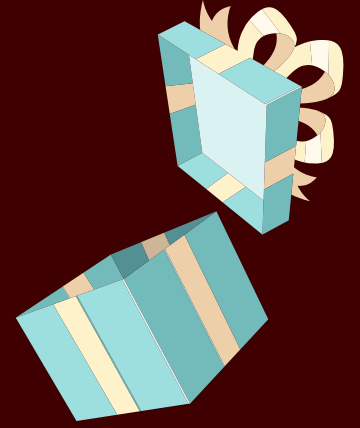
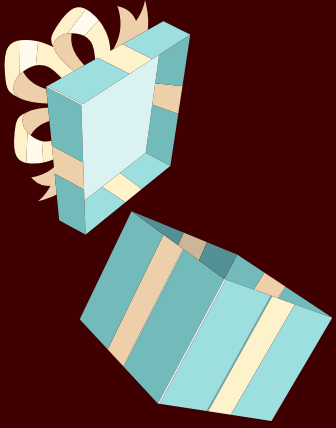


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# CHAPTER 1

## THE INDIAN CONTRACT ACT, 1872

*Plan to work and work your plan  
because failing to plan is planning to  
fail.*

### UNIT I - CONTRACT OF INDEMNITY

#### 1. INTRODUCTION TO CONTRACT OF INDEMNITY

[SECTION 124]

<b>'Indemnity' Meaning</b>	<ul style="list-style-type: none"> <li>▪ To make good the loss incurred by another person.</li> <li>▪ To compensate the party who has suffered some loss.</li> <li>▪ To save a party from incurring a loss.</li> </ul>	
<b>'Contract of indemnity' Definition-</b>	<p>A contract is called as a contract of indemnity if</p> <ul style="list-style-type: none"> <li>➤ one party promises to save the other from loss caused to him</li> <li>➤ by the conduct of the promisor himself or</li> <li>➤ by the conduct of any other person.</li> </ul> <p><b>Example:</b> Mr. X contracts with the Government to return to India after completing his studies at University of Cambridge and serve the Government for a period of 5 years. If Mr. X fails to return to India, he will have to reimburse the Government. It is a contract of indemnity.</p>	
<b>Modes of contract of indemnity</b>	<b>Expressed</b>	<ul style="list-style-type: none"> <li>▪ When a person expressly promises to compensate the other from loss. It may be <b>oral or written</b>.</li> </ul>
	<b>Implied</b>	<ul style="list-style-type: none"> <li>▪ When the contract is to be inferred from the conduct of the parties or from the circumstance of the case.</li> </ul>
<b>Essential elements of a contract of indemnity</b>	<b>Contract</b>	<p>All the <b>essentials of a valid contract</b> must also be present in the contract of indemnity which includes:</p> <ol style="list-style-type: none"> <li>a. Offer and acceptance</li> <li>b. Intention to create legal obligation</li> <li>c. Consideration</li> <li>d. Competency to contract</li> <li>e. Free consent</li> <li>f. Lawful object</li> <li>g. The agreement must not be expressly declared to be void- e.g.: an agreement in restraint of trade/ marriage etc.</li> </ol>

	<p>h. The terms of the agreement must not be vague or uncertain</p> <p>i. The agreement must be capable of performance- An agreement to do an impossible act is void.</p> <p>j. Legal formalities</p> <ul style="list-style-type: none"> <li>▪ <b>Example:</b> Ram asks Shyam to beat Mohan and promises to indemnify Shyam against the consequences. Shyam beats Mohan and is fined INR 10,000. Shyam cannot claim this amount from Ram because the object of the agreement was unlawful.</li> </ul>
<b>Loss to one party</b>	<ul style="list-style-type: none"> <li>▪ In a contract of indemnity, a person agrees to indemnify another person in case such other person incurs some loss.</li> </ul>
<b>Indemnity by promisor</b>	<ul style="list-style-type: none"> <li>▪ The purpose of contract of indemnity is to protect the indemnity holder from any loss that may be caused to the indemnity holder.</li> </ul>
<b>Reason for loss</b>	<ul style="list-style-type: none"> <li>▪ The contract of indemnity must specify that indemnity holder shall be protected from the loss caused due to- <ul style="list-style-type: none"> <li>a) Conduct of the promisor himself; or</li> <li>b) Conduct of any other person.</li> </ul> </li> </ul> <p>Thus, <b>loss caused by the conduct of the promisee, or accident, or an act of God is not covered.</b></p> <p><b>Note:</b> A contract of Fire Insurance or Marine Insurance is always a contract of indemnity. But there is no contract of indemnity in case of contract of Life Insurance.</p>
<b>Example</b>	<p>a) A may contract to indemnify B against the consequences of any proceedings which C may take against B in respect of a sum of INR 5000/- advanced by C to B. In consequence, when B who is called upon to pay the sum of money to C fails to do so, C would be able to recover the amount from A as provided in Section 124.</p> <p>b) X, a shareholder of a company lost his share certificate. He applied for the duplicate. The company agreed to issue the same on the term that X will compensate the company against the loss where any holder produces the original certificate. Here, there is contract of indemnity between X and the company.</p> <p>c) X may agree to indemnify Y for any loss or damage that may occur if a tree on Y's neighbouring property blows over. If the tree then blows over and damages Y's fence, X will be liable for the cost of fixing the fence.</p>

