160].
2. **To Return the Goods Bailed (Sec. 160]**: The bailee must return the goods bailed on the expiration of time or accomplish of the purpose for which the goods were bailed. The goods must be returned to the bailor or disposed of according to his direction. Moreover, the goods must be returned without any demand from the bailor.

***Example:*** ‘A’ hires a horse in Calcutta from ‘B’ to march to Benaras. ‘A’ rides with lot of care, but marches to cuttack instead. The horse accidentally falls and is injured. ‘B’ is liable to make compensation to ‘A’ for the injury to the horse.

1. **Indemnity:** If the bailee does not return the goods according to the terms of the bailment, the bailee must indemnify the bailor for any loss, destruction or deterioration of the goods from the date of expiry of the time for which the goods were bailed.
2. **To Take Reasonable Care of the Goods Bailed:** 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 [Sec. 151]. In spite of enough care, if the goods are destroyed or spoiled, in the absence of any special contract, the bailee is not liable for the loss [Sec. 152]. A liablee is liable for damages caused by negligence of the servants.
3. **To deliver any Accretion to the Goods Bailed:** In the absence of a contract to the contrary, the bailee must return to the bailor any addition or profit accruing from the goods [Sec. 163]. **Example: ‘X’** leaves a cow in the custody of ‘Y’ to be taken care of. The cow has a calf. ‘Y’ is bound to deliver the calf as well as the cow to ‘X’.
4. **Not to Mix Bailor’s Goods With his Own Goods [Sec. 155-157]:** The bailee must not mix his own goods with those of the without the consent of the bailor. If such mixed goods can be separated, the cost of separation will have to be borne by the bailee. If the goods so mixed cannot be separated, all the damages and the cost of the goods must be paid by the baliee. **Example: ‘D**’ bails superior flour worth Rs. 10,000 to ‘B’. without ‘D’s consent, ‘B’ mixes the flour with inferior quality flour of his own, worth only Rs. 2000. ‘B’ must compensate ‘D’ for the loss.
5. **To Compensate for Setting up of Adverse Title:** The bailee must not set up an adverse title to the goods of the bailor. If he does so, he must compensate for the same.

# Rights of the Bailee

Generally, the bailee can, by suit, enforce the duties of the bailor.

* 1. The bailor is entitiled to be rewarded if the goods were bailed to be worked upon by him [Sec. 148].
  2. The bailee has a right to be compensated if he has suffered any loss from the defect in the goods which the bailed and which he did not disclose [Sec. 150].
  3. The bailee has a right to be compensated if he as suffered any loss from the fact that the bailor was not entitled to ball the goods [Sec. 164].” If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to or according to directions of the bailor, the bailee is not responsible to the owner in respect of such delivery” [Sec 166].
  4. The bailee is entitled to recover reasonable expenses incurred by him in connection with the goods bailed.
  5. If the bailee is deprived of the goods bailed by a third person, he has a right to sue such a person to recover goods from him as if the goods belonged to him. If he has incurred any expense in such a case, he can recover the amount from the bailor.
  6. “If several joint-owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint-owner without the consent of all, in the absence of any agreement to the contrary” [Sec. 165].
  7. The bailee has a right to exercise lien. The right of a person to retain the property of another person till his satisfies the right of a person, who is in possession of the goods of another, to retain such possession until the debt due to him has been discharged. This right is sometimes called a ‘Possessory Lein’.

This lien may be of its who is in possession of the two types, namely

* + 1. Particular lien
    2. General lien

# PARTICULAR LIEN OR SPECIFIC LIEN

Particular lien means the right to retain particular goods until claims on account of those goods are paid.

**Example:** If ‘X’ gives a piece of cloth to ‘Y’, a tailor, for making a suit, and if ‘X’ does not pay the lawful charges to the tailor, the tailor has a right to refuse the delivery of the suit. Unlike general lien, the tailor has no right to retain any other items of cloth of ‘X’ other than the suit, for the pending charges from ‘X’.

