MAR GREGORIOS COLLEGE OF ARTS & SCIENCE

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DEPARTMENT OF COMMERCE (CORPORATE SECRETARYSHIP)

SUBJECT NAME: COMMERCIAL LAW

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PREPARED BY: PROF.SHILPA S NAIR

CORE PAPER XII – COMMERCIAL LAW

UNIT I

Meaning of Law – Sources of Law – Classification of Contract – Express & Implied – Valid, Void & Voidable Contracts – Executed &Executory Contracts – Unilateral & Bilateral Contracts.

UNIT II

Structure and Formation of Contract – Essential Elements of Contracts – Consensus-ad – idem – Offer – Acceptance – Lawful Consideration- Capacity of parties – Free Consent – Mistake – Misrepresentation – Fraud – Coercion – Undue influence – Lawful Objects – Discharge of Contracts – Remedies for Breach of Contracts.

UNIT III

Contract of Indemnity & Guarantee – Essential Difference between Contract of Indemnity & Contract of Guarantee – Revocations of Continuing Guarantee – Surety's Liability – Rights of Surety – Discharge of Surety from Liability – Bailment – Pledge.

UNIT IV

Contract of Agency – Essentials – creation of agency – Kinds of Agents – Agent Authority – Duties and Rights of Principal – Agent when personally liable – Delegations of Authority – Sub-Agent – Substituted Agent – Termination of Agency – Irrevocable Agency

UNIT V

Law of Sale of Goods – Definition – Sale and Agreement to Sell – Sale and HirePurchase – Conditions & Warranties – Duties & Rights of Buyer & Seller – Right of Unpaid Seller – Auction Sale

REFERENCE BOOKS:

1. N.D.Kapoor – Mercantile Law

2.Avatar Singh - Mercantile Law

3.M.C.Shukla – Mercantile Law

Part	**Total Questions**	**Questions to be Answered**	**Marks per Question**	**Total Marks**
A (50 words)	**12**	**10**	**2**	**20**
B (200 words)	**7**	**5**	**5**	**25**
C (500 words)	**3**	**5**	**10**	**30**
Maximum Marks for End Semester External Examination				**75**

UNIT 1

Commercial law, also known as **mercantile law** or trade **law**, is the body of **law** that applies to the rights, relations, and conduct of persons and business engaged in commerce, merchandising, trade, and sales. It is often considered to be a branch of civil **law** and deals with issues of both private **law** and public **law**.

the Commercial law groups together laws that are considered important for men in business and includes laws relating to various contracts, partnerships, companies, negotiable instruments, insurance, carriage of goods, arbitration, etc. The law of contract is the most important part of commercial law in India. It determines the circumstances in which the promise!, made by the parties to a contract shall be binding on them and provides for the remedies available against a person who fails to perform his promise. The law of contract is contained in the I Indian Contract Act, 1872, which deals with the general principles of law -r governing all contracts 'and covers the special provisions relating to contracts like bailment, pledge, indemnity, guarantee and agency.

Sources of Mercantile Law

Law Merchant: Law merchant is the main source of Mercantile law. It refers to those customs and rules that apply to traders and businessmen on their dealings and tradings with each other.

Statute Law: Statute law is that law that has been created by the legislation. A statute is a formal act of the legislature in written form. It has also become an important source of Mercantile law.

The Principle of Equity: The principle of equity refers to a set of rules, which neither originated from customs nor statutory law. Thus, equity rules were formed on the basis of dictates of conscience which had been decided in the courts of chancery.

Common Law: Common law consists of a body of rules, which have been defined by customs, judicial decisions and old scholarly works in the law. It is the unwritten law of English which applies to everyone in the country. Common law, in this case, refers to the principles of law that have been evolved by judges through their case judgments.

Sources of Indian Mercantile Law

The sources of Indian Mercantile Law constitute of the following:

English Mercantile Law

The Indian mercantile law is heavily based on the English one. Although, necessary changes made to suit the context of Indian conditions, local customs, and rules.

It is very dependent on English mercantile Law, as even now, in the absence of laws relating to any matter in the Indian law, the courts use English law to make their decisions.

Acts enacted by Indian Legislation

The major acts that have been enacted by the Indian legislation which are related to mercantile law are:

Indian Contract Act(1872), Sale of Goods Act(1930), Indian Partnership Act(1932), Negotiable Instruments Act(1881), The Arbitration and Conciliation Act(1996), The Insurance Act(1938), The Carriers Act(1865), The Presidency Town Insolvency Acts(1909) and Provincial Insolvency Act (1920)

Judicial Decisions

In terms of business law, judicial decisions or precedents are past decisions of the court that are used to solve cases with similar characteristics, where there is a conflict of interest and no clear judgment can be made.

Thus, judicial decisions or precedents often become new rules or laws. The judicial decisions are universally considered as a source of law.

Customs and Trade Usages

A very large part of Indian Law has finally been codified. However, many Indian statutes make special provisions. Thus, the effect of rules laid down in a particular act is conditional to any special custom or usage of trade.

Contract

Broadly speaking, a contract is an agreement between two or more persons to do or to abstain from doing a particular act. A contract invariably creates a legal obligation between the parties by which certain rights are given to one party and a corresponding duty.is imposed on the other party. A contract has been defined by different authorities in various ways. Some of the important definitions are as follows:

- *A contract* is an agreement, creating and defining the obligation between parties. -Salmond
- *A contract* is an agreement enforceable at law made between two or more persons by which rights are acquired by one or more to acts or forbearances on the part of others. -Sir William Anson
- Every agreement and promise enforceable at law is a contract -Sir Fredrick Pollock

Agreement

Section 2(e) of the Contract Act defines *agreement* as every promise 'and every set of promises forming the consideration for each other. in other words, an agreement consists of an offer by one party and its acceptance by the other. Thus, Agreement = Offer + Acceptance.

Difference between Contract and Agreement

Agreement	Contract
Offer and its acceptance constitute an agreement	Agreement and its enforceability . constitute a contract
An agreement may not create a a legal obligation	A contract necessarily creates a legal obligation.
Every agreement may not be a contract.	All contracts are agreements
Agreement is not a concluded or a binding contract	Contract is concluded and binding on the on the concerned parties

Classification of contract

Contracts can be classified on a number of bases. They are:

1) On the basis of creation

2) On the basis of execution

3) On the basis of enforceability.

On the Basis of Creation

A contract may be (i) made in writing or by word of mouth or (ii) inferred from the conduct of the parties or circumstances of the case. The first category of contract is termed as 'express contract' and the second as 'implied contract' '

Express Contract: An express contract is one where the terms are clearly stated in words, spoken or written. For example, A wrote a letter to B stating "1 offer to sell my car for Rs. 30,000 to you ", B accepts the offer by letter sent to A. This is an express contract. Similarly, when A asks a scooter mechanic to repair his scooter and the mechanic agrees, it is an express contract made orally by spoken words.

Implied Contract*:* A contract may be created by the conduct or acts of parties (and not by their words spoken or written). It may result from a continuing course of conduct of the parties. For example, where a coolie in uniform carries the luggage of A to be carried out of railway station without being asked by A to do so and A allows it, the law implies that A has agreed to pay for the services of the coolie. This is a case of an implied contract between A and the coolie. Similarly, when A boards a D.T.C bus, an implied contract comes into being. A is bound to pay the prescribed fare.

On the Basis of Execution its classified into s (i) executed contracts, and (ii) executory contracts.

Executed Contracts: It is a contract where both the parties have fulfilled their 1 respective obligations under the contract. For example, A agrees to sell his book to B for Rs. 30. A delivers the book to B and B pays Rs. 30 to A. It is an executed contract.

Executory Contracts: It is a contract where both the parties to the contract have still to perform their respective obligations. For example, A agrees to sell a book to B for Rs. 30. If the book has not been delivered by A and B has not paid the price.the contract is executory.

On the Basis of Enforceability

its classified as (i) valid, (ii) void, (iii) voidable, (iv) illegal or (v) unenforceable

Valid Contract: A contract which satisfies all the conditions prescribed by law is a valid contract. (These conditions are discussed in Section 1.8.) If one or more of these elements is/are missing, the contract is either void, voidable, illegal or unenforceable.

Void Contract: According to Section 2 0) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. It is a contract without any legal effects and is a nullity. A contract may become void due to impossibility of performance, change of law or some other reasons.

Voidable Contract: According to Section 2(i) of the Contract Act, An agreement which is enforceable by law at the option of one or more of the parties thereon, but not at the option of the other or others, is a voidable contract. Thus, a voidable contract is one which can be set aside or repudiated at the option of the aggrieved party. Until it is set aside or avoided by the party entitled to do so, it remains a valid contract. A contract is usually treated as voidable when the consent of a party has not been free i.e., it has been obtained either by coercion, undue influence, misrepresentation or fraud.

Illegal or unlawful contract: The word illegal' means contrary to law. You know that contract is an agreement enforceable by law and therefore, it cannot be illegal. It is only the agreement which can be termed as illegal or unlawful. Hence, it is more appropriate to use the term 'illegal agreement' in place of 'illegal contract'.
An **'illegal agreement'** is one which has been specifically declared to be unlawful under the provisions of the Contract Act or which goes against the provisions of any other law of the land. Such agreement cannot be enforced by law. For example, A agrees to pay R;.50,000 to B if B kills C. This is an illegal agreement because its object is unlawful. Even if B kills C, he cannot claim the agreed amount from A

Unenforceable contract: It is a contract which is actually valid but cannot be enforced because of some technical defect. Thii may be due to non -registration of the agreement, non -payment of the requisite stamp fee, etc. Sornetitnes, the law requires a particular agreement to be in writing. If such agreement has not been put in writing, it becomes unenforceable.

Void Agreement	Voidable Contract
It is void from the very beginning.	It remains valid till it is repudiated by the aggrieved party.
A contract is void if any essential element of a valid contract (other than free consent) is missing	A contract is voidable if the consent of a party is not free.
It cannot be enforced by any party	If the aggrieved party so decides, the contract may continue to be valid and enforceable.
Third party does not acquire any right	An innocent party in good faith and for consideration acquires good title before the contract is avoided.
Lapse of time will not make it a valid contract, it always remain void	if it is not avoided within reasonable time, it may become valid.
Question of damages does not arise	The aggrieved party can also claim damages
Void Agreement	Illegal
All void agreements are not necessarily illegal.	1) All illegal agreements are void..
Collateral transactions to a void agreements are not also affected i.e., they do not become void.	2) Collateral transactions to an illegal agreements are affected i.e. they also become void
If a contract becomes void subsequently, the benefit received has to be restored to the other party.	The money advanced or thing given cannot be claimed back

Executed Contract is the contract in which the parties to the contract have performed their part or obligation, and nothing is left to be done. In these contracts, the consideration is the action or forbearance, which when completed or brought to notice, then the contract is said to be completed.

On the other hand, an **Executory Contract** is a contract wherein the parties obligation is yet to be completed. The consideration in these agreements is the corresponding promise or obligation. An executory contract is further subdivided into a unilateral contract and bilateral contract.