## 2. RIGHTS OF INDEMNITY HOLDER

[SECTION 125]

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to following:

<b>a) Rights to recover damages</b>	<p>The indemnity holder has the right to recover <b>all the damages</b> which</p> <ul style="list-style-type: none"> <li>➤ he is compelled to pay in any suit</li> <li>➤ in respect of any matter covered by the contract of indemnity.</li> </ul>
<b>b) Right to recover costs of suit</b>	<p>The indemnity holder has the right to recover all the costs which he is compelled to pay in <b>bringing or defending such suit.</b></p> <p><b>Conditions</b></p> <ul style="list-style-type: none"> <li>a) The indemnifier authorised him to compromise the suit; or</li> <li>b) (i) The indemnity holder did not contravene the orders of the indemnifier; and (ii) The indemnity holder acted as it would have been prudent for him to act in the absence of any contract of indemnity.</li> </ul>

<b>c) Right to recover sums paid as a compromise of the suit</b>	The indemnity holder has the right to recover any sum paid as a <b>compromise of the suit</b> . <b>Condition:</b> a) The indemnifier authorised him to compromise the suit; or b) (i) The indemnity holder did not contravene the orders of the indemnifier; and (ii) The indemnity holder acted as it would have been prudent for him to act in the absence of any contract of indemnity.
<b>Note:</b> Rights given under section 125 are <b>not exhaustive</b> .	
<b>Note:</b> Indian Contract Act is silent about the rights of Indemnifier. However, they are similar to rights of surety.	

### When does the liability of an indemnifier commence?

Although the Indian Contract Act, 1872, is silent on the time of commencement of liability of indemnifier, however, on the basis of judicial pronouncements it can be stated that the liability of an indemnifier commences **as soon as the liability of the indemnity-holder becomes absolute and certain**. This principle has been followed by the courts in several cases.

**Example:** A promises to compensate X for any loss that he may suffer by filing a suit against Y. The court orders X to pay Y damages of Rs 10,000. As the loss has become certain, X may claim the amount of loss from A and pass it to Y.

## UNIT II - CONTRACT OF GUARANTEE

### 1. MEANING OF CERTAIN TERMS

[SECTION 126]

<b>Contract of Guarantee</b>	A contract of guarantee is a contract to – ➤ Perform the promise; or ➤ Discharge the liability of a <b>third person in case of his default</b> .
<b>Surety</b>	The person who gives the guarantee is called as surety.
<b>Principal Debtor</b>	The person in respect of whose default, the guarantee is given is called as principal debtor.
<b>Creditor</b>	The person to whom the guarantee is given is called as creditor.
<b>Example</b>	a) When A requests B to lend INR 10,000 to C and guarantees that C will repay the amount within the agreed time and that on C falling to do so, he (A) will himself pay to B, there is a contract of guarantee. Here, B is the creditor, C the principal debtor and A the surety. b) Where 'A' obtains housing loan from LIC Housing and if 'B' promises to pay LIC Housing in the event of 'A' failing to repay, it is a contract of guarantee. c) X and Y go into a car showroom where X says to the dealer to supply latest model of Wagon R to Y. In case of Y's failure to pay, X will be paying for it. This is a contract of guarantee because X promises to discharge the liability of Y in case of his defaults.

### 2. ESSENTIALS AND LEGAL RULES FOR A VALID CONTRACT

[SEC 126, 127, 142 AND 143]