## The right of ‘Particular lien’ can be exercised by the bailee under the following circumstances only.

1. The particular lien is available only if the service rendered by the bailee is one involving the “exercise of labour and” in respect of the goods bailed. There is no lien for custody charges or other charges for work not involving labour or skill.
2. The right of lien cannot be exercised until the services have been performed in full. When a bailee has done only a part of the work contracted for, he cannot claim lien for part payment.
3. The lien cannot be claimed if there is an agreement to pay the money on a future date.
4. The lien can be exercised only so long as the goods are in the possession of the bailee. If possession is lost for is also lost for any reason, the lien is also lost.

# Persons entitled to exercise particular lien

* 1. The bailee (Sec. 170), e.g., a carrier, mechanic , repaiers, tailors, watch-makers, etc.
  2. Unpaid seller of goods under Sec. 47 of the Sale of Goods Act.
  3. Agents in respect of their claims against their principals under sic. 221 of Indian Contract Act.
  4. A partner of a firm, under Sections 46 and 52 of the Partnership Act.
  5. Finder of the goods, uner Sec. 168 of the Indian Contract Act.
  6. Pawnee and pledgee under Sec. 173 of the Indian Contract Act.

# GENERAL LIEN

The ‘general lien’ is a right to retain the goods belonging to another, not only for the discharge of a debt or liability incurred in connection with those goods but also for a general balance of account between the owner and the person detaining the goods. Bankers, factors, harbingers, attorneys of the High Courts, policy-brokers may, in the absence of a contract to the contrary, exercise the general lien and retain as a security for a general balance of account any goods bailed to them but no other person has a right to retain as a security for such balance, goods bailed to them, unless there is an express contract to that effect [Sec. 170].

# FINDER OF GOODS

Rights and Responsibilities of a person who finds the goods belonging to another and takes them into his custody

# Responsibility (or) Duties

* + 1. If the finder of goods takes the goods that he has found into the custody he must try to find out the owner of the goods and incur necessary expenses.
    2. He must take as much care of the goods found as he would have taken care of his own goods of the same bulk, quality and value till he finds the owner. He is considered to be the bailee though no formal contract has been entered into between him and the owner.
    3. He must incur expenses to preserve the goods, e.g., if he finds a cow, he must properly feed it to keep it alive.
    4. If there is an accrual to the goods found, he must return it to the true owner.

# Rights of a Finder of Goods

* + - 1. He can retain the goods till his lawful charges in finding the owner and preserving it are paid to him by the owner.
      2. If the owner of the lost goods had announced a reward the finder can sue the owner for the reward and he can exercise the right of lien on the goods till the announced reward is paid to him
      3. The finder of the goods may sell them.
         1. If the owner of the goods cannot be found after reasonable efforts; or
         2. If the owner refuses to pay the lawful charges
         3. If the goods are in danger of perishing or losing the greater part of their value and
         4. His lawful charges amount to two-third of the value of the goods.

# TERMINATION OF BAILMENT

## A contract of bailment terminates under the following circumstance:

1. **Expiry of time:** if the bailment’s is for a stipulated period, the bailment terminates as soon as the stipulated period expires.
2. **Fulfilment of purpose:** If the bailment is for a specific purpose, the bailment terminates as soon as the purpose is fulfilled.
3. **Act Inconsistent with the Terms:** If the bailee does any act, with regard to the goods bailed, which is inconsistent with the terms of the bailment, the bailment terminates [Sec. 153].
4. **Goods lent Gratuitously:** A gratuitous bailment can be terminated anytime. But if premature termination causes any loss to the bailee the bailor must compensate the loss.
5. **Death:** A gratuitous bailment terminates upon the death of either the bailor or the bailee.

# CONTRACT OF PLEDGE OR PAWN

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

# Essentials of a valid Pledge

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

# Rights of Pledgee or Pawnee

1. **Right of Retainer:** “The pawnee can retain the goods pledged not only for payment of the debt or the performance of the promise, but also for the interset of the debt and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged” [Sec. 173]. The pawnee enjoys only particular lien. If the pawnee makes fresh advances to the same debtor it will be presumed that the debtor has agreed to create lien on the goods already pledged for the fresh advance [Sec. 174].
2. **Rights to sell:** The pawnee may sell the goods by giving reasonable notice to the pawnor if the principal debt and the interest is not paid to him even if the pawnor’s title to the goods was defective. If the sale results in deficit, he can recover the remaining amount by filing a suit against the pawnor.
3. **Rights to Sue the Pawnor:** If the pawnor does not repay the debt or perform the promise after the expiry of the period, he may sue the pawnor for the same without losing his right of lien or the right to sell the goods pledged.