Unilateral and Bilateral (Multilateral) Contracts

unilateral contract - the offeror promises something in return for the offeree’s performance and indicates that this performance is the way acceptance is to be made

bilateral contract - on the other hand, is one that is formed by a mutual exchange of legally binding promises. The offeror merely expects a promise in return as acceptance to form a binding contract.

Basis for comparison	**Unilateral contract**	**Bilateral contract**
Meaning	Unilateral Contract is the contract wherein only one party needs to perform the promise or obligation	Bilateral Contract is one in which the parties to the contract, commit to perform their concerned obligation or promise
Consideration	Executed	Executory
Promise	One	Mutual
Legal Effect	Only one party is legally bound	Both the parties are legally bound.

Unilateral Contract is said to be a one-sided contract, wherein only one party needs to perform his part, while forming the contract, as the other party has already completed his part, at the time of the contract or before it comes into being. In this contract, the promisor has already performed his duty or obligation and the other party's obligation is outstanding.

In this type of contract, the promisor makes a promise to whoever undertakes or performs the activity stipulated in the offer itself. Hence, there is no mutual reciprocal promise between the two parties. It must be noted that the period to which contract is valid, has to be stipulated.

A Bilateral Contract is a dual-sided contract, wherein both the parties to the contract has not yet fulfilled their part, at the time of entering into the contract.

The contract comes into existence when the parties to the contract make mutual, reciprocal promises to one another, that require performance or non-performance of an act. Hence, both the parties are promisor as well as promisee. The commitment made by one party acts as adequate consideration, for the promise made by another party.

UNIT 2

Contracts can be verbal (spoken), written or a combination of both. Some types of contract such as those for buying or selling real estate or finance agreements must be in writing.

Written contracts may consist of a standard form agreement or a letter confirming the agreement.

Verbal agreements rely on the good faith of all parties and can be difficult to prove.

It is advisable (where possible) to make sure your business arrangements are in writing, to avoid problems when trying to prove a contract existed.

Regardless of whether the contract is verbal or written, it must contain four essential elements to be legally binding.

Essential elements of a valid contract

1. Offer and acceptance
2. Consensus ad idem
3. Legal relationship
4. Competency of parties
5. Free consent
6. Lawful Consideration
7. Lawful Object
8. Not declared to be void
9. Certainty and Possibility of Performance
10. Legal Formalities

1. offer

Section 2(a)[5] defines proposal/offer as:

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.

Every contract starts from an offer. Without an offer there can be no acceptance and then no agreement and then no contract. Thus offer becomes an essential element for a contract.

Essentials of a valid offer:

a) Intention to obtain the acceptance.
b) Intention to create legal relationship.

c) The offer must be certain.
d) A valid offer should not contain any term, the non compliance of which leads to acceptance.
e) The offer must be communicated.

Communication of offer:

As it is essential for an offer to be communicated to be valid, section 4[6] of Indian Contract Act states that the communication of the offer/proposal is complete when it comes to the knowledge of the person to whom it is made.

Therefore until and unless the information of the proposal reaches the person to whom it is made, the offer is not considered valid. And if the knowledge of the offer does not reach the other party then how will the other party accept the offer and until there is no acceptance of the offer, there will be no agreement between the parties. And without agreement and its enforceability by law, a contract cannot be completed.

Thus completion of communication of offer becomes essential for establishment of a contract between any two or more parties.

Different Types Of Offers

1. GENERAL OFFER:-

When an offer made at large or in public or in general this offer is known as General Offer. It can be accepted by any individual or public at large whoever is interested in the offer offered. When a person accepts the offer given then offeror and offeree enter into contract. The reward will be given to that person who completed the task given or fulfilled the given condition.

2. SPECIFIC OFFER :-

The offer which is made to an individual or to a specific group of individual is said to be Specific offer. It can be accepted by that individuals or that group of individual.

Example :Sandhya offer to buy a car from Sona for Rs. 10 lakh. Thus, a specific offer is made to a specific person , and only Sona can accept the offer.

3. COUNTER OFFER :-

When an offeror makes an offer to offeree and offeree with some modification in it makes converse offer which makes initial offer void and the other comes in existence, which reverse the party from offeror and offeree to offeree and offeror respectively this type of offer is known as counter offer.

4. CROSS OFFER :-

When the offeror and offeree make the same offer to one another having same terms out of knowledge of each other is known as cross offer. In this case there will be no contract due to acceptance of the offer offered.

5. IMPLIED OFFER :-

When an offer is given by body posture, gesture or by action or by the conduct of the offeror is known as implied offer. The offeree can accept the offer by understanding the action of the offeror.

6. EXPRESSED OFFER :-

When an offer is express in written or in verbal form then this offer is known as expressed offer. For example : "C" writes a letter to "D" to buy his earphone for Rs.500. This is an expressed offer.

7. STANDING OFFER :-

When tender is submitted to supply certain goods or any quantity as and when required it will amount to standing offer. In such a case contract does not come into existence merely when tender is accepted, but a contract takes place only after the order is placed. Each order in such a case is acceptance and as soon as the offer is accepted the contract comes into existence.

Acceptance:

Section 2(b)[7] defines acceptance as: When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.
Once the offer is extended, it is in the hands of the offeree (the person to whom offer is made) to either accept or reject the proposal/offer.
Without acceptance of the offer there can be no agreement (whose enforceability by law results in a valid contract), thus acceptance is another essential element for a contract.

Communication of acceptance:

Section 4 states that the communication of 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; As against the acceptor, when it comes to the knowledge of the proposer

Consensus ad idem

The parties that are entering in the contract must have mutual consent i.e. they should be agreeing upon the same thing in the same sense as it is. It means that there must exist consensus ad idem (i.e. meeting of minds).

Legal relationship

Parties entering into a contract must intend to constitute a legal relationship. It arises only when the parties know that if any one of them fails to fulfil his part of the promise, he would be liable for the failure of the contract.

If there exists no intention to create a legal relationship, there is no contract between parties. Agreements of a social or domestic nature are not considered as contracts as they do not contemplate or give rise to a legal relationship.

Competency of parties

According to **section 11** of the contract act The parties entering into a contract would be considered competent if he

1. Has attained the age of majority,
2. Is of sound mind,
3. Is not disqualified to make a contract under a law to which he is subject.

However, the following persons are considered incompetent to contract, or only capable of contracting to a particular extent. The persons who disqualified from entering into a contract due to certain reasons may arise from their legal status, political status or corporate status.

1. Alien Enemy: An agreement with an Alien Enemy is held to be void.
2. Foreign Sovereign and Ambassadors: Foreign sovereigns and their representatives enjoy certain amount of privileges and immunities in every country. They cannot enter into a contract except through their agents residing in India.
3. Convicts: A convict while he is undergoing imprisonment, cannot enter into a contract.

4. Insolvents: An insolvent person is a person who is said to be unable to discharge or get off his liabilities and therefore, has applied for being adjudged insolvent or if such proceedings have been initiated by any one of his creditors.
5. Company or Statutory bodies: A contract entered into by a corporate body or statutory body will be valid only to the extent it is within its Memorandum of Association

Free consent

According to **section 13** of the act two or more persons are said to consent to a common thing when they agree upon the same thing in the same sense. A consent is regarded as the most fundamental component of a contract. The next section talks about free consent which is essential for a valid contract. A consent is said to be free and valid when it is not caused by:

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

When consent is caused due to any of such factor, the agreement is voidable at the option of the party whose consent was so caused. if however the consent is done by mistake, the agreement is considered to be void.

A consent of a person is affected by a number of factors, of which coercion is the most noticeable one.

Coercion is defined under **Section 15** of the act as committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the 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. —Coercion means the committing, or threatening to commit, any act which is forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property with the intention of causing any person to enter into an agreement."

Lawful consideration and lawful object

According to **section 23** of the Indian Contract Act, the following considerations and objects are not considered as lawful:

1. If it is forbidden by law,
2. If it is against the provisions of other law,
3. If it is fraudulent,
4. If it damages somebody's person or property,
5. If it is in the opinion of court, immoral or against public policy.

Thus any contract which incorporates such unlawful provisions are not considered as a valid contract.

Consideration:

Section 2(d)[8] defines consideration as:

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 abstain from doing, such act or abstinence or promise is called a consideration for the promise.

Something of value must be exchanged in order to have a valid legal agreement as any agreement without consideration is void. Thus if there will be no consideration then the agreement will be void and it will not be enforceable by law and there will be no contract. Therefore consideration is must for a contract.

Exception: section 25:

there is an exception for following cases where agreement without consideration is valid:

If the agreement is expressed in writing and registered under the law for the time being in force, and is made on account ofd natural love and affection between parties standing in a near relation to each other; or

It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or

It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

Capacity to contract:

Capacity simply means competence or ability of the parties to come into a contract. A capable person is the one who is allowed /qualified to enter into a contract.

Section 11[9] of Indian Contract Act defines who are competent to contract:

- Major person
- Person with sound mind (section 12 defines unsound mind)
- Person not disqualified by law

a. Convicts
b. Alien enemy
c. Insolvent
d. Married women (with respect to her husband's property)

A person who is not capable cannot come into any contract, thus capacity to contract is an essential element for a contract.

Legality:

As section 2(h) defines contract as - â€˜An agreement enforceable by law', the legality becomes the most important element of a contract. One cannot enforce a contract which is unlawful. Also, every agreement of which the object or consideration is unlawful is void. Section 23[10]defines what considerations and objects are lawful, and what not -Should not be forbidden by law; or Should not defeat provisions of any law; orShould not imply injury to the person or property of another; or The court should not regard it as immoral or opposed to public policy. Thus, legality is an essential element for a contract.

Free consent

According to Section 13 of the Indian Contract Act, 1872 consent means when both parties agree to a thing in the same sense of mind or unison of mind.

Elements of free consent

- Consent is considered to be free consent when the following factors are satisfied:
- It should be free from coercion.

- The contract should not be done under the pressure of undue influence.
- The contract should be done without fraud.
- The contract should not be made through misrepresentation.
- The contract should not be made by mistake

Importance of free consent

- The contract made out of free consent protects the validity and enforceability of an agreement.
- It provides a protecting shield to the parties from coercion, undue influence, misrepresentation, fraud, and mistake
- It provides the parties to withstand their autonomous power to frame their running policy or principle.
- The principle of consensus-ad-idem is followed

Basis	**Consent**	**Free consent**
Meaning	When both the parties agree to a thing in the same sense of mind or unison of mind, then the agreement is considered to be done with consent.	When an agreement is done with consent and is free from coercion, fraud, misrepresentation, undue influence, and mistake. Then the agreement is considered to be done with free consent.
Essentials	Both parties must be entering into the agreement in the same sense of mind. Both parties must be entering into the agreement should be agreeing to the same thing.	Consent should be free from: • Coercion • fraud • misrepresentation • undue influence • mistake

Voidability	When there is a lack of consent, the contract would be void.	When there is no free consent, then the voidability of the contract depends on the option of the aggrieved party

Mistake

A mistake refers to an incorrect belief that is innocent in nature which leads one party to misunderstand the other. It usually takes place when the parties to the contract are not completely aware of the terms of the agreement and understands the terms in a different sense. Therefore there is no *consensus ad–idem* i.e meeting of minds between the parties and thus do not understand the same thing in the same sense.