<b>a) Principal Debt</b>	<ul style="list-style-type: none"> <li>▪ The purpose of a guarantee being to <b>secure the payment of a debt</b>, the existence of recoverable debt is necessary.</li> <li>▪ It is of the essence of a guarantee that there should be someone liable as a principal debtor and the surety undertakes to be liable on his default. If there is no principal debt, there can be no valid guarantee.</li> </ul>
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<p><b>b) Must have all the essentials of a valid contract Including Consideration</b></p>	<ul style="list-style-type: none"> <li>▪ All the essentials of a valid contract must be present in the contract of guarantee (sec. 126).</li> <li>▪ Like every other contract, a contract of guarantee should also be supported by some consideration. A guarantee without consideration is void, but there need be no direct consideration between the surety and the creditor.</li> <li>▪ As per Section 127, <b>Consideration received by the principal debtor is a sufficient consideration to the surety</b> for giving the guarantee (sec. 127).</li> </ul> <p><i>Illustrations</i></p> <p>a) B requests A to sell and deliver to him goods on credit. A agree to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. As per section 127, there is a sufficient consideration for C's promise. Therefore, the guarantee is valid.</p> <p>b) A sells and delivers goods to B. B makes a default in payment. C requests A to forbear to sue B for the debt for a year and promises that, if he does so, C will pay for them in case of default of payment by B. A agrees to forbear as requested. As per section 127, there is a sufficient consideration for C's promise. Therefore, guarantee is valid.</p> <p>c) A sells and delivers goods to B. C, afterwards, without consideration, agrees to pay for them in case of default by B. As per section 127, there is no consideration for C's promise. Therefore, the guarantee is void.</p> <p><b>Note:</b> Even if principal debtor is incompetent to contract, the guarantee is valid. But if surety is incompetent to contract, the guarantee is void.</p>
<p><b>c) Primary liability of some person</b></p>	<ul style="list-style-type: none"> <li>▪ The <b>principal debtor is primarily liable</b>. However, even if the principal debtor is incompetent to contract, the guarantee is valid although the principal debtor is not liable at all.</li> <li>▪ The debt must be legally enforceable.</li> <li>▪ The debt must not be a time barred debt.</li> </ul>
<p><b>d) The contract must be conditional</b></p> <p><b>e) No Misrepresentation or Concealment</b></p>	<ul style="list-style-type: none"> <li>▪ The liability of surety is <b>secondary and conditional</b>.</li> <li>▪ The liability of surety arises only if the <b>principal debtor makes a default</b>.</li> </ul> <ul style="list-style-type: none"> <li>▪ Any guarantee which has been <b>obtained by means of misrepresentation made by the creditor</b> or with his knowledge and assent, concerning a material part of the transaction, is <b>invalid</b> (sec. 142)</li> <li>▪ Any guarantee, which the creditor has obtained by means of <b>keeping silence with respect to material circumstance, is invalid</b> (sec. 143).</li> </ul> <p><i>Illustrations</i></p> <p>a) A engages B as clerk to collect money for him. B fails to account for some of his receipts and A, in consequence, call upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterward makes default. As per section 143, The guarantee given by C is invalid since the creditor (A) has obtained the guarantee from C by means of keeping silence as to material circumstance (B's failure in the past to duly account for the receipts).</p> <p>b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay INR 5 per tonne beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. As per section 143, A is not liable as surety since the creditor(C) has obtained the guarantee from A by means of keeping silence as to material</p>

	circumstance (B paying excess INR 5 per tonne to be applied in liquidation of an old debt).
<b>f) Writing Not Necessary</b>	<ul style="list-style-type: none"> <li>▪ A contract of guarantee may be <b>either oral or written</b>.</li> </ul>
<b>g) Joining of other co-sureties</b>	<ul style="list-style-type: none"> <li>▪ The guarantee by a surety is not valid if-           <ol style="list-style-type: none"> <li>a) A condition is imposed by a surety that some other person must join as a co-surety but</li> <li>b) Such other person does not join as a co-surety.</li> </ol> </li> </ul>

### 3. TYPES OF GUARANTEE

<b>a) Specific Guarantee</b>	<p>A guarantee which extends to a single debt/ specific transaction is called a specific guarantee. The surety's liability comes to an end when the guaranteed debt is duly discharged or the promise is duly performed.</p> <p><b>Example:</b> A guarantees payment to B of the price of the five bags of rice to be delivered by B to C and to be paid for in a month. B delivers five bags to C; C pays for them. This is a contract for specific guarantee because A intended to guarantee only for the payment of price of the first five bags of rice to be delivered one time [<i>Kay v Groves</i>]</p>
<b>b) Continuing Guarantee [Sec 129]</b>	<p>A guarantee which extends to a series of transaction is called a continuing guarantee. A surety's liability continues until the revocation of the guarantee.</p> <p><b>Example:</b> On A's recommendation B, a wealthy landlord employs C as his estate manager. It was the duty of C to collect rent on 1st of every month from the tenant of B and remit the same to B before 5th of every month. A, guarantee this arrangement and promises to make good any default made by C. This is a contract of continuing guarantee.</p>

#### 3.1. CONTINUING GUARANTEE

[SEC 129, 130 AND 131]

<b>Meaning (Sec. 129)</b>	<ul style="list-style-type: none"> <li>▪ Guarantee which <b>extends to a series of transaction</b> is called continuing guarantee.</li> </ul>
<b>Revocation (Sec. 130)</b>	<ul style="list-style-type: none"> <li>▪ Continuing guarantee may be revoked at any time by the surety by giving a <b>notice to the creditor</b>.</li> <li>▪ However, revocation shall be <b>effective only in respect of future transactions</b>.</li> <li>▪ Thus, liability of surety continues till the performance or the discharge of all the transactions entered into or the guarantee is withdrawn.</li> </ul>
<b>Death of surety (Sec.131)</b>	<ul style="list-style-type: none"> <li>▪ Death of the surety operates as a revocation of a continuing guarantee <b>with respect to future transactions</b>.</li> </ul>
<b>Illustrations</b>	<ol style="list-style-type: none"> <li>a) A, in consideration that B will employ C in collecting the rent of B's Zamindari, promises B to be responsible to the amount of INR 5,000 for the due collection and payment by C of those rent. As per section 129, the guarantee given by A is a continuing guarantee.</li> <li>b) A guarantees payment to B, a tea dealer to the amount of INR 100 for any tea he may, from time to time, supply to C. B supplies C with tea exceeding INR 100 and C pays B for it. Afterwards, B supplies C with tea worth INR 200. C fails to pay. As per section 29, the guarantee given by A was a continuing guarantee. Therefore, A is liable to B to the extent of INR 100.</li> <li>c) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards, B delivers four sacks to C, which C does not pay for. As per section 129, the guarantee given by A was not a continuing guarantee. Therefore, A is not liable to B for the price of the four sacks.</li> </ol>