# Rights of Pledgor or Pawnor

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

statutes enacted for the protection of debtors e.g., Money Lender’s Acts.

# When Can a Non-owner make a Valid Pledge?

The owner of goods can always make a valid pledge. In the following cases, one who is not an owner can make a valid pledge.

1. **Mercantile Agent [Sec. 178]:** A mercantile agent who is in possession of goods, with the consent of the owner, can make a valid pledge provided the pawnee acts in good faith and has not noticed at the time of the plede that the pawnor has no authority to pledge.
2. **Person in possession of goods under voidable contract:** When a person has obtained possession of goods under voidable contract, he can make a valid pledge before the contract has been revoked provided the pawnee acts in good faith and without any notice of any defect in the title of the pawnor.
3. **Pawnor with a Limited Interest [Sec. 179]:** A person who has only limited interest in the goods can make a valid pledge to the extent of that interest.
4. **Possession with Co-owner:** If one of several co-owners is in sole possession of the goods with the consent of the other owners. He can make a valid pledge of the goods [Sec. 28 of Sale of Goods Act]
5. **Seller in Possession of Goods after Sale:** A seller in possession of the goods after the sale, and the buyer to whom the possession had been delivered before payment of the price, may make a valid pledge, provided the pawnee acted in good faith and had no prior notice of this effect. [Sec. 30(1)of Sale of Goods Act]

# DISTINCTION BETWEEN PLEDGE AND BAILMENT

* 1. In case of Pledge something is delivered to the pledge as security against a loan or for the performance of the promise, whereas, in the case of bailment, the goods are delivered to the bailee for some purpose, say, for safe custody or use or conversion of goods into another form, etc.
  2. In case of pledge the same goods are to be returned to the pawnor after payment of the debt with interest, whereas, in the case of bailment, the identical goods may or may not be returned to the bailor (e.g.) Piece of cloth given to the bailee may be returned to the bailor as a suit.
  3. In case of pledge, the pawnee does not become the owner but has a right of possession, whereas, in the case of bailment the bailee has no right in respect of the things bailed and he holds those things for some purpose.

# QUESTIONS

1. Define a contract of indemnity. Distinguish between a contract of guarantee and a contract of indemnity. 2. Discuss the nature and extent of the liability of a surety.

1. State the law relating to continuing guarantee.
2. What are the rights of a surety against the principal debtor and against the co sureties.
3. When is a surety discharged from liability?
4. What are the rights of the indemnity holder?
5. Define bailment. State the degree of care to be taken by a bailee.
6. What is a pledge? What are the rights of a pledgee?
7. Can a person other than the true owner make a valid pledge of goods?
8. Explain the rights and duties of the bailor and the bailee.
9. State the rights and duties of a finder of goods.
10. Explain the differences between pledge and bailment.

# UNIT –IV AGENCY AND LAW OF SALE OF GOODS

**Lesson - 4.1** Contract of Agency

**Lesson - 4.2** Law of Sale of Goods

# LESSON - 4.1 CONTRACT OF AGENCY

**Definition of an Agent (Sec. 182)**

An agent is defined by the Act as “a person employed to do any act for another or to represent another in dealings with a third person. In other words, an agent is a person who acts in place of another. The person for whom or on whose behalf he acts is called ‘Principal’. For example, ‘X’ appoints ‘Y’ a broker to sell his house on his behalf. ‘X’ is the principal and ‘Y’ is his agent. The relationship between ‘X’ and ‘Y’ is called Agency.

The functioning of an agent is to bring about contractual relations between the principal and third parties. Thus, an agent is merely a connecting link between the Principal and the third party. Acts of the agent within the scope of the instructions by the principal bind the principal as if he has done them by himself. In simple words, the act of an agent is the act of the Principal.