Mistake can be:

- Mistake of law: when a party enters into a contract, without the knowledge of the law in the country, the contract is affected by such mistakes but it is not void. The reason here is that ignorance of law is not an excuse. However, if a party is *induced* to enter into a contract by the mistake of law then such a contract is not valid.[2]
- Mistake of fact:-Where both the parties enter into an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is voidable.

Misrepresentation is about giving of inaccurate information by one party (or their agent) to the other before the contract is made which induces them to make the contract. If a person makes a contract in reliance on misrepresentation and has to face loss as a result, they can revoke the contract or claim damages.

Types of Misrepresentation

- Fraudulent misrepresentation
- Negligent misrepresentation
- Innocent misrepresentation

Remedies of Misrepresentation

- Rescind: Rescind means to cancel. When the aggrieved party wants he can claim for cancellation of the contract and/or damages. Under contract law, rescission is defined

as the unmaking of a contract between the parties. Rescission is the unwinding of a transaction. This is made to bring the parties, as far as possible, back to the position in which they were before they entered into a contract (the status quo ante).

- Insist upon the performance: The aggrieved party can claim to the first party who have committed misrepresentation to get the object in the manner which was prior to the contract that they directly.

Fraud implies and involves any of the following acts committed by a contracting party or his connivance or his agent with the intention of deceiving or inciting another party or his agent to enter into the agreement.

- the active concealment of a fact by one having knowledge or belief of the fact.
- A promise made without any intention of performing it.
- Any other act fitted to deceive.
- Any such act or omission as the law specially declares to be fraudulent

The Act of fraud must be done –

- By the party to the contract himself
- With his connivance
- Or by his agent
- **There must be a false representation or assertion**
- **There must be active concealment of fact**

The major difference between fraud and misrepresentation are as under:

1. Fraud is a deliberate misstatement of a material fact. Misrepresentation is a bonafide representation of misstatement believing it to be true which turns out to be untrue.
2. Fraud is done to deceive the other party, but Misrepresentation is not done to deceive the other party.
3. Fraud is defined in Section 17 and misrepresentation is defined in Section 18 of the Indian Contract Act, 1872.
4. In fraud, the party making representation knows the truth however in misrepresentation, the party making representation does not know the truth.
5. In fraud, the aggrieved party can claim damages for any loss sustained. On the other hand, in misrepresentation, the aggrieved party cannot claim damages for any loss sustained

"Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the 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.

Essential Ingredients of Coercion :

a) Committing or threatening to commit any act forbidden by Indian Penal Code or,

b) The unlawful detaining or threatening to detain any property to the prejudice of any person whatever.

c) with the intention of causing any person to enter into an agreement.

Undue Influence

A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other. Nothing in the sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).

Discharge of Contract

Modes of discharge of contract and discharge of contract by Performance (Sec.37). Discharge of contract means termination ofthe contractual relationship between the parties

.A contract is said to be discharged when it ceases to operate, i.e. when the rights and obligations created by it come to an end. In some cases, other rights and obligations may arise as a result of discharge of contract, but they are altogether independent of the original contract. A contract may be discharged:

1) By performance 2) By agreement or consent 3) By impossibility 4) By lapse of time 5) By operation of Law 6) By breach of Contract

Example of breach of contract

Performance means the doing of a thing which is required in a contract. Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. In such a case, the parties are discharged and the contract comes to an end. But if only one party performs the promise, he alone is discharged: Such a party gets a right of action against the other party who is guilty of breach.

Performance of a contract is the most usual mode of its discharge. It may be (1) actual performance or (2) attempted performance

. 1) Actual Performance: When both the parties perform their promises, the contract is discharged. Performance should be complete; precise and according to the terms of the agreement. Most ofthe contracts are discharged by performance in this manner. ..

2) Attempted Performance or tender: Tender is not actual performance but is only an offer to perform the obligation under the contract. Where the promisor offers to perform his obligation, but the promisee refuses to accept the performance, 'tender' is equivalent to actual performance except in case of tender of money. The effect of a valid tender is that the contract is deemed to have been performed by the tenderer. The tenderer is discharged from the responsibility for non performance of the contract without in any way prejudicing his rights which accrue to him against the promise.

Remedies for Breach of Contract

A contract gives rise to correlative rights and obligations. A right accruing to a party under a contract would be of no value if there were no remedy to enforce that right in a Court of Law in the event of its infringement or breach of contract. A remedy is the means given by law for the enforcement ofa right

When a contract is broken, the injured party has one or more of the following remedies

1.Rescission of the contract;

2) Suit for damages;

3) Suit upon quantum merit;

4) Suit for specific performance of the contract; and for

Rescission :When a contract is broken by one party, the other party may _sueto treat the contract as rescinded and refuse further performance. In such a case, he is absolved of all his obligations under the contract. Example: A promises B to supply 10 bags of cement on a certain day. B agrees to pay the price after the receipt of the goods. A does not supply the goods. B is discharged from liability to pay the price The Court may, however, refuse to rescind the contract

a) Where the plaintiff has expressly or impliedly ratified the contract; or

b) Where, owing to the change of circumstances (not being due to any act of the defendant himself), the parties cannot be restored to their original . . . positions; or

c) Where third parties have, during the subsistence of the contract, acquired rights in good faith and for value; or

d) Where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract (Sec.27 of the Specific Relief Act 1963)

When a party treats the contract as rescinded, he makes himself liable to restore any benefits he has received under the contract to the party from whom such benefits were received. But if a person rightfully rescinds a contract he is entitled to compensation for any damage which he has sustained through non-fulfillment of the contract by the other party.

Note: All other remedies for breach of contract need no explanation.

Sue for damages ; Section 73 clearly states that the party who has suffered, since the other party has broken promises, can claim compensation for loss or damages caused to them in the normal course of business. Such damages will not be payable if the loss is abnormal in nature, i.e. not in the ordinary course of business. There are two types of damages according to the Act,

- Liquidated Damages: Sometimes the parties to a contract will agree to the amount payable in case of a breach. This is known as liquidated damages.
- Unliquidated Damages: Here the amount payable due to the breach of contract is assessed by the courts or any appropriate authorities.

Sue for Specific Performance

This means the party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the party carry out the agreement.

So if any of the parties fails to perform the contract, the court may order them to do so. This is a decree of specific performance and is granted instead of damages.

Quantum Meruit

Quantum meruit literally translates to “as much is earned”. At times when one party of the contract is prevented from finishing his performance of the contract by the other party, he can claim quantum meruit.

So he must be paid a reasonable remuneration for the part of the contract he has already performed. This could be the remuneration of the services he has provided or the value of the work he has already done.

UNIT 3

Contract of indemnity

An indemnity contract is a legal arrangement between two parties in which one party agrees topay another party for a loss or harm that meets certain requirements and conditions unless other circumstances are specified. It is a form of contingent contract which is characterized by all the essential elements of a valid contract.

in an indemnity contract, there are only two parties, as stated in:

- The indemnifier:
  The promisor, who agrees to make up the damage caused to the other group, is called the Indemnifier.

- The Indemnified:
  the person who is assured of compensation for the damage incurred (if any) is referred to as the indemnity holder or the indemnified.

The mode of the compensation contract can be express or implied, i.e. if a personexpressly agrees to save the other from damages, the mode of the contract will be stated, while if the contract is signified by the terms of the case, the mode of the contract will be implied.

Rights of indemnity holder

Section 125 of the Indian contracts act states:
Rights of indemnity-holder when sued.
The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recoverfrom 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 which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;
3. all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

Rights of the Indemnifier

Right of the indemnity holder – (Section 125)

An indemnity holder (i.e. indemnified) acting within the scope of his authority is entitled to the following rights –

1. Right to recover damages – he is entitled to recover all damages which he might have been compelled to pay in any suit in respect of any matter covered by the contract.

2. Right to recover costs – He is entitled to recover all costs incidental to the institution and defending of the suit.

3. Right to recover sums paid under compromise – he is entitled to recover all amounts which he had paid under the terms of the compromise of such suit. However, the compensation must not be against the directions of the indemnifier. It must be prudent and authorized by the indemnifier.

4. Right to sue for specific performance – he is entitled to sue for specific performance if he has incurred absolute liability and the contract covers such liability. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

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Contract of Guarantee

Section 126 of the Indian Contracts Act defines a contract of guarantee as A contract of guarantee is a contract to perform the promise or discharge the liability, of a third person in case of his default.

The person who gives the guarantee is called the **surety**, the person in respect of those defaults the guarantee is given called **principal debtor**, and the person to whom guarantee is given is called the **creditor**.

There are three parties in each guarantee contract, the principal creditor, the surety and the principal debtor.

A guarantee contract consists 3 contracts:

- First, the principal debtor himself makes a commitment to fulfill a contract in favor of the creditor.
- Second, if the principal debtor makes a default, the surety undertakes to be liable to the creditor.
- Thirdly, the principal debtor's implicit promise in support of the assurance that, in the event that the protection is obliged to discharge the responsibility of the principal debtor's default, the principal debtor shall indemnify the protection for it.

Main features of contract of guarantee

1. The contract can be either oral or in writing. Nevertheless, the assurance contract can only be in writing in English law.
2. The guarantee contract presumes a principal liability or a discharge duty on the part of the principal debtor. Even if there is no such principal liability, one party agrees to pay another under such situations, and the enforcement of this obligation is not contingent on anyone else's default, it is an indemnity contract.
3. Sufficient consideration is to support the principal debtor. It is not necessary to have clear consideration between the creditor and the assurance that it is appropriate that the creditor has done anything for the good of the principle debtor.
4. Assurance consent cannot be obtained by misrepresentation or cover of any material information relating to the transaction.

Liability of surety

Section 128 of the Indian contracts act states the liability of the surety is co-extensive with that of principal debtor, unless it is otherwise provided by the contract

Surety's liability is the same as that of the principal debtor. A creditor can move directly againstthesurety. Without suing the principal debtor, a creditor may sue the surety directly. Surety is liable to make payment immediately after the default of any payment by the principal debtor.

Primary responsibility for making payment, however, is from the principal debtor, and the responsibility of the surety is secondary. In fact, if the principal debtor can not be held liable forany payment due to any document error, then surety is not responsible for such payment as well.

Rights of surety

Broadly, the rights of the surety are classified into 3 types:

A. **Rights against the principle debtor**
   - Right to give Notice
   - Rights of Sub-rogation
   - Right of Indemnity
   - Right to get Securities
   - Right to ask for Relief

B. **Rights against the creditor**
   - Right to get Securities
   - Right to ask for Set-off
   - Rights of Sub-rogation
   - Right to advice to Sue Principal Debtor

- Right to insist on Termination of Services

C. **Rights against co-sureties**

- Right to ask for contribution: Surety can ask its co surety to add the sum when the principal debtor defaults. If they have issued commitments for equal quantities, they would have to make equivalent contributions. In the event that guarantee is given in equal quantities, the contribution style varies from England law to Indian law. According to England law payment in the ratio of assured sums is to be made. Nevertheless, according to Indian law, the sum of the deficit is to be allocated equally to all guarantees, and each promise must contribute a share of the deficit or pledge that is ever lower.

- Right to claim share in securities

Difference between contract of indemnity and contract of guarantee .