**4. NATURE OF EXTENT OF SURETY'S LIABILITY****[SEC 128]**

<b>Surety's liability is co-extensive with liability of principal debtor</b>	<ul style="list-style-type: none"> <li>▪ The term "co-extensive with that of principal debtor" means that the <b>surety is liable for what the principal debtor is liable</b>. However, the liability of the surety may be made less than that of the principal debtor by an express contract to that effect.</li> <li>▪ The liability of a surety arises only on default by the principal debtor. But as soon as the principal debtor defaults, the liability of the surety begins and runs co-extensive with the liability of the principal debtor, in the sense that the surety will be liable for all those sums for which the principal debtor is liable.</li> <li>▪ If there is a condition precedent for surety's liability, the surety would be liable only when such condition is fulfilled. A partial recognition of this principal is found in Section 144 (Joining of co surety)</li> <li>▪ Where a debtor cannot be held liable on account of any defect in the document, the liability of the surety also ceases.</li> <li>▪ Surety's liability continues even if the principal debtor has not been sued or is omitted from being sued. In other words, a creditor may choose to proceed against a surety first, unless there is an agreement to the contrary.</li> </ul>
<b>Commencement of surety's liability</b>	<ul style="list-style-type: none"> <li>▪ The liability of surety arises <b>immediately on default by the principal debtor</b>.</li> <li>▪ The creditor is not required to             <ul style="list-style-type: none"> <li>➤ first sue the principal debtor; or</li> <li>➤ first give a notice to the principal debtor.</li> </ul> </li> </ul>
<b>Secondary</b>	<ul style="list-style-type: none"> <li>▪ Liability of surety is of secondary nature as he is liable only on default of principal debtor</li> </ul>
<b>Surety's liability may be continuous</b>	<ul style="list-style-type: none"> <li>▪ The surety may agree to become liable for a series of transaction of continuous nature.</li> <li>▪ However, the surety may fix             <ul style="list-style-type: none"> <li>➤ a limit on his liability up to which the guarantee shall remain effective; or</li> <li>➤ a time period during which the guarantee shall remain effective.</li> </ul> </li> </ul>

**5. LIABILITY OF TWO PERSONS PRIMARILY LIABLE, NOT AFFECTED BY ARRANGEMENT BETWEEN THEM THAT ONE SHALL BE SURETY ON OTHER'S DEFAULT****[SECTION 132]**

<b>Third party not affected by contract between two sureties</b>	<p>Where two persons contract with a third person to undertake a certain liability, and</p> <ul style="list-style-type: none"> <li>➤ also contract with each other that one of them shall be liable only on the default of the other,</li> <li>➤ the third person not being a party to such contract,</li> <li>➤ the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract,</li> <li>➤ although such third person may have been aware of its existence.</li> </ul>
<b>Example</b>	<p>A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer, to a suit by C against A upon the note.</p>

**6. RIGHTS OF SURETY****[SEC. 140, 141, 145, 146, AND 147]****✚ Rights against principal debtor**



<p><b>a) Right of indemnity (sec. 145)</b></p>	<ul style="list-style-type: none"> <li>▪ In every contract of Guarantee, there is an implied promise by the principal debtor to indemnify the surety.</li> <li>▪ The surety is entitled to claim from the principal debtor, all the sums which he has rightfully paid.</li> <li>▪ The surety cannot recover such sums which he has paid wrongfully.</li> <li>▪ <b>Illustrations</b></li> </ul> <p>a) B is indebted to C and A is surety for the debt. C demands payments from A and on his refusal, sues him for the amount. A defends the suit having reasonable grounds for doing so but he is compelled to pay the amount of the debt with costs. As per section 145, A can recover from B, the amount paid by him for costs as well as the principal debt.</p> <p>b) C lends B, a sum of money and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A and on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit and has to pay the amount of the bill and costs. As per section 145, A can recover from B the amount of the bill but not the sum paid for costs as there was no real ground for defending the action.</p> <p>c) A guarantees to C, to the extent of 2,00,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,00,000 rupees, but obtains from A payment of the sum of 2,00,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.</p>
<p><b>b) Right of subrogation (sec. 140)</b></p>	<ul style="list-style-type: none"> <li>▪ On payment of a debt, the surety shall be <b>entitled to all the rights which the creditor could claim against the principal debtor.</b></li> </ul>