Any person who is of the age of majority according to the law to which he is subject to, and who is of sound mind, may employ an agent (Sec. 183).

According to Sec. 184 “as between the Principal and the third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his Principal according to the provisions in that behalf”.

# Creation of Agency:

A contract of Agency may be created by

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

1. **Express Agency:** A person may be appointed as an agent, either by word of mouth or by writing. No particular form is required for appointing an agent. The usual form of a written contract of agency is the power of attorney on a stamped paper.
2. **Implied Agency:** Implied agency arises from the conduct, situation or relationships of parties. Implied agency therefore includes agency by estoppels, agency by holding out, and agency of necessity.
   1. ***Agency by Estoppel***: When a person has by his conduct or induced others to believe that a certain person is his agent, he is stopped from subsequently, denying it. Example: ‘P’ allows ‘A’ telling ‘C’ that ‘A’ is ‘P’s agent. Lat on, ‘C’ supplies certain goods to ‘A’ thinking him to be ‘P’s agent. ‘P’ shall be held liable to pay the price to ‘C’.
   2. ***Agency by Holding out***: Though it is an extension of Agency by estoppels, some affirmative conduct by the principal is necessary in creation of agency by holding out. Example: ‘P’ allows his servant ‘A’ to buy goods for him on credit from ‘C’; and pays for them regularly. On one occasion, ‘P’ pays his servant cash to purchase the goods. The servant purchased goods on credit pocketing the money ‘C’ can recover the price from ‘P’ since through previous dealings ‘P’ has held out his servant ‘A’ as his agent.
   3. ***Agency of Necessity***: This arises where there is no express or implied appointment of person as agent for another but he is forced to act on behalf of a particular person. Example: A horse was sent by rail and at the destination it was not taken delivery of by the owners. The station master had to feed the horse. Held, station master became the agent by necessity and hence, the owner must compensate him.
3. **Agency by Ratification (Sec. 196-200):** Where an agent does an act for his Principal but without knowledge of authority, the principal is not held bound by the transaction. However, Sec. 196 permits the principal, if he so desires, to ratify the act of the agent. If he so elects, it will have the same effect as if the act was originally done by this authority. Agency in such a case is said to be created by ratification. In other words, the agency is taken to have come into existence from the moment the agent first acted

and not from the date of Principal’s ratification. ***Example:*** The case of Bolten Partners

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

# The following are the requisites of a valid ratification:

* 1. The agent must contract in the capacity of agent and not as principal
  2. The Principal must have been in existence at the time the agent originally acted. He must have contractual capacity both at the time of the contract as well as at the time of ratification.
  3. Ratification may be made within a reasonable time. what is reasonable time shall vary from case to case.
  4. The act to be ratified must be a lawful one.
  5. According to Sec. 198 of the Act, “No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. “So, the principal should have full knowledge of the facts.
  6. Ratification cannot be made for a portion of the contract. The principal cannot reject the discomforts and accept only comforts.
  7. Ratification of acts not within the Principal’s authority is ineffective. For example: Acts of directors which are ultravires the powers of the company cannot be ratified.
  8. Ratification if it results in, loss to a third party or terminating any right of interest of a third person is not valid (Sec. 200). Example: ‘A’ holds a lease from ‘B’ which can be cancelled on three months’ notice. ‘C’, an unauthorised person, gives notice of termination to ‘A’. The notice cannot be ratified by ‘B’ which will cause a great loss to ‘A’.

# DUTIES OF AGENT

The duties of an agent towards his Principal are

**1.** To run the business of agency as per the directions of the principal (Sec. 211): The duty of the agent must be not to deviate from the directions of the Principal even for the principal’s benefit. If he resorts to any deviation, any loss occurred shall have to be borne by the agent, whereas, any surplus must be accounted for to the Principal. ***Example:*** Lilley V. Douleday (1881) ‘A’ was directed by his Principal to store the goods in a particular warehouse. ‘A’ stored a portion of the goods in a different place, equally good but cheaper. Those goods were destroyed by fire. Held, the agent was liable to make good the loss.