1. **NumberofParties**: A contract of guarantee always has three parties; they are, the creditor, the principal debtor, and the surety; for e.g., Bank Loan, whereas a contract of indemnity has two parties, the indemnifier, and the indemnity holder
2. **Number of Contracts**: In a contract of indemnity, there is a single promise or contract; a promise to pay if there is a loss. For e.g., Insurer and Insured, in a contract of guarantee, by contrast, there are multiple promises (3), i.e., between principal debtor and creditor, between creditor and surety, and an implied contract between the principal debtor and the surety.
3. **Nature**: A contract of indemnity is for reimbursement of loss, whereas the contract of guarantee is for the security of the creditor or assurance to the creditor
4. **Liability**: In a contract of indemnity, the liability of the indemnifier is primary (Fire Insurance), whereas in a contract of guarantee, the debtor is primarily liable, and the surety assumes secondary liability because the customer is primary liable in default of his payment then after the surety has liability.
5. **Object**: The purpose is of safety from an uncertain future event in a contract of indemnity, for e.g., Fire Insurance, whereas the purpose in a contract of guarantee is to assure the other party of the performance of an obligation.
6. **Scope**: The Scope is limited in a contract of indemnity as it doesn't include contracts of guarantee, whereas the scope is wider in a contract of guarantee as it includes a contract of indemnity.
7. **Consideration**: Indemnifiers receive consideration from the indemnity holder at the beginning of the contract, e.g., premium in case of fire insurance. But Surety doesn't receive any consideration. The only consideration for the surety is the expected gain of the principal debtor.
8. **Existence of liability**: In indemnity, the contingency present is that of the possibility or risk of suffering a loss to which the indemnifier agrees to indemnify for e.g., in fire insurance, the compensation would be given only when a fire occurs viz uncertain; while in guarantee, there is an existing debt or duty whose performance is guaranteed by the surety.

9. **Subrogation**: In a contract of indemnity, the indemnifier cannot sue a third party in his own name for the loss compensated unless they have the right. The surety is entitled to file a suit against the principal debtor in his own name if only he has discharged the obligation of the creditor, then he steps in the shoes of the principal debtor.
10. **Discharge**: The indemnifier is not necessarily discharged with the discharge of the persons for whom the indemnity was given. After paying compensation, it's not necessary the fire insurance company is free from all the liabilities. The surety is discharged from his liability with the discharge of the principal debtor for e.g., the guarantee is over when surety pays off the amount to the bank.
11. **Interests of the parties**: The indemnifier has some interest in the transaction other than indemnity like commission, but the surety has no such interest except that of guarantee.
12. **Types**: The contract of indemnity has no types, whereas the contract of guarantee has 2 types: specific and continuing guarantee.

Continuing guarantee: Meaning

A continuing guarantee is given in respect of a series of transactions to be undertaken between the principal debtor and the creditor over a period of time and some of the transactions to be made between the debtor and the creditor may be unknown, indefinite or uncertain at the time of giving the guarantee. The surety becomes liable for the unpaid balance on the default of the debtor at the end of the guarantee.[1]

For eg- The surety guarantees payment to the creditor who is a tea dealer, to the amount of Rs 100 for any amount of tea supplied by him to the Principal debtor. Afterwards, the creditor supplies tea of above Rs 100 which was paid by the debtor. Subsequently, he supplies tea to the amount of Rs 200 which was unpaid by the debtor. Accordingly, the surety is liable to pay Rs 100 to the creditor as it was a continuing guarantee.[2]

According to Section 129, a continuing guarantee extends to a series of transactions which means that continuing guarantee is concerned with continuing transactions and not the time period of such transactions. Hence, such a guarantee may be confined to a series of transactions, but restricted or limited to a certain period of time, e.g. for one year.[3]

Whether a guarantee is a continuing guarantee or not simply depends on the facts and circumstances as well as terms and conditions prescribed in the guarantee. There is no hard and fast rule for the determination of the same. It is difficult to know whether a guarantee for the payment of goods to be supplied up to a specific amount, is given for a single or definite number of transactions between the creditor and the debtor or whether it is a continuing guarantee.[4]

In the former event which is a simple guarantee, the surety's liability come to an end as soon as payment is made by principal debtor for the goods sold. While in the continuing guarantee, the surety remains liable for future transactions to the extent of his guarantee.

Specific guarantee and continuing guarantee

A specific guarantee covers only a single transaction within a fixed period of time and it comes to an end when the liability under that transaction ends. Where the payment of a

single specific sum is guaranteed, it is a simple guarantee.

For eg- A agrees to be answerable to B for the amount of five bags of flour to be delivered to C payable in one month. Afterwards, the creditor supplied five bags of flour and the debtor paid for them. Further, creditor supplied four bags of flour during the same month and the debtor failed to pay. The surety was not held liable for the four bags of flour because the guarantee given by him was a simple guarantee for a single transaction.

The surety guarantees the repayment of loan of Rs10,000 taken by the debtor from the creditor. It is a specific guarantee and the liability of the surety ends if the debtor has paid his loan.

Specific and continuing guarantee can also be differentiated on the basis of nature of consideration given for these guarantees. If the consideration for the guarantee is divisible and variable as the result of future dealings between the parties, the guarantee is continuing and revocable. If the consideration for the guarantee is given once for all or it is indivisible, such guarantee is a specific guarantee. When a lease was granted for five years in lieu of furnishing the guarantee, the consideration for it was held to be indivisible and hence not a continuing guarantee. If a servant is employed on the basis of guarantee as to his good conduct, the guarantee is not revocable so long as the servant continues in service.

A surety is a person who comes forward to pay the amount in the event of the borrower failing to pay the amount. In the event of a decree in favour of the creditor against the principal debtor the wings of the decree can also be extended against the sureties as their liability in coextensive with the principal debtor. But when a suit against the principal debtor was dismissed for default and the decision became final there being no liability surviving against the debtor the surety's liability gets automatically terminated.

Liability of surety under continuing guarantee

In the continuing guarantee, surety continues to be liable for further goods or loans given by the creditor to the principal debtor. He is liable for any amount which may become due from time to time dealings or transactions between the creditor and the debtor. However, he is discharged from his liability when he revokes his guarantee. Whereas in a simple guarantee, the liability of surety is in respect of only one transaction and this liability comes to an end as soon as the debtor paid his debt but in a continuing guarantee, the surety is liable until the transactions or credits contemplated by the parties and covered by the guarantee have been exhausted or until the guarantee itself has been revoked.[9]

Rights of surety against the principal debtor

Rights of subrogation(Section 140):

When the principal debtor makes a default in the performance of his duty, and on such a default, the surety makes the necessary payment or makes performance of all what he is liable for he becomes invested with all the creditor had against the principal debtor. In other words, the surety steps in to the shoes of the creditor and by an action against the principal debtor, he can recover from him all that, which could have been recovered by the creditor. This is known as surety's right of subrogation.

Rights of indemnity against the principal debtor(sec.145):

In a contract of guarantee, when the principal debtor makes a default, the surety has to make payment to the creditor. This payment is make by the payment to the creditor. This payment is made by him on behalf of the principal debtor. After making such payment, he can recover the same from the principal debtor. Such a claim can be made by the surety only in respect of the sums he has rightfully paid under the guarantee, but not the sums which he has paid wrongfully.

<u>Right of surety against the creditor</u>

Right to securities with the creditor (Section 141):

It has been noted above that after the surety has performed his duty under the contract of guarantee, he is subrogated to all the rights which are available to the creditor against the principal debtor. Section 141 makes a further provision in that regard, according to which a surety is entitled to the benefit of every security which the creditor has against the principal debtor at that time when the contract of surety ship is entered into. It is, however, not necessary that at the time of making the contract, the surety should be aware of the securities which the creditor had.

Surety has no right to goods in hypothecation.

It may be noted that according to section 141, the surety is entitled to the benefit of such good which are with the creditor. It covers situations where the goods are pledged to the creditor and he has the possession of the goods. If he loses or parts with the goods, the surety is discharged thereby. In case there is hypothecation of the goods, the goods remain in the possession of the goods and there is no question of his losing or parting with the same. If, therefore, hypothecated goods are lost without any fault of the creditor that will not discharge the surety. In other words, since in the case of the hypothecated goods, the creditor does not have the possession of the goods, the surety cannot invoke the provision of section 141 in such case.

Securities received by the creditor after the contract of guarantee:

It has been noted above that according to section 141, a surety is entitled to the benefit of every security which the creditor has at the time when the contract of surety ship is entered into. It means that the surety

has no right to those securities which the creditor obtained from the principal debtor after making the contract of guarantee. Therefore, if the creditor parts with the securities which he had obtained subsequent to the making of the contract of guarantee, the surety will not be discharges as a consequence of the loss of such securities

Discharge of surety

The Indian Contract Act, 1872 provides for the discharge of the liability of surety, in case of certain given circumstances. A surety is said to discharge from his liability if his liability to perform the promise, in case of a default by the principal debtor, comes to an end.

The situations under which a surety is discharged from his liability is listed as follows:

- **Discharge by Revocation**

1. Revocation of guarantee by giving notice (Section 130); ***Notice:*** **Section 130**[12] of ICA provides for the revocation of a continuing guarantee for future transactions by the surety. It says that the surety, by giving notice to the creditor, can revoke a continuing guarantee for future transactions. The notice should clearly state that the surety is discontinuing his liability for future transactions. However, a specific guarantee for the liability that has already been arisen cannot be revoked by the surety. A surety is still liable for the transactions already entered into.
2. Revocation by death (Section 131).**Section 131**[13] of ICA provides for the revocation of continuing guarantee for the continuing transactions. In case of the surety's death, he is released from his liability and his legal heirs will not be liable for the transactions, either continuing or in future. However, they will be liable if so is provided in the contract of guarantee.

- **Discharge by the conduct of the parties**

1. Variance in terms of the contract (Section 133);**Section 133**[14] of ICA provides for the discharge of surety's liability by any variation in the terms of the contract of guarantee entered upon by the creditor and principal debtor. A surety is only liable for the terms agreed upon by him thus if the creditor and the principal debtor make any changes in

the terms of the contract without informing or consulting the surety, he will be immediately released from his liability.

2. Release or discharge of the principal debtor (Section 134);**Section 135**[17] of ICA provides for the discharge of surety's liability when the creditor compounds with or promises the principal debtor that he will not sue the principal debtor on the occurrence of default in performance. In such a scenario, the liability of the surety is released unless he consents to such a contract.
3. Compounding by Creditor with the principal debtor (Section 135);
4. Creditors act/omission impairing surety's eventual remedy (Section 139);**Section 139**[18] of ICA discharges the surety from its liabilities if the creditor has done any act or omission which is inconsistent with the rights of the surety. Also, if the said act or omission impairs the eventual remedies of the surety against the principal debtor, the surety's liabilities are said to be discharged
5. Loss of security (Section 141).**Section 141**[19] of ICA provides that if the creditor losses or parts with any security without the consent of the surety, then the surety will be discharged from his liability for the value of the security so parted with or lost. It is immaterial that surety knew of the securities or not.