#### ✚ Rights against the creditor

<p><b>a) Right to claim creditor's securities (Sec. 141)</b></p>	<ul style="list-style-type: none"> <li>▪ The surety can claim all the securities which the creditor had at the <b>time of giving of guarantee.</b></li> <li>▪ It is immaterial as to whether the surety had knowledge of such securities or not.</li> <li>▪ If the securities are returned by the creditor to the principal debtor, the surety is discharged to the extent of value of the securities so returned.</li> <li>▪ <b>Illustrations</b></li> </ul> <p>a) C advances to B, his tenant, INR 2,000 on the guarantee of A. C has also further security for INR 2,000 by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent and C sues A on his guarantee. As per section 141, A is discharged from liability to the extent of amount of the value of the furniture.</p> <p>b) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.</p> <p>c) A, as surety for B, makes a bond jointly with B and C, to secure a loan from C to B. Afterwards, C obtains from B, a further security for the same debt. Subsequently, C gives up the further security. As per section 141, A is not discharged since the security lost by the creditor (C) was obtained by him (C) after the guarantee was given by A.</p>
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<b>b) Right of Set off</b>	<ul style="list-style-type: none"> <li>Any amount recovered by the principal debtor may be claimed as deduction.</li> <li>Any amount recovered by the surety may be claimed as deduction.</li> </ul>
<b>c) Right to share reduction</b>	<ul style="list-style-type: none"> <li>The surety has right to claim proportionate reduction in his liability if the principal debtor becomes insolvent.</li> </ul>

#### ✚ Rights against the co-sureties

“Co-sureties (meaning)- When the same debt or duty is guaranteed by two or more persons, such persons are called co-sureties”

<b>a) Co-sureties liable to contribute equally (Sec 146)</b>	<b>General rule</b>	All the co-sureties shall <b>contribute equally</b> (Sec. 146).
	<b>Exceptions</b>	<ul style="list-style-type: none"> <li>Under the contract of guarantee, the co-sureties may fix limit on their respective liabilities.</li> <li>Even in such a case, the co-sureties shall contribute equally subject to maximum limit fixed by the co-sureties (Sec.147).</li> <li>The contract of guarantee may provide that the co-sureties shall contribute in some other proportion (sec. 146).</li> </ul>
	<b>Illustrations</b>	<p>a) A, B and C are sureties to D for the sum of INR 3,000 lent to E. E makes default in payment. As per section 146, A, B and C are liable among themselves to pay INR 1,000 each to D.</p> <p>b) A, B &amp; C are sureties to D for the sum of INR 1,000 lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one –quarter; B to the extent of one quarter and C to the extent of one half. E makes default in payment. As per section 146, as between the co-sureties, A is liable to pay INR 250; B INR 250 &amp; C INR 500.</p>
<b>b) Liability of co-sureties bound in different sums (Section 147)</b>	<p>The principal of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.</p> <p><b>Example</b></p> <p>a) A, B and C as sureties for D, enter into three several bonds, each in different penalties namely, A in the penalty of INR 10,000, B in that of INR 20,000, C in that of INR 40,000, conditioned for D’s duly accounting to E. D makes default to the extent of INR 30,000. As per section 147, as between the co-sureties A, B and C are each liable to pay INR 10,000.</p> <p>b) A, B and C as sureties for D enter into three several bonds each in different penalties namely A in the penalty of INR 10,000 B in that of INR 20,000. C in that of INR 40,000 conditional for D’s duly accounting to E. D makes default to the extent of INR 40,000. As per section 147, as between the co-sureties, A is liable to pay INR 10,000 and B and C INR 15,000 each.</p> <p>c) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 1,00,000 rupees, B in that of 2,00,000 rupees, C in that of 4,00,000 rupees, conditioned for D’s duly accounting to E. D makes default to the extent of 7,00,000 rupees. A, B and C have to pay each the full penalty of his bond.</p>	
<b>c) Right to share benefit of securities</b>	<ul style="list-style-type: none"> <li>If one co-surety receives any security, all the other co-sureties are entitled to share the benefit of such security.</li> </ul>	

## 7. DISCHARGE OF SURETY FROM LIABILITY

[SEC. 130 TO 139]