**2.** In the absence of instructions from the Principal, the agent should follow the customs of the business in the place where it is conducted (Sec. 214). ***Example: ‘***A’ an agent engaged in carrying on for ‘B’ a business in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. ‘A’ must make good to ‘B’ the interest usually gained by such investment.

1. The agent should run the business with the skill and diligence that is generally possessed by persons engaged in similar business, except where the principal knows that the agent is lacking in skill (Sec. 212). ***Example:*** Where a lawyer proceeds under a wrong Section and thereby the case is lost, he shall be liable for the loss.
   1. ***To render Proper accounts (Sec. 213):*** Rendering accounts does not mean the showing of accounts but of the accounts supported by vouchers. If the agent fails to keep proper account of the principal’s business, the agent is personally liable for the default.
   2. ***In cases of difficulty to communicate with the Principal (Sec. 214):*** It is the duty of the agent, in case of difficulty, to use all reasonable tactfulness, in communicating with his principal, and in seeking to obtain his instructions. In case of emergency, the agent can do all that a reasonable man would do under similar circumstances with regard to his own goods.
   3. ***Not to make any secret profits***: An agent, except the lawful deductions towards his remuneration and expenses should deliver to the principal, all moneys including secret commissions received by him.
   4. ***Not to deal on his own account***: An agent shall not deal on his own account without obtaining consent of his Principal. If he acts without the consent, the principal can claim from the agent any benefit which the agent has received. ***Example:*** ‘P’ directs ‘A’ his agent, to buy a particular house for him. ‘A’ tells ‘P’ it cannot be bought, and buys the house for himself. ‘P’ may, on discovering that ‘A’ as bought the house, compel him to sell it to ‘P’ at the price he bought.
2. Agent not entitled to remuneration for business misconduct: An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which has misconduct. (Sec.220).
3. An agent should not disclose confidential information supplied to him by the principal.
4. When an agency is terminated by the death or insanity of the principal, the agent is bound to act on behalf of the representatives of the late principal, and take all reasonable steps for the protection and preservation of the interest contrasted to him (Sec. 209).

# RIGHTS OF AN AGENT

1. **Right to Receive Remuneration (Sec. 219 - 220):** An agent is entitled to his agreed commission or remuneration and if there is no agreement, to a reasonable remuneration.
2. **Right of Retention (Sec. 217):** In agent may retain, out of any sums received, or account of the Principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as an agent.
3. **Right of Lien (Sec. 221);** An agent is entitled to retain goods, papers and other

.property, whether movable or immovable of the principal received by him, until the due amount towards commission, remuneration etc. has been paid by the Principal.

1. **Right of Stoppage in Transit:** This right is available to the agent in the following cases:
   1. Where he has purchased goods on behalf of the principal either with his own funds, or by incurring a personal liability for the price, he stands towards the principal in the position of an unpaid seller. Like an unpaid seller, he enjoys the right of stopping the goods in transit if in the meantime the principal has become insolvent.
   2. Where an agent holds himself liable to his principal for the price of the goods sold; for example, delcredere agent; he may exercise the unpaid seller’s right of stopping the goods in transit in case of buyer’s insolvency.
2. **Right of Indemnification (Sec. 222-224):** The principal is bound to indemnify the agent against consequences of all lawful acts done by the agent in exercise of authority conferred upon him. However, the agent cannot claim indemnification for an unlawful act, even though the principal had agreed to do so.
3. **Right to Compensation for Injury Caused by Principal’s Negligence (Sec.225):** The principal must make compensation to his agent in respect of injury caused to such agent by the principal’s neglect or want of skill. **Example: ‘A’** employs ‘B’ as a bricklayer in building a house and he failed to provide enough support systems and safety measures. Consequently ‘B’ met with an accident ‘A’ must make compensation to ‘B’.

# SCOPE OF AGENT’S AUTHORITY

**Express and Implied Authority:** The authority of an agent may be express or implied [Sec. 1861. The authority is said to be express when it is given by words or written. The authority is said to be implied when it is to be inferred from the circumstances of the case. The inference as to implied authority may be drawn from things spoken or written or ordinary course of dealing between the parties and others. (Sec. 187]. ***Example:* ‘A’** owns a shop in Serampur, himself living in Calcutta and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from ‘C’ in the name of ‘A’ for the purposes of the shop, and of paying for them out of A’s funds with A’s knowledge. ‘B’ has an implied authority from ‘A’ to order goods from ‘C’ in the name of ‘A’ for the purposes of the shop.