- **Discharge by the invalidation of the contract**

1. Guarantee obtained by misrepresentation (Section 142); As per **Section 142**[20] of ICA, a guarantee obtained by the means of misrepresentation on the part of the creditor that concerns a material fact is invalid. Hence, the surety's liability will be discharged.
2. Guarantee obtained by concealment (Section 143); As per **Section 143**[21] of ICA, a guarantee obtained by concealing a material fact of a contract on the part of the creditor is constituted as invalid and as a result, the liability of the surety will be discharged.
3. Failure of a co-surety to join a surety (Section 144).As per **Section 144**[22] of ICA, when a condition is proposed by a surety that the creditor will not act upon the contract unless another co-surety has joined. The non-fulfillment of this condition will result in the invalidation of the contract and thus the surety will be discharged from his liability.\

Bailment as defined in section 148 of the Indian contract act 1872 is the delivery of goods by one person to another for some specific purpose, upon a contract that these goods are to be returned when the specific purpose is complete. For example, A delivering his car for Service at the service center is an example of bailment. The person delivering the goods is known as bailor and the person to whom goods are delivered is known as bailee. However, if the owner continues to maintain control over the goods, there is no bailment

Essentials of Contract of Bailment

1. **The existence of a valid contract**:- The existence of a valid contract is a foremost condition in bailment which implies that goods are to be returned when the purpose is fulfilled. Finder of lost goods is also known as bailee although there may not be any existing contract between him and the actual owner.
2. **Temporary delivery of goods**:- The whole concept of bailment revolves around the fact that the goods are delivered for a temporary period and bailee cannot have permanent possession. Delivery of goods can be done through actual delivery or through constructive delivery which means that doing something which has the effect of putting the goods in possession of bailee or any other person authorized by him.
3. **Return of specific goods**:- The bailee is bound to return the goods to bailor after the purpose for which it was taken is over. If the person is not returning the goods then it will not be bailment.

Types of Bailments

- Deposit:- It is the simple bailment of goods by one man to another for a particular use. For example, A gives his computer to B for 7 days, it will be a case of a deposit
- Hire:- It includes goods delivered to the bailee for hire. For example, A gives his car to B for 7 days on rent of Rs. 700 per day, it will be a case of a hire
- Pawn/ Pledge:- when goods are delivered to another person by way of security for money borrowed. For example, A takes a loan from the Bank and keeps his papers of the house with a bank as security, it will be a case of pledge

Duties and liabilities of a bailor

1. The bailor is bound to disclose to the bailee, the faults in the goods bailed. which he knows and if he does not make such disclosures, he is directly responsible for damage arising to the bailee directly from such faults.
2. Bailor is also responsible to the bailee for any loss which the bailee may sustain by reason of the fact that bailor was not entitled to make EXPLAIN

   a) To make the bailment
   b) To receive the goods
   c) To give directions respecting them Section 164

3. **Duty to indemnify the bailee**:- The bailor is duty bound to make good the loss suffered by the bailee where he was compelled to return the goods before the expiry of the period of bailment
4. **Duty to claim back the goods**:- The bailor is bound to accept the goods upon being returned by the bailee in accordance with the terms of the agreement. If he refuses to accept it at a proper time, without any reasonable ground then he will be liable for any loss which may happen to the goods.

Bailee's Rights

Lien

- **Particular lien** Section 170 of Indian contracts act 1872; Lien is basically a right in one person to retain the property which is in his possession, belonging to another, until certain demands are satisfied. It includes those things where the bailee, in accordance with the purpose of bailment, rendered any service involving the exercise of labor or skill in respect of the goods bailed.

For exercising this particular lien following factors are to be considered:

1. The bailee must have rendered some service involving labor or skill
2. The service must be in accordance with the purpose of the bailment.
3. This service must be with regard to the thing bailed.
4. There must be no contract to the contrary

- **General lien :**Section 171 of the Indian contract act 1872 deals with the general lien. A general lien is the right to retain the property of another for a general balance of accounts. It entitles a person in possession of goods to retain them until all claims or accounts of the person in possession against the owner of goods are satisfied.

An example of general lien can be Banker who is entitled to retain the goods until the person satisfies his debt with the bank.

- **Right against wrongful deprivation of or injury to goods Section 180–181** : A bailee is having a definite right if he suffers an injury with respect to goods bailed from bailor. Moreover, if a third person wrongfully deprives the bailee of the use or possession of goods bailed he is entitled to such remedies as the owner might have in such a situation.

Bailee's Liabilities

- Care to be taken by the bailee–(Section 151 and 152) : The bailee is bound to take as much care of goods bailed to him as a man of ordinary prudence would have under similar circumstances and therefore he will not be liable for any loss, destruction or deterioration of the thing bailed if he has taken care.

YOUR LIGHT SHI

- The duty of the bailee to return the bailed goods (Section 160 and 161)**:** Bailee is under the duty to return or deliver goods according to the bailor's direction as soon as the time for which goods were bailed has expired.

- Bailee's duty to deliver increase profit from the bailed goods to the bailor :In the absence of any agreement, bailee is bound to deliver to the bailor any increase in profit or any benefit which may have accrued from the goods bailed (Section 161).

Pledge

Pledge is a kind of bailment. Pledge is also known as Pawn.It is defined under section 172 of the Indian Contract Act, 1892. By pledge, we mean bailment of goods as a security for the repayment of debt or loan advanced or performance of an obligation or promise. The person who pledges the goods as security is known as Pledger or Pawnor and the person in whose favour the goods are pledged is known as Pledgee or Pawnee.

Essentials of Pledge

Since Pledge is a special kind of bailment, therefore all the essentials of bailment are also the essentials of the pledge. Apart from that, the other essentials of the pledge are:

- There shall be a bailment for security against payment or performance of the promise,
- The subject matter of pledge is goods,
- Goods pledged for shall be in existence,
- There shall be the delivery of goods from pledger to pledgee,
- There is no transfer of ownership in case of the pledge.

  Exception: *In exception circumstances pledgee has the right to sell the movable goods or property that are been pledged.*

Rights of Pawnor

As per Section 177 of the Indian Contract Act, 1872 the Pawnor has the Right to Redeem. By this, we mean that on the repayment of the debt or the performance of the promise, the

Pawnorcan redeem the goods or property pledged from the Pawnee before the Pawnee makes the actual sale. The right of redemption is extinguished once the actual sale is done by the Pawnee as per his right under section 176 of the Indian Contract Act, 1872[9].

Rights of a Pawnee

The rights of the Pawnee as per Indian Contract Act, 1872 are:

- **Right to retain the goods:** If the Pawnor fails to make the payment of a debt or does not perform as per the promise made, the Pawnee has the right to retain the goods pledged as security. Moreover, Pawnee can also retain goods for non-payment of interest on debt or non-payment of expenses incurred. But Pawnee cannot retain goods for any other debt or promise other than that agreed for in the contract. (Section 173-174)
- **Right to recover extraordinary expenses:** The expenses incurred by Pawnee on the preservation of goods pledged can be recovered from Pawnor. (Section 175)
- **The right of suit to procure debt and sale of pledged goods:** On the failure to make repayment to Pawnee of the debt, the Pawnee has two right: either to initiate suit proceedings against him or sell the goods. In the former case, the Pawnee retains the goods with himself as collateral security and initiate the court proceedings. He need not provide any notice of such proceedings to the Pawnor[10]. And in the latter case, the Pawnee can sell the goods after giving due notice of sale to the Pawnor. If the amount received from the sale of goods is less than the amount due then the rest amount can be recovered from Pawnor. And if the Pawnee gets more amount than the due amount then such surplus is to be given back to Pawnor. (Section 176)

Difference between Bailment and Pledge

Basis	**Bailment**	**Pledge**
Meaning	Transfer of goods from one person to another for a specific purpose is known as the bailment.	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
Defined In	It is defined under section 148 of the Indian Contract Act, 1872.	It is defined under section 172 of the Indian Contract Act, 1872.
Parties	The person who delivers the bailed goods is known as Bailor and the person receiving such goods is	The person who delivers the pledged goods is known as Pledger or Pawnor and the person receiving such goods

	known as Bailee.	is known as Pledgee or Pawnee.
Consideration	The consideration may or may not be present.	Consideration is always there.
Right to Sell	Bailee has no right to sell the goods bailed.	Pledgee or Pawnee has the right to sell the goods.
Use of Goods	Bailee can use the goods only for a specific purpose only and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.
Purpose	The purpose of bailed goods is for safekeeping or repairs etc.	The purpose of pledged goods is to act as security for repayment of debt or performance of the promis

UNIT IV

Contract of Agency is a two-party relationship in which one person acts as representative to the other in business dealing in order to create contractual relations between that other and third person. An agency may be created to perform any act which the creator of agency himself could lawfully do.

Section of 182 of the Contract Act,1872 defines the term **Agent** and **Principal** as; "An agent is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is completed, or who is so represented, is known the Principal."

In a contract of agency, the principal employs agent on his own behalf to represent him before a third person with or without the consideration to the agent. It is also important that the agent shall act as per the directions of the principal. The act done by the agent against the directions and instruction of the principal, the principal shall not be responsible for such an act.

These are the **essentials of Contract of Agency** which are given below:

- Agreement : There shall be an agreement between the principal and agent.
- Consideration not necessary : The contract shall be with or without consideration.

- Intention to Act on behalf of the principal: There shall be an intention of the agent to act on behalf of the principal. When the agent enters into a contract for himself, then the principal will not be liable.

The **Contract of Agency could be created** in any of the subsequent ways;
The agency or agency agreement could also be created by words of mouth or by an agreement in writing.

Types of Agents

1. Special Agent- Agent appointed to do a singular specific act.
2. General Agent- Agent appointed to do all acts relating to a specific job.
3. Sub-Agent-An agent appointed by an agent.
4. Co-Agent- Agents together appointed to do an act jointly.
5. Factor- An agent who is remunerated by a commission (one who looks like the apparent owner of the things concerned)
6. Broker- An agent whose job is to create a contractual relationship between two parties.
7. Auctioneer- An agent who acts a seller for the Principal in an auction.
8. Commission Agent- An appointed to buy and sell goods (make the best purchase) for his Principal
9. Del Credere- An agent who acts as a salesperson, broker and guarantor for the Principal. He guarantees the credit extended to the buyer.

Authority of an Agent

Express authority

According to Section 187, the authority is said to be express when it is given by words spoken or written.

Implied authority

According to Section 187, authority is said to be implied when it is to be inferred from the facts and circumstances of the case. In carrying out the work of the Principal, the agent can take any legal action. That is, the agent can do any lawful thing necessary to carry out the work of the Principal.