<b>1) By revocation of the Contract of Guarantee</b>	
<b>a) Revocation of continuing guarantee by Notice (Sec 130)</b>	<p>The continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors. A specific guarantee can be revoked only if liability to principal debtor has not accrued.</p> <p><b>Example 1:</b></p> <p>a) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 50,000 rupees. B discounts bills for C to the extent of 20,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 20,000 rupees, on default of C.</p> <p>b) A guarantees to B, to the extent of 100,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonors the bill at maturity. A is liable upon his guarantee.</p> <p>c) X gives guarantee to the extent of INR 50,000 for the loans given from time to time by A to B. A gave a loan of INR 10,000 to B. Afterwards, X gives notice of revocation. X is discharged from all liability to A for any loan granted after the revocation of guarantee but he is liable to A for INR 10,000 on default of B.</p>
<b>b) Revocation of continuing guarantee by surety's death (Sec 131):</b>	In the absence of any contract to the contrary, the death of surety operates as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety. However, the surety's estate remains liable for the past transactions which have already taken place before the death of the surety.
<b>c) By Novation [Sec 62]:</b>	The surety under original contract is discharged if a fresh contract is entered into either between the same parties or between the other parties, the consideration being the mutual discharge of the old contract.
<b>2) By conduct of the creditor</b>	
<b>a) By Variance in terms of Contract (Sec.133)</b>	<p><b>If-</b></p> <ul style="list-style-type: none"> <li>➤ <b>subsequent</b> to the formation of contract of guarantee,</li> <li>➤ any <b>variation</b> is made in the terms and conditions of conduct of guarantee; and</li> <li>➤ such variation is made <b>without the consent of surety</b>,</li> </ul> <p><b>Then</b></p> <ul style="list-style-type: none"> <li>➤ the surety shall be <b>released from the liabilities</b> in relation to transactions</li> <li>➤ which <b>take place after such variation</b>.</li> </ul> <p><b>Illustration</b></p> <p>a) A becomes surety to C for B's conduct as manager in C's bank. Afterwards, B and C contract without A's consent that B's salary shall be raised and that he shall become liable for one fourth of the losses on overdrafts. B allows a customer to over-draw and the bank loses a sum of money. As per section 133, A is discharged with respect to his guarantee by reason of the variation in the terms of contract made without his consent. Accordingly, A is not liable to make good the loss incurred by the bank.</p> <p>b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. As per section 133, Material alteration in duties of B amounts to variation in terms and conditions of guarantee. Although such variation is not due to an agreement between the principal debtor and creditor, yet the surety is discharged.</p>

	<p>c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as clerk. Afterwards, without A's knowledge or consent, C and B agrees that B should be paid by a commission on the goods sold by him and not by a fixed salary. As per section 133, A is discharged with respect to his guarantee by reason of the variation in the terms of contract made without his consent. Accordingly, A is not liable for subsequent misconduct of B.</p> <p>d) A gives to C a continuing guarantee to the extent of INR 3,000 for any oil supplied by C to B on credit. Afterwards, B becomes embarrassed and without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money and that the payment shall be applied to the then, existing debts between B and C. As per section 133, A is not liable on his guarantee for any goods supplied after the new arrangement made between B and C.</p> <p>e) C contracts to lend B INR 5,000 on 1<sup>st</sup> March. A guarantees repayment. C pays INR 5,000 to B on the 1<sup>st</sup> January. As per section 133, A is discharged from his liability, as the contract has been varied, since C might sue B for the money before 1<sup>st</sup> March.</p> <p><b>Variation which is not substantial or material or which is beneficial to the surety will not discharge him of his liability.</b></p> <p>In <i>M.S Anirudhan v Thomco's Bank Ltd. AIR 1963 SC 746</i>, the surety guaranteed the repayment of loan provided by the bank to the principal debtor of only upto INR 25,000. Subsequently, since the bank was willing to provide loan only upto INR 20,000, the principal debtor reduced the amount to INR 20,000 in the guarantee form and without intimation to the surety gave it to the bank which was then accepted. On default by the principal debtor, the court held that the surety's liability was not discharged as the alteration was beneficial to him and not substantial.</p>
<p><b>b) By Release or discharge of principal debtor (Sec.134 and 138)</b></p>	<p><b>If</b></p> <ul style="list-style-type: none"> <li>➤ the creditor makes a fresh contract with the principal debtor whereby the principal debtor is relieved from his liability; or</li> <li>➤ the creditor does any act or omission resulting in discharge of the principal debtor</li> </ul> <p><b>Then</b></p> <ul style="list-style-type: none"> <li>➤ the surety is <b>discharged</b> (sec. 134).</li> </ul> <p><b>Illustrations</b></p> <p>a) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. As per section 134, B is released from his debt by the new contract entered into with C. A is discharged from his guarantee since the effect of the new contract is release of the principal debtor.</p> <p>b) A contracts with B to grow a crop of indigo on A's land and to deliver to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for the irrigation of A's land, and thereby prevents A from raising the indigo. As per section 134, C is no longer liable on his guarantee.</p> <p>c) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. As per section 134, C is discharged from his suretyship.</p> <p>However, in case of co-sureties, a release by the creditor of one of them-</p> <ul style="list-style-type: none"> <li>i) does not discharge the other.</li> </ul>