# Extent of agent’s authority (scope)

An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act (Sec. 188).

**Authority in an emergency:** An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances” [Sec. 189]. ***Examples:***

* 1. An agent for sale may have goods repaired if it is necessary.
  2. ‘A’ consigns provisions to ‘B’ at Calcutta with directions to send them immediately to ‘C’ at Cuttak. ‘B’ may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without any damages.

# Consequences of Agent Exceeding his Authority

1. **When the authority is separable:** “When an agent does more than he is authorized to do, and when the part of what he does which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does is within his authority, is binding as between him and his principal”. (Sec. 227). ***Example:* ‘A’** being owner of a ship and cargo, authorises ‘B’ to procure insurance for Rs. 4,000 on the ship. ‘B’ procures a policy for 4000 rupees on the ship, and another for the like sum on the cargo. ‘A’ is bound to pay the premium for the policy on the ship, but not the premium on the cargo.
2. **When the authority cannot be separated:** “When an agent does more than he is authorised to do and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction” [Sec. 228]. ***Example:* ‘A’** authorises ‘B’ to buy 500 sheep for him. ‘B’ buys 500 sheep and 300 cows for a fixed sum of Rs. 1,00,000. ‘A’ may repudiate the whole transaction.

# The principal is bound for the unauthorised acts of the agent during the following situations:

* 1. Where by the rule of estoppels the principal is prohibited from denying the authority of the agent.
  2. Where an agency gets terminated, but notice of termination has not been received by the other party.

# DUTIES AND RIGHTS OF THE PRINCIPAL

**Principal’s Duties to Agent:** The rights of an agent are in fact the duties of the principal.

Thus a Principal is

1. bound to indemnify the agent against the consequences of all the lawful acts done by such agent in exercise of the authority conferred upon him (Sec. 222).
2. Liable to indemnify an agent against the consequences of an act done in good faith, though it causes an injury to the rights of third persons. (Sec. 223).
3. not liable for acts which are criminal in nature though done by the agent at the instance of the principal. (Sec. 224).
4. to make compensation to his agent in respect of injury caused to such agent by the

Principal’s neglect or for want of skill (Sec. 225).

# Principal’s Liability to Third Persons:

* 1. An agent being a mere link binds the principal for his acts done within the scope of his authority.
  2. The principal is liable for the agent’s acts which fall not only within the actual authority but also within the scope of his apparent authority.
  3. Where an agent exceeds his authority and the part of what he does which is within his authority, the principal is liable to the third parties.
  4. Misrepresentations by Agent. The Principal is liable for misrepresentations made or frauds committed, by an agent in the business of agency for his own benefit. But, misrepresentations made or frauds committed, by agents in matters beyond their authority, do not affect their principals. (Sec. 238).
  5. The principal is bound by any notice or information given to the agent in the course of business transacted by him.
  6. The liability of the principal continues even in cases where agent is personally held liable. Sec. 233 provides an option to the third parties to either sue the principal or agent or both.

**Agency coupled with interest:** Agency is said to be coupled with interest when authority is given for the purpose of securing some benefit to the agent. In other words, where the agent has himself an interest in subject matter of the agency, the agency is one coupled with interest. ***Example:*** Where an agent is appointed to sell properties of the principal and to pay himself out of such sale proceeds, the debt due to the agent.

# CLASSIFICATION OF AGENTS

Agents are classified as follows: One way of classifying the agents is:

* + 1. General
    2. Specific (or) Special.

A general agent is one who is appointed to represent the principal in all matters concerning a particular business e.g. manager of a firm or managing director of a company.

A special agent is a person appointed to do some particular act or enter into some particular contract. A special agent, therefore, has only a limited authority to do the specified act. If he does anything beyond the specified act, he runs the risk of being held personally liable since the principal may not ratify the same. According to another view point, agents may be classified as;

1. Mercantile agents and
2. Non-mercantile agents.

# Mercantile or commercial agents

A mercantile or commercial agent may assume any of the following forms.