Implied authority is of four main types

1. Incidental authority- doing something that is incidental to the due performance of express authority
2. Usual authority- doing that which is usually done by persons occupying the same position
3. Customary authority- doing something according to the pre-established customs of a place where the agent acts
4. Circumstantial authority- doing something according to the circumstances of the case

Duties of agent:

1. It is the duty of an agent to execute the mandate of his principal.
2. It is the duty of an agent to take reasonable care of the property of the principal and not to destroy the sale.
3. An agent is bound to render proper accounts to his principal on demand.
4. In case of difficulty, the agent must inform the principal and get instruction from him before taking any steps in facing the difficulty or emergency.
5. It is the duty of agent not to deal on his own account.
6. An agent should not make any secret profit out of his agency or agency agreement.
7. An agent must not delegate his authority to a different person, but perform the work of agency himself.

rights of the agent:

1. **Right of retainer**– An agent has the right to retain any remuneration or expenses incurred by him while conducting the Principal's business.
2. **Right to remuneration**– An agent, when he has wholly carried out the business of the agency has the right to be remunerated of any expenses suffered by him while conducting the business.
3. **Right of Lien on Principal's property-** The agent has the right to hold (keep with himself) any movable or immovable property of the Principal until his due remuneration is paid to him by the Principal.
4. **Right to be Indemnified**– The agent has the right to be indemnified against all the lawful acts done by him during the course of conducting the Principal's business.
5. **Right to Compensation**– The Agent has the right to be compensated for any injury or loss suffered by him due to the lack of skill and competency of the Principal.

Duties of principal:

1. The Principal is bound to indemnify the agent against any lawful acts done by him in the exercise of his authority as an agent.
2. The Principal is bound to indemnify the agent against any act done by him in good faith, even if it ended up violating the rights of third parties.
3. The Principal is not liable to the agent if the act that is delegated is criminal in nature. The agent will also in no circumstances be indemnified against criminal acts.
4. The Principal must make compensation to his agent if he causes any injury to him because of his own competence or lack of skill.

Rights of Principal:

1. If the principal suffers any loss, he has a right to recover from his agent if it occurs due to the following reasons;
2. Not any action of the agent according to the directions of his principal.
3. No following the customs of trade in the absence of directions.
4. No performing of his duties with skill, care or diligence.
5. If the agent without the knowledge and consent of the principal makes any secret profiles out of the agency, the principal has a right to recover them from the agent.
6. If the principal shows that the agent has acted as a principal himself and not merely as an agent, he has a right to refuse to indemnify the agent against loss suffered by the agent in such transaction.

Personal Liability of an Agent to the Third Party.

As agent is only a connecting link between his principal and the third party, he cannot, as a rule, personally enforce the contract entered into by him on behalf of his principal, nor can he be personally liable for such contracts in the absence of a contract to the contrary. But there are circumstances under which the agent incurs personal liability.

- **Where the agent expressly agrees :** If an agent, while contracting with a third party, expressly agrees to be personally liable on the contract, he can be held personally liable for any breach of contract.
- **When the agent acts for a foreign principal :** Where an agent contracts for the sale or purchase of goods on behalf of a merchant residing abroad, he is presumed to be personally liable.
- **Where the agent acts for an undisclosed principal :** Where an agent does not disclose the name of the principal, he is personally liable
- **When the agent acts for a principal who cannot be sued :** An agent incurs personal liability when he contracts on behalf of a principal who, though disclosed, cannot be sued. Thus, an agent who contacts for an ambassador or foreign sovereign, becomes personally liable.
- **Where the agent acts for a non-existing principal :** When an agent enters into a contract on behalf of a fictitious or non-existing principal, in such case, the agent is personally liable on the contracts. No agent can bind a non-existent principal.
- **Where an agent receives or pays money by mistake or fraud :** When an agent pays some money by mistake or fraud, he has a right to recover it back from the receiver. Similarly, when a third party pays to an agent some money under mistake or fraud, the agent can be sued for refund of the amount.

- **When an agent has an interest in the subject matter of the contract :** Where an agent himself has an interest in the subject-matter of the contract, the Where an agent himself has an interest in the subject-matter of the contract, the agent is personally liable to the extent of his interest in the subject-matter.
- **When the agent exceeds his authority :** When an agent exceeds his authority or represents to have a kind of authority which he, in fact, does not have, he commits breach of warranty of authority and is personally liable to third party for any loss caused to him by reason of acting under the false representation
- **Trade usage or custom :** In certain cases, the trade usage or custom of trade provides that the agent shall be personally liable for his acts. In such cases, the agent is personally liable
- **Where the agent signs a contract or a negotiable instrument in his own name :** Where the agent signs a negotiable instrument or a contract without making it clear that he is signing on behalf of the principal, the agent will be personally liable in that case.

Delegation of Authority means division of authority and powers downwards to the subordinate. Delegation is about entrusting someone else to do parts of your job. Delegation of authority can be defined as subdivision and sub-allocation of powers to the subordinates in order to achieve effective results.

1. **Authority** : authority can be defined as the power and right of a person to use and allocate the resources efficiently, to take decisions and to give orders so as to achieve the organizational objectives. Authority must be well- defined. Authority always flows from top to bottom. It explains how a superior gets work done from his subordinate by clearly explaining what is expected of him and how he should go about it. Authority should be accompanied with an equal amount of responsibility. Delegating the authority to someone else doesn’t imply escaping from accountability. Accountability still rest with the person having the utmost authority.
2. **Responsibility** : is the duty of the person to complete the task assigned to him. A person who is given the responsibility should ensure that he accomplishes the tasks assigned to him. If the tasks for which he was held responsible are not completed, then he should not give explanations or excuses. Responsibility without adequate authority leads to discontent and dissatisfaction among the person. Responsibility flows from bottom to top. The middle level and lower level management holds more responsibility. The person held responsible for a job is answerable for it. If he performs the tasks assigned as expected, he is bound for praises. While if he doesn’t accomplish tasks assigned as expected, then also he is answerable for that.

3. **Accountability** - means giving explanations for any variance in the actual performance from the expectations set. Accountability can not be delegated. For example, if ’A’ is given a task with sufficient authority, and ’A’ delegates this task to B and asks him to

ensure that task is done well,responsibility rest with 'B', but accountability still rest with 'A'. The top level management is most accountable. Being accountable means being innovative as the person will think beyond his scope of job. Accountability, in short, means being answerable for the end result. Accountability can't be escaped. It arises from responsibility.

Delegation of authority is the base of superior-subordinate relationship, it involves following steps:-

1. **Assignment of Duties -** The delegator first tries to define the task and duties to the subordinate. He also has to define the result expected from the subordinates. Clarity of duty as well as result expected has to be the first step in delegation.
2. **Granting of authority -** Subdivision of authority takes place when a superior divides and shares his authority with the subordinate. It is for this reason, every subordinate should be given enough independence to carry the task given to him by his superiors. The managers at all levels delegate authority and power which is attached to their job positions. The subdivision of powers is very important to get effective results.
3. **Creating Responsibility and Accountability -** The delegation process does not end once powers are granted to the subordinates. They at the same time have to be obligatory towards the duties assigned to them. Responsibility is said to be the factor or obligation of an individual to carry out his duties in best of his ability as per the directions of superior. Responsibility is very important. Therefore, it is that which gives effectiveness to authority. At the same time, responsibility is absolute and cannot be shifted. Accountability, on the others hand, is the obligation of the individual to carry out his duties as per the standards of performance. Therefore, it is said that authority is delegated, responsibility is created and accountability is imposed. Accountability arises out of responsibility and responsibility arises out of authority. Therefore, it becomes important that with every authority position an equal and opposite responsibility should be attached.

A sub**-agent is the agent of the original agent** as he works under the control of the agent whereas, a substituted agent is the agent of the principal because he works under the control of the principal.

Substituted Agent : In some cases, principal asks agent to appoint another person to do some work (which is normally not done by the agent). In such case, the another person appointed by agent is not sub-agent, but is agent of the principal itself. For convenience, such person may be called Substituted Agent. Section 194 deals with this matter. It states when 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.

Differences between a Sub-Agent and a Substituted Agent

1. **Control**: A sub-agent is the agent of the original agent as he works under the control of the agent whereas, a substituted agent is the agent of the principal because he works under the control of the principal.
2. 2. **Responsibility**: A sub-agent is responsible for all the acts to original agent and for the acts of fraud or willful wrong to the principal. On the other hand, a substituted agent is responsible to the principal alone.

2. 3. **Contract**: There is no direct contract between the sub-agent and the principal whereas there is direct contract between the substituted agent and the principal.
3. 4. **Appointment**: A an agent appoints sub-agent only when he finds it necessary as per the custom of trade or the nature of agency. Whereas, a substituted agent is appointed by the agent when he has express or implied authority to do so from the principal.
4. 5. **Liability**: Sub-agent is liable to the agent. However, substituted agent is liable to the principal.
5. 6. **Remuneration to agents**: The agent pays remuneration or commission to a sub-agent. But in case of substituted agent, the principal makes such payments.
6. 7. **Responsibility towards third party**: A principal is not responsible to the third parties for the acts committed by the sub-agent provided he has not been appointed by the consent of the principal. The principal is bound to all the acts of a substituted agent in the same way and extent as he is liable to the acts of his agent.

Termination of agency

- Agreement : An agency or agency agreement can be terminated at any time by a ***mutual agreement*** between the principal and the agent. Therefore, the authority of an agent terminates when the principal and therefore the agent complies with to terminate it.
- Revocation by the Principal : The principal can revoke the authority of the agent at any time before the agent has exercised his authority.
- Revocation by Agent : An agency or agency agreement can be terminated or revoked by the agent himself because a person cannot be compelled to work as an agent.
- Completion of business of Agency : An agency or agency agreement comes to an end automatically when the business of the agency is completed.
- Expiry of Time : If the agent is appointed for a fixed period, the agency comes to an end on the expiry of the fixed period, even though the business may not have been completed.
- Death of the Principal or Agent: An agency or agency agreement terminates automatically on the death of the principal or agent.
- The Insanity of the Principal or Agent : An agency or agency agreement terminates automatically, where the principal or the agent becomes of an unsound mind. When the principal becomes insane, the agent cannot act for an individual of unsound mind.
- Insolvency of the Principal or Agent : An agency or agency agreement is also terminated by the insolvency of the principal.
- Destruction of Subject matter: An agency or agency agreement terminates on the destruction of the subject matter of the Contract of Agency.

- Principal or Agent becomes Alien enemy: If the principal and agent are citizens of two different countries and a war breaks out between the two countries, the contract of agency(agency agreement) is terminated.b

Irrevocable agency
It means an agency which cannot be terminated.

When an Agency is Irrevocable

When the agency cannot be terminated, it is known as an irrevocable agency. There are some situations when revocation of an agency by the principal is not possible, as follows:-

1. When the agency is coupled with interest then this is a case where an agent has interest in the subject matter of such agency. Where the agency is coupled with an interest, it does not come to an end even in the case of death or insanity or insolvency of the principal.

2. When an agent has incurred personal liability, then the principal cannot revoke the agency, the agency becomes irrevocable. For Example – P appoints Q as his agent. Q purchases some wheat as per the instructions of P in his personal name. Now, in such a case P cannot revoke the agency.

3. Where the agent has partly exercised the authority, and it is irrevocable with regard to liabilities which arises from the acts performed. (section 204) For Example – Mr. X appoints Mr. Y as his agent. On Mr. X's direction, Mr. Y purchases 100kg cereals in the name of his principal 'Mr. X'. Now, in such a case Mr. X cannot revoke the agency.

When Termination takes Effect

Termination of an agency takes its effect when it becomes known to an agent. When the principal revokes the agency, it comes into effect only when it is known to the agent. However, in the case of third parties, termination comes into effect only when such termination of agency comes to their knowledge.