	<p>ii) does not result in discharge of the surety so released from his liability towards other co-sureties (sec. 138).</p>
<b>c) Composition with principal debtor</b>	<p>The surety is <b>discharged</b> if-</p> <ul style="list-style-type: none"> <li>➤ the creditor makes a composition with the principal debtor</li> <li>➤ without obtaining the consent of surety.</li> </ul>
<b>d) Not to sue the principal debtor (sec. 135)</b>	<p>The surety is <b>discharged</b> if the creditor-</p> <ul style="list-style-type: none"> <li>➤ without obtaining the consent of the surety</li> <li>➤ enters into a contract with the principal debtor not to sue him viz. the principal debtor.</li> </ul> <p>However, <b>mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not discharge the surety</b> (sec. 137).</p> <p><b>Illustration:</b></p> <p>B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has becomes payable. As per section 137, A is not discharged from his guarantee since mere forbearance on the part of the creditor to sue the principal debtor does not discharge the surety.</p>
<b>e) Giving extension of time to principal debtor (sec. 135, 136 and 137)</b>	<p>i) The surety is <b>discharged</b> if-</p> <ul style="list-style-type: none"> <li>➤ the creditor extends the time</li> <li>➤ for repayment of the debt or performance of the promise by principal debtor</li> <li>➤ <b>without obtaining the consent of the surety</b> (sec. 135).</li> </ul> <p>ii) The surety is <b>not discharged</b> if-</p> <ul style="list-style-type: none"> <li>➤ a contract to give time to principal debtor</li> <li>➤ is made by the creditor</li> <li>➤ <b>with a third person, and not with the principal debtor (sec. 136).</b></li> </ul> <p><b>Illustrations:</b></p> <p>C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. As per section 136, A is not discharged since the contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor.</p>
<b>f) Loss of security by a creditor (Sec. 141)</b>	<p>The surety is discharged to the <b>extent of security lost by the creditor.</b></p>
<b>g) Creditor's act or omission impairing surety's eventual remedy (Sec. 139)</b>	<p><b>If</b></p> <ul style="list-style-type: none"> <li>➤ the creditor does any act which is <b>inconsistent with right of the surety</b>; or</li> <li>➤ <b>omits to do any act</b>, which his duty to the surety requires him to do; and</li> <li>➤ the eventual remedy of the surety against the principal debtor is thereby impaired,</li> </ul> <p><b>Then</b></p> <ul style="list-style-type: none"> <li>➤ the surety is <b>discharged.</b></li> </ul> <p><b>Illustrations</b></p> <p>a) B contracts to build a ship for C for given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. As per section 139, A is discharged by the prepayment since such prepayment amounts</p>

	<p>to such an act which is inconsistent with the right of the surety and the eventual remedy of the surety against the principal debtor is thereby impaired.</p> <p>b) A puts M as apprentice to B and gives a guarantee to B for M's fidelity. B promises that he will at least once a month, see that M has duly accounted for the cash. B omits to see this done as promised and M embezzles. As per section 139, B's omission to verify M's duly accounting for the cash amounts to omission to do any act which his duty to the surety requires him to do, by reason of which the eventual remedy of the surety against the principal debtor is impaired. So, A is not liable on his guarantee.</p>
<b>3) By the invalidation of the contract of guarantee</b>	
<b>a) Guarantee obtained by misrepresentation invalid [Sec 142]</b> - Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.	
<b>b) Guarantee obtained by concealment invalid [Sec 143]</b> - Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.	
<b>c) Guarantee on contract that creditor shall not act on it until co-surety joins (Section 144)</b> - Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.	

## 8. DISTINCTION BETWEEN INDEMNITY AND GUARANTEE

Basis	Contract of Indemnity	Contract of Guarantee
<b>Number of party/Parties to the contract</b>	Only two parties namely the indemnifier [promisor] and the indemnified [promisee]	Three parties namely creditor, principal debtor and surety.
<b>Nature of liability</b>	The liability of the indemnifier is primary and unconditional	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
<b>Time of liability</b>	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non-performance of an existing promise or non-payment of an existing debt.
<b>Time to Act</b>	The indemnifier need not act at the request of indemnity holder	The surety acts at the request of principal debtor.
<b>Right to sue third party</b>	indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
<b>Purpose</b>	Reimbursement of loss	For the creditor
<b>Competency to contract</b>	All parties must be competent to contract	In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

## UNIT III - CONTRACT OF BAILMENT

### 1. MEANING OF CONTRACT OF BAILMENT

[SECTION 148]

A bailment is the **delivery of goods** by one person to another for **some purpose** and when the **purpose is accomplished**, they shall be **returned or otherwise disposed** of according to the **directions of the person delivering them**.

#### Example:

- a) Where 'X' delivers his car for repair to 'Y', 'X' is the bailor and 'Y' is the bailee.
- b) X delivers a piece of cloth to Y, a tailor, to be stitched into a suit. It is contract for bailment.