1. **Broker:** A broker is a mercantile agent engaged to buy and, or sell property or to make bargains and contracts between the engager and a third party for a commission (called brokerage). He cannot have the possession of goods. He is merely a connecting link between the person who engages him and a third party.
2. **Factor:** A factor is a mercantile agent who is entrusted with the possession of goods with an authority to sell the same. He can even sell the goods on credit and in his own name. He is also authorised to raise money on their security. A factor has a general lien on the goods in his possession. A factor cannot delegate his authority.
3. **Commission agent:** A commission agent is an agent who is engaged to buy and sell goods or transact business. The remuneration that he gets for the purpose is called the commission. A commission agent is not liable in case the third party fails to carry out the agreed obligation. A commission agent may have possession of the goods or not. His lien is a particular lien.
4. **Del Credere Agent:** Del Credere Agent is one who, in consideration of an extra commission, called a delcredere commission, guarantees the performance of the contract by the other party. A delcredere agent occupies the position of a guarantor, as well as of an agent. A delcredere agent is mostly appointed in case of deals with foreign nationals, about whom the principal knows nothing.
5. **Auctioneer**: An auctioneer is one who is authorised to sell goods of his principal by auction. He has a particular lien on the goods for his remuneration. He has the goods in his possession and can sue the buyer in his own name for the purchase price up to the moment of sale. He acts as an agent for the seller. After the sale he acts as an agent for the buyer. An auctioneer has an implied authority to sell the goods without any restriction.
6. **Banker:** Though the relationship between a banker and customer is ordinarily that of debtor and creditor, he acts as his agent when he buys and sells securities on his behalf. Likewise, when he collects cheques, bills, interest dividends etc. or when he pays insurance premium out of customer’s account as per customer’s request, he acts as his agent.
7. **Indentor:** An indentor is a commission agent, who, for a commission procures a sale, or, a purchase on behalf of his principal, with a merchant in a foreign country. According to a custom judicially recognised in Bombay. Such agent can charge commission at the rates mentioned in the indent.

# Non-mercantile agents

**Wife as the agent:** If the wife and husband are living together and the wife is looking after necessaries, she is an agent. But in certain cases the husband may escape liability if he can prove that

* 1. He had expressly forbidden his wife from purchasing anything on credit or from borrowing money.
  2. He had given sufficient money to his wife for Purchasing necessaries: and
  3. The goods purchased were not necessaries.
  4. The trader had been expressly told not to give credit to his wife.

Where the wife lives apart from the husband, through no fault of hers, the husband is liable to provide for her maintenance. If he does not provide for her maintenance, she has an implied authority to bind the husband for necessaries. But if the wife lives apart under no justifiable circumstances, she is not her husband’s agent and him for necessaries.

Besides, estate agents, advocates, Attorneys etc., are other instances of non- commercial agents.

**Sub-Agents and Substituted Agents (Sec. 190-195):** The general rule is that an agent cannot appoint an agent. Sec. 190 of contract act deals with circumstances as to when and how far an agent can delegate his duties.

**Sub-Agent:** Sec**.** 191 of the act states that a sub-agent is a person employed by, and acting under the control of the original agent in the business of agency. There is no privacy of contract between the sub-agent and the principal. So, the sub-agent, cannot sue the principal for remuneration and similarly, the principal cannot sue the sub-agent for any moneys due from him.

**Substituted Agent**: Where an agent appoints another person for being appointed as an agent in his place, such person is called as a substituted agent. According to Sec. 194 of the Act, “Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency has named another person accordingly, such person is not a sub-agent but an agent of the principal for such part of the business of the agency as is entrusted to him”.