According to Section 210 of the Indian Contract Act, 1872 termination of an agent's authority also terminates the sub-agents authority appointed by the agent. A per Section 209 of Indian Contract Act, 1872 it is the duty of an agent to protect his principal's interest in case his principal becomes of unsound mind or dies.

It is the duty of an agent that on the termination of an agency due to death of the principal or his becoming insane, to take all the reasonable steps on behalf of his late principal or dying principal to protect the interest that the latter entrusts to him.

UNIT V

Various businessmen and consumers normally have the freedom to get into whatever contract they see fit for themselves. Contracts involving sales of goods may however be liable by some statutory restrictions. Various rules and guidelines are created keeping in mind the safety and security of the consumers.

The Law of Sale of Goods provides such guidelines and liabilities for the safety and security of the consumers. Any firm or person entering into the business of selling goods to consumers should be aware of the fact that the law will impose certain terms and conditions on each transaction.

Consumers can be defined as the group of people who buy certain commodities which will not be involved in their trade, profession or business. Consumers lie at the end of the trade chain.

Definition : A contract of sale is a legal contract an exchange of goods, services or property to be exchanged from seller to buyer for an agreed upon value in money paid or the promise to pay same. It is a specific type of legal contract.

Goods may be:

Existing goods: goods actually in existence when the contract is made. They may be either specific or unascertained in the sense that they have yet to be appropriated to the contract (section 5(1)).

Future goods, goods yet to be acquired or manufactured or grown by the seller (section 5(1)) as in Sainsbury V Street.Where the seller agreed to dell to the buyers a crop of some 275 tons of barley to be grown by him on his farm.

Specific goods, goods identified and agreed upon at the time the contract of sale is made (section 61(1)). The sale of a raincoat at a market stall.

Unascertained goods: as where A agrees to sell to B 200 bags of flour from a stock of 2000 lying in A's warehouse. The main problem in examination terms arises in question which is concerned with when ownership in such goods passes from seller to buyer. This problem will be considered below.

Types of Contract of Sale

There are two types of the contract of sale: Sale and Agreement to Sell

- **Sale**: When in a contract of sale, there is an immediate transfer of property in the goods from the seller to the buyer of goods, for a price, it is called a sale.
- **Agreement to Sell**: When in a contract of sale, the transfer of property in the goods from the seller to the buyer will take place at a future specified date or subject to the fulfilment of some conditions, such a contract is called as agreement to sell. It reflects the intention to transfer, the property in goods when the conditions are fulfilled.

Elements of Contract of Sale

- **Parties**: At least two parties must be present to constitute the sale, i.e. buyer and seller.
- **Presence of Subject Matter**: The presence of subject matter, i.e. goods is important in a contract of sale, which must be a movable item.
- **Price**: The price of goods should be paid or promised to be paid monetarily and not in kind.
- **Transfer of Property**: There has to be a transfer of property in goods.
- **Elements of Contract**: All the essential elements of a contract must be there in a contract of sale.

Sale and agreement to sell.—(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

4) An agreement to, sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred

Formalities of the contract

Contract of sale how made.—(1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Subject-matter of contract

6. Existing or future goods.—(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen

. (3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

7. **Goods perishing before making of contract**. — Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

8. Goods perishing before sale but after agreement to sell.—Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

The price

Ascertainment of price.—(1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties

. (2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Conditions and warranties

Stipulations as to time.—Unless a different intention appears from the terms of the contract, stipulations as to time of payment arc not deemed to be of the essence of a contract of sale. Whether any other Stipulation as to time is of the essence of the contract or not depends on the terms of the contract

. Condition and warranty.—(1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated

. (4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

BASIS FOR COMPARISON	SALE	HIRE PURCHASE
Meaning	Sale implies a transaction between buyer and seller under a contract, wherein the buyer acquires goods or services, in exchange for money.	Hire Purchase refers to a form of purchase in which the buyer acquires the asset by making down payment, however, the entire purchase price of the asset can be paid over the stipulated time through periodical instalments.
Governing Act	Sale of Goods Act, 1930	Hire Purchase Act, 1972
Timing of transfer of property	Immediate	On the payment of the last instalment
Position of buyer	The buyer's position is that of the owner.	The hire purchaser's position is that of the bailee, till he pays the final instalment due.
Payment	Lump-sum	Instalments
Treatment of Payment	Price of the goods.	Hire charges for the use of the asset, until the purchase option is exercised by the hire purchaser.
Non-payment of the amount due	The seller can take legal action against the buyer.	The vendor can repossess the goods.
Termination	The buyer cannot terminate the contract, and he/she is obligated to pay the price.	The hire purchaser can terminate the contract by returning the asset to the vendor and has no liability to pay the instalments in full.
Insolvency	If the buyer becomes insolvent, the seller has to bear the risk of loss.	If the purchaser becomes insolvent, the seller can repossess the asset.
Repair of goods	Buyer	Hire vendor

BASIS FOR COMPARISON	SALE	HIRE PURCHASE
Transfer of title to the third party	As ownership is transferred, the buyer can transfer a good title to the bonafide purchaser.	As ownership is not transferred, the hire purchaser cannot transfer a good title to the bonafide purchaser.
Resale	The buyer can resell the goods.	The hirer does not enjoy such right to resell the goods unless he has paid all the instalments.

Hire purchase is a type of a business arrangement in which the customer pays the cost of the asset in the form of an initial down payment and the outstanding balance in instalments, which can be monthly quarterly or yearly. During the period, the ownership of the asset rests with the seller i.e. hire vendor, until the customer, i.e. hire purchaser settles his entire liability.
In this system, both the parties gains something, as the purchaser gets the right to use the asset immediately, without making the complete payment at the time of contract. So, the purchaser not just gets the product, but also credit from the seller. On the other hand, the seller gets the cost of credit as well as he enjoys the increase in sales.

Characteristics of Hire Purchase System

- **Ownership**: The ownership of the asset is transferred to the hire purchaser when he makes payment of the final instalment and exercises the option of purchasing the asset.
- **Instalments**: There is a precondition on the delivery of the goods that the hire purchaser should make payments of the agreed instalments.
- **Down payment**: A specified sum is paid on signing the agreement by the hire purchaser, called as a down payment.
- **Possession**: The possession of the asset is immediately transferred to the hire purchaser, once the contract is entered into, by the parties concerned.
- **Repossession**: When the hire purchaser defaults in the payment of instalment, no matter if the instalment is first or last, the hire vendor has the right to repossess the goods.

Condition

In the context of the Sale of Goods Act, 1930, a condition is a foundation of the entire contract and integral part for performing the contract. The breach of the conditions gives the right to the aggrieved party to treat the contract as repudiated. In other words, if the

seller fails to fulfil a condition, the buyer has the option to repudiate the contract or refuse to accept the goods. If the buyer has already paid, he can recover the prices and also claim the damages for the breach of the contract.

For example, Sohan wants to purchase a horse from Ravi, which can run at a speed of 50 km per hour. Ravi shows a horse and says that this horse is well suited for you. Sohan buys the horse. Later on, he finds that the horse can run only at a speed of 30 km/hour. This is the breach of condition as the requirement of the buyer is not fulfilled. The conditions can be further classified as follows

Kinds of conditions

- Expressed Condition

The dictionary meaning of the term is defined as a statement in a legal agreement that says something must be done or exist in the contract. The conditions which are imperative to the functioning of the contract and are inserted into the contract at the will of both the parties are said to be expressed conditions.

- Implied Condition

There are several implied conditions which are assumed by the parties in different kinds of contracts of sale. Say for example the assumption during sale by description or sale by sample. Implied conditions are described in Section 14 to 17 of the Sale of Goods Act, 1930. Unless otherwise agreed, these implied conditions are assumed by the parties as if it is incorporated in the contract itself

- *Implied condition as to title*

In every contract of sale, the basic yet essential implied conditions on the part of the seller are that-

1. Firstly, he has the title to sell the goods.
2. Secondly, in case of an agreement to sell, he will have the right to sell the goods at the time of performing the contract.

Consequently, if the seller has no title to sell the given goods, the buyer may refuse or reject those goods. He is also entitled to recover the full price paid by him.

- *Implied condition as to the description*
    - Moving to Section 15 of the Act, In the contract of sale, there is an implied condition that the goods should be in conformity with the description. The buyer has the option to either accept or reject the goods which do not conform with the description of the good. Say for example: Where Ram buys a new car which he thinks to be new from "B" and the car is not new. Ram' can reject the car.

Warranty

Warranty is the additional stipulation and a written guarantee that is collateral to the main purpose of the contract. The effect of a breach of a warranty is that the aggrieved party cannot repudiate the whole contract however, can claim for the damages. Unlike in the case of breach of condition, in the breach of warranty, the buyer cannot treat the goods as repudiated.

Kinds of Warranty

Expressed Warranty

The warranties which are generally agreed by both the parties and are inserted in the contract, it is said to be expressed warranties.

Implied Warranty

Implied warranties are those warranties which the parties assumed to have been incorporated in the contract of sale despite the fact that the parties have not specifically included them in the contract. Subject to the contract, the following are the implied warranties in the contract of sale:

- *Warranty as to undisturbed possession*

Section 14(2) of the given Act provides that there is an implied warranty that the buyer shall enjoy the uninterrupted possession of goods. As a matter of fact, if the buyer having got possession of the goods, is later disturbed at any point, he can sue the seller for the breach of warranty.

- *Warranty as to freedom from Encumbrances*

In Section 14(3), there is an implied warranty that the goods shall be free from any charge or encumbrances that are in favour of any third party not known to the buyer. But if it is proved that the buyer is known to the fact at the time of entering into the contract, he will not be entitled to any claim.

- *Implied warranty to disclose Dangerous nature of the goods sold*

If the goods sold are inherently dangerous or likely to be dangerous and the buyer is not aware of the fact, it is the duty of the seller to warn the buyer for the probable danger. If there would be a breach of this warranty, the seller will be liable.

Difference between Condition and Warranty

BASIS FOR COMPARISON	CONDITION	WARRANTY
Meaning	It is a stipulation which forms the very basis of the contract.	It is additional stipulation complementary to the main purpose of the contract.
Provision	Section 12(2) of the Sale of Goods Act, 1930 defines Condition.	Section 12(3) of the Sale of Goods Act, 1930 defines Condition.

Purpose	Condition is basic for the formulation of the contract.	It is a written guarantee for assuring the party.
Result of Breach of Contract	The whole contract may be treated as repudiated.	Only damages can be claimed in case of a breach.
Remedies available to the aggrieved party	Repudiation, as well as damages, can be claimed.	Only damages can be claimed.

Rights and Duties of Buyer and Seller in a Contract of Sale:

There are certain terms and conditions in a contract without which no contract can be executed. These terms and conditions may include time, place of delivery of goods etc. Basically, these terms and conditions are the rights and duties of the parties(buyer and seller) to the contract which has to be fulfilled/ performed in its true spirit.

Seller: A person who sells his goods.

Buyer: A person to whom the goods are sold. (OR) A person who purchases the goods.

Rights of buyer

- **Right to have delivery of goods:** It is the basic right of the buyer to take the delivery of goods from the seller after payment of consideration.

- **Right to reject:**It is the right of the buyer to reject the goods if it is found that the seller has delivered him the goods of other quantity or quality or if the buyer notices any defects in the goods he may also refuse to take those defective goods.