# TERMINATION OF AGENCY

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

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

Where an agency is for a fixed period of time, and the contract of agency is revoked without sufficient cause, compensation must be paid to the agent. The agency is revocable in the following cases:

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

1. **On the Expiry of Fixed Period of Time:** When the agency is for a fixed period of time, it comes to an end on the expiry of that time.
2. **On the Performance of the Specific Purpose:** where an agent is appointed to do a particular act, it terminates when that act is done or when the performance becomes impossible.
3. **Insanity or Death of the Principal or Agent:** Death or insanity of the principal or the agent terminates the agency. But, an agent in such a case, should take all reasonable steps for the preservation of property on behalf of the legal representatives of the principal.
4. An Agency shall also terminate in Case Subject-matter is either Destroyed or becomes Unlawful**.**
5. If the Principal Becomes Insolvent the Agency Get Terminated.
6. **By Renunciation of Agency by the Agent:** If Principal can cause termination of agency by revocation, an agent may renounce his agency by giving a sufficient notice

to that effect. Where an agency is fixed for a particular period and the agency is renounced without a sufficient notice, and cause, the principal must be compensated. (Sec. 205).

# When termination of agency takes effect:

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

**Undisclosed Principal:** Where an agent, though discloses the fact that he is an agent working for some principal, conceals the name of the principal, such a principal is called an undisclosed principal.

**Concealed principal:** Where an agent not only conceals the name of the principal, but the very fact that there is a principal, the principal is called as a concealed principal.

# UNIT- V

**Unit Structure**

**Lesson 5.1** Law of Sale of Goods

**Lesson 5.2** Negotiable Instruments Act

**Lesson 5.3** Classification of Negotiable Instruments **Lesson 5.4** Parties to a Negotiable Instrument **Lesson 5.5** Endorsement

**LESSON - 5.1 LAW OF SALE OF GOODS**

# LAW OF SALE OF GOODS - DEFINITIONS

The law relating to the sale of movable goods is contained in the sale of Goods Act, 1930. The Act came into force on 1st July, 1930. It clearly follows the English Act on the subject. Unless otherwise mentioned the sections mentioned in this chapter pertain to Sale of goods Act, 1930.

# Buyer, Seller and Goods

**Buyer [Sec. 2(1)]:** Buyer means a person who buys or agrees tp buy goods.

**Seller [Sec. 2(13)]:** Seller means a person who sells or agrees to sell goods.

**Goods [Sec. 2(7)]:** The term ‘goods’ includes every kind of movable property except

* 1. Actionable claims, and
  2. Money.

An actionable claim means a debt or a claim for money on which a person may have against another and which he may recover by suit. And money means legal tender money.

These two types of movable property are not included in the definition of the term goods as unused in the sale of goods Act.

Movable articles like furniture, clothing etc and shares, debentures are goods. Things attached to the earth are not movable. But growing crops and grass, which can easily be separated from earth before sale, and fruits which can be severed from trees, are included with the definition of ‘Goods’.

The goods are classified into three types, namely:

1. Existing goods
2. Future goods and
3. Contingent goods.
4. **Existing Goods:** Existing goods are goods which are already in existence and which are physically present in some person’s possession and ownership [Sec. 6(1)] Existing goods may be either,
   1. specific and ascertained, or
   2. generic or unascertained
5. Specific goods are goods which can be clearly defined and recognised as separate things e.g. a particular picture by a painter; or a ring with distinctive features.
6. Generic goods are goods indicated by description and not separately identified. If a merchant agrees to supply one bag of wheat from his godown to a buyer, it is a sale of unascertained goods because it is not known which bag will be delivered. As soon as a particular bag is separated out and marked and identified for delivery, it becomes specific goods.
7. **Future goods:** Future goods are goods which will be manufactured as produced as required by the seller after the making of the contract of sale Sec. 2(6). ***Example;* P** agrees to sell to Q all the mangoes which will be produced in his garden next year. This is an agreement for the sale of future goods.

**C. Contingent goods:** There may be a contract for the sale of goods and the acquisition of which by the seller depends upon a *contingency* which may or may not happen [Sec. 6(2)]. In such cases the goods sold are called contingent goods. ***Example: ‘X’*** agrees to sell to ‘Y’ a ring provided he is able to purchase it from ‘Z’. This is an agreement for the sale of contingent goods.

**Definition and Essentials of Contract of Sale (Sec. 4):** ”A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price”.