- **Right to cancel:**It is another right of the buyer to cancel the contract if the seller does not perform his part in the stipulated time or otherwise if the seller commits any negligence as to the performance of a contract in that situation it is the right of the buyer to cancel the contract.

- **Right to claim damages;**If there is any defect in the Goods which may cause loss to the buyer or if due to the negligence of a seller. The buyer sustains a loss, in such circumstance or eventuality, it is the right of the buyer to be compensated or the buyer may claim damages.

- **Right to examine:**It is the right of the buyer to examine the goods before its purchase and to duly satisfy himself as to be quality of goods.

- **Right to sue for performance:**If the seller refuses to obey the terms and conditions of the contract which gives irreparable loss to the buyer, the buyer has the right to knock or approach the competent court of law to compel the seller for specific performance.

- **Right to take insurance:**It is the duty of the seller to give notice to the buyer to be ensured the goods if the seller delivers in a good way whether sea or by any other method/means due to which apprehension that the goods may be destroyed then it is the right of the buyer to ensure the goods before its delivery.

- **Right to sue for recovery of price:**It is the right of the buyer to file a suit for recovery of the price which he has already paid to the seller but even then, the seller refuses to perform his part.

- **Right to claim interest** It is the right of the buyer to claim an interest in the situation if the delay is caused by the seller in the delivery of goods.

Duties of buyer

- **Duty to accept goods:** After the execution of the agreement if the seller delivers the goods to the buyer to accept the goods without any delay. If the buyer refuses to take the

goods from the seller and the goods sustain any damage, the seller cannot be held responsible for the same.

- **Duty to pay the consideration :**It is the basic duty of the buyer to pay the agreed consideration to the seller on time.

- **Duty to pay damages:**It is the duty of the buyer to pay damages to the seller if due to refusal of the buyer to receive goods from seller and seller sustains any injury or for maintenance if the seller incurs any cost over the goods.

- **Duty to perfrom agreement:**It is the duty of the buyer to perform his part/obligation in true spirit as agreed between buyer and seller and in case of his non-performance, the buyer can be held liable for any loss to the seller.

- **Duty to apply for goods:**It is another duty of the buyer to apply for delivery of goods to the seller. If it was agreed that the seller would only deliver the goods if the buyer applies for its delivery.

Rights of seller

- **Right to have accept ace of goods:** It is the right of the seller that goods delivered by a seller under a contract of sale must be accepted by the buyer

- **Right to claim loss:**If the buyer unlawfully refuses to accept the delivery of goods, the seller has a right to claim from the buyer the loss caused to him due to non-acceptance of the goods and also reasonable charges for the care and custody of the goods.

- **Right to receive the price of goods:**It is the right of the seller to receive the price of goods from the buyer as per the term of the contract.

- **Right to take legal action:**It is the right of a seller to take legal action against the buyer if the price is not paid to him.

- **Right to interest :**Seller is entitled to interest at a reasonable rate on the total unpaid price of goods sold, from the time it was due and until it is actually paid to him.

Duties of seller

- **Duty to deliver goods:** It is the duty of a seller to deliver the goods to the buyer according to the terms and conditions of the contract. If the seller refuses to deliver the goods to the buyer, he may sue the seller for damages for non-delivery.

- **Duty to put goods in deliverable state:**Where it is necessary for the seller to do something with the goods in order to put them into a deliverable state, he must do such thing to put the goods into a deliverable state within a stipulated or reasonable time.

- **Duty to refund the price:**Where the seller fails to deliver the goods to the buyer, he must pay back the price of the goods to the buyer which he had received in advance.

- **Duty to pay interest :**Where the seller has already received the price but he fails to deliver the goods to the buyer, he must pay interest at a reasonable rate on the total received price, from the date of receiving such price and until it is actually paid back to the buyer.

- **Duty to pay for damages for breach of warranty :**Where there is a breach of warranty on the part of a seller, the seller is bound to pay the damages to the buyer for the breach of warranty.

unpaid seller

He is the seller to whom:- 1. Whole of the price is not paid 2. Conditional payment

Bill of exchange/ promissory note/ cheque has been received by seller but it dishonours. Till the time bill of exchange/ promissory note/ cheque is with the seller so, till that time he is only called as seller but when any of the mentioned instruments dishonours then after this seller is called unpaid seller

Features of an unpaid seller

1. Seller must sell the goods on cash basis and must be unpaid (in cash transactions payment becomes due instantly)

2. Seller must be unpaid either wholly or party

3. The decided period has expired and the price has not been paid to seller

4. Seller must not refuse to accept the payment

5. Where the price paid through negotiable instrument (bill of exchange/ promissory note/ cheque) and the same has been dishonoured

A. Rights of unpaid seller against good

1.**Right of possession/ lien** :If the buyer fails to pay the price within the decided time, then unpaid seller has the right to keep the goods in his possession and he can refuse to deliver the goods until the due payment is paid.

When right of possession can be exercised:-

- à When goods are sold on cash basis, but payment is unpaid
- à When goods have been sold on credit basis and the term of credit has expired
- à When the buyer becomes insolvent even within the decided period for payment à So, far as the goods are in the possession of unpaid seller, he can exercise this right. If goods are lost/ given up then right of possession/ lien is also lost/ given up

Termination of Right of Possession

- By delivery of goods to the buyer/ his agent

- By delivery of goods to the carrier/ courier company à

- By waiver This means that it's specifically mentioned in the contract that seller can't retain the possession of the goods even if the price has not been paid

- When buyer has obtained the possession of goods lawfully

2.Right of stoppage of goods in transit

If a buyer fails to pay the price within the decided time, then unpaid seller has the right to stop the goods in transit.

Conditions for stoppage of goods:-

- When seller is unpaid either wholly or partially

- When the buyer becomes insolvent

- Goods must be in the course of transit- This means that goods must not be in the possession of the seller and have not reached the buyer's possession as well

Termination of Transit

- By delivery to the buyer/ his agent

- Interception by the buyer (Interception means the act of catching/ receiving): When buyer or his agent obtains the delivery of the goods before their arrival at the appointed destination hence, the transit comes to an end

- Acknowledgement to the buyer by the carrier/ courier company that they are holding the goods on buyer's behalf, then also transit comes to an end

- Part delivery of goods: If part of the goods are delivered to the buyer then the transit comes to an end for the remainder of the goods as well

3.**Right of resale:** The unpaid seller has the right to resell the goods

Conditions for resale:

- When goods are of perishable nature- Then unpaid seller can resell them immediately without the notice to the buyer. But in case of non-perishable items unpaid seller needs to send notice to the buyer for reselling them

- Where unpaid seller gives the notice to buyer and buyer still don't pay for it

- Where the right of resale is reserved/ mentioned in the contract If contract clearly specifies that reselling can't be done or vice versa

- Buyer becomes insolvent

- Buyer fails to pay the price of the goods

B. Rights of unpaid seller against buyer

1. Suit for price : Under the contract of sale if the property of the goods is already passed but he refuses to pay for the goods the seller becomes an unpaid seller. In such a case. the seller can sue the buyer for wrongfully refusing to pay him his due.

Suit for interest and special damages If there is a specific agreement between the parties the seller can sue for the interest amount due to him from the buyer. This is when both parties have specifically agreed on the interest rate to be paid to seller from the date on which the payment becomes due.

But if the parties do not have such specific terms, still the court may award the seller with the interest amount due to him at a rate which it sees fit.

2. Suit for damages for non-acceptance Suit can be filed against the buyer if the buyer wrongfully refuses to accept the goods

3. Suit for breach of contract

Repudiation of Contract before Due Date

4. If the buyer repudiates the contract before the delivery date of the goods the seller can still sue for damages. Such a contract is considered as a rescinded contract, and so the seller can sue for breach of contract. This is covered in the Indian Contract Act and is known as Anticipatory Breach of Contract.

Rights (Remedies) of Buyer against Seller

- Suit for damages for non-delivery :If the seller wrongfully or neglectfully refuses to deliver the goods to the buyer, then the buyer can sue for non-delivery of the goods. According to Section 57 of the Sale of Goods Act, if the buyer faces losses due to the wrongful actions of the seller (non-delivery) he can sue for damages caused due to this.

Suit Suit for breach of warranty: **As stated under Section 59, the buyer cannot reject the goods solely on the basis of breach of warranty on the part of the seller or when a buyer is forced to treat a breach of condition as a breach of warranty. But he may sue the seller for damages or set up against the seller the breach of the warranty in the extinction of the price.**

- Suit for specific performance :If the seller commits a breach of contract, the buyer can approach the court to ask the seller for specific performance. The court after deliberation can command the seller for specific performance. One important point to keep in mind is that this remedy is only available if the goods are ascertained or specific.

- Suit for breach of contract: As stated under Section 59, the buyer cannot reject the goods solely on the basis of breach of warranty on the part of the seller or when a buyer is forced to treat a breach of condition as a breach of warranty. But he may sue the seller for damages or set up against the seller the breach of the warranty in the extinction of the price.

Repudiation of Contract

- If the seller repudiates the contract, the buyer does not have to wait until the date of the contract. He can treat the contract as rescinded and sue for damages immediately. This will be an anticipatory breach of contract.

Auction Sale

An auction sale is a public sale. The goods are sold to all members of the public at large who are assembled in one place for the auction. Such interested buyers are the bidders.

The price they are offering for the goods is the bid. And the goods will be sold to the bidder with the highest bid. The person carrying out the auction sale is the auctioneer. He is the agent of the seller. So all the rules of the Law of Agency apply to him. But if an auctioneer wishes to sell his own property as the principal he can do so. And he need not disclose this fact, it is not a requirement under the law.

Rules of an Auction Sale

1] Goods Sold in Lots

- In an auction sale, there can be many goods up for sale of many kinds. If some particular goods are put up for sale in a lot, then each such lot will be considered a separate subject of a separate contract of sale. So each lot ill prima facie be the subject of its own contract of sale.

2] Completion of Sale

- The sale is complete when the auctioneer says it is complete. This can be done by actions also – like the falling of the hammer, or any such customary action. Till the auctioneer does not announce the completion of the sale the prospective buyers can keep bidding.

3] Seller may Reserve Right to Bid

- The seller may reserve his right to bid. To do so he must expressly reserve such right to bid. In this case, the seller on any person on his behalf can bid at the auction.

4] Sale Not Notified

If the seller has not notified of his right to bid he may not do so under any circumstances. Then neither the seller nor any person on his behalf can bid at the auction. If done then it will be unlawful.

The auctioneer also cannot accept such bids from the seller or any other person on his behalf. And any sale that contravenes this rule is to be treated as fraudulent by the buyer.

5] Reserve Price

- An auction sale may be subject to a reserve price or an upset price. This means the auctioneer will not sell the goods for any price below the said reserve price.

6] Pretend Bidding

- But if the seller or any other person appointed by him employs pretend bidding to raise the price of the goods, the sale is voidable at the option of the buyer. That means the buyer can choose to honor the contract or he can choose to void it.

7] No Credit

- The auctioneer cannot sell the goods on credit as per his wishes. He cannot accept a bill of exchange either unless the seller is expressly fine with it.

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