**2. ESSENTIALS OF A VALID CONTRACT OF BAILMENT****[SEC. 148]**

<b>a) Contract</b>	<ul style="list-style-type: none"> <li>There must be a contract; <b>expressed or implied</b>.</li> </ul>
<b>b) Goods</b>	<ul style="list-style-type: none"> <li>Bailment can be made of <b>moveable goods only</b>.</li> </ul>
<b>c) Delivery</b>	<ul style="list-style-type: none"> <li>There must be <b>delivery of goods</b> by one person to another person.</li> <li>The delivery of the possession of goods is of the following kinds: <ul style="list-style-type: none"> <li>i) <b>Actual Delivery:</b> When goods are physically handed over to the bailee by the bailor. Eg: delivery of a car for repair to workshop</li> <li>ii) <b>Constructive Delivery:</b> Where delivery is made by doing anything that has the effect of putting goods in the possession of the bailee or of any person authorized to hold them on his behalf. Eg: Delivery of the key of a car to a workshop dealer for repair of the car.</li> </ul> </li> </ul>
<b>d) Purpose of delivery</b>	<ul style="list-style-type: none"> <li>The goods must be delivered for <b>some purpose</b>; expressed or implied.</li> </ul>
<b>e) Possession</b>	<ul style="list-style-type: none"> <li>In bailment, possession of goods changes. Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of bailee.</li> <li>The change of possession does not lead to change of ownership. In bailment, bailor continues to be the owner of goods as there is no change of ownership.</li> <li>Where a person is in custody without possession, he does not become a bailee.</li> </ul> <p><b>For example</b>, servants of a master who are in custody of goods of the master do not become bailees.</p> <p>Similarly, depositing ornaments in a bank locker is not bailment, because ornaments are kept in a locker whose key are still with the owner and not with the bank. The ornaments are in possession of owner though kept in a locker at bank.</p>
<b>f) Return or disposal of goods</b>	<ul style="list-style-type: none"> <li>Bailee is obliged to return the goods physically to the bailor. The goods should be returned in the same form as given or may be altered as per bailor's direction.</li> <li>Exchange of goods is allowed. The bailee cannot deliver some other goods, even if those are of higher value.</li> <li><b>Example:</b> Deposit of money in a bank is not bailment since the money returned by the bank would not be identical currency notes.</li> </ul>

**3. DIFFERENT FORMS OF BAILMENT**

Following are the popular forms of bailment

- Delivery of goods by one person to another to be held for the **bailor's use**.
- Hiring** of goods.
- Delivering goods to a creditor to serve as **security for a loan**.
- Delivering goods **for repair** with or without remuneration.
- Delivering goods **for carriage**.
- Goods given to a **friend for his own use** without any charge.

**4. CLASSIFICATION OF BAILMENT – BASED ON REWARD**

<b>Gratuitous bailment</b>	<p>Bailment without any charges or reward.</p> <ul style="list-style-type: none"> <li>No hire charges are paid by bailee; and</li> </ul>
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	<ul style="list-style-type: none"> <li>No custody charges are paid by bailor.</li> </ul>
<b>Non-gratuitous bailment</b>	<p>Bailment for some charges or reward.</p> <ul style="list-style-type: none"> <li>Hire charges are paid by bailee; or</li> <li>Custody charges are paid by bailor.</li> </ul>

**5. DUTIES OF BAILOR [SEC. 150, 158, 159 AND 164]**

a) <b>Duty to disclose faults in the goods (sec. 150)</b>	<b>Gratuitous bailment</b>	<ul style="list-style-type: none"> <li><b>Disclosure</b> – The bailor is liable to disclose all the faults known to him, which- <ul style="list-style-type: none"> <li>are material for use of the goods; or</li> <li>may put the bailee to extraordinary risks.</li> </ul> </li> <li><b>Effects of non-disclosure</b> - The bailor shall be liable for damages for any loss caused to the bailee.</li> </ul>
	<b>Non-gratuitous bailment</b>	<ul style="list-style-type: none"> <li><b>Disclosure</b>- The bailor is liable to disclose all the faults, whether known to him or not.</li> <li><b>Effects of non-disclosure</b> - The bailor shall be liable for damages for any loss caused to the bailee, whether or not he was aware of the fault.</li> </ul> <p><b>Illustration</b></p> <p>a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. As per section 150, A is liable to B for damages sustained by him.</p> <p>b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it. A is injured. As per section 150, B is liable to A for the injury caused to him.</p>
b) <b>Duty to reimburse expenses</b>	<b>Extraordinary expenses</b>	<ul style="list-style-type: none"> <li>The bailor is liable to pay the extraordinary expenses.</li> <li>The bailee may recover the extraordinary expenses paid by him.</li> <li>It is immaterial as to whether the bailment is gratuitous or non-gratuitous.</li> </ul>
	<b>Ordinary expenses</b>	<ul style="list-style-type: none"> <li>The bailee is liable to pay ordinary expenses.</li> <li>However, if the bailment is gratuitous for the benefit of bailor, the bailor is liable to pay the ordinary necessary expenses.</li> </ul> <p><b>Example:</b> A hired a taxi from B for the purpose of going to Gurgaon from Noida, during the journey, a major defect occurred in the engine. A had to pay INR 5000 as repair charges.</p> <p>These are the extraordinary expenses and it is the bailor's duty to bear such expenses. However, the usual and ordinary expenses for petrol, toll tax etc are to be borne by the bailee itself.</p>
c) <b>Indemnify bailee for defective title</b>	<ul style="list-style-type: none"> <li>The bailor shall indemnify the bailee for any loss caused to bailee by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them (defective title in goods).</li> </ul>	
d) <b>Indemnify the bailee for premature termination</b>	<p><b>If</b></p> <ul style="list-style-type: none"> <li>the bailment is gratuitous; and</li> <li>for specific period,</li> </ul> <p><b>Then</b></p>	



	<ul style="list-style-type: none"> <li>➤ the bailor may compel the bailee to return the goods before expiry of the period of bailment; and</li> <li>➤ the bailor shall indemnify the bailee for any loss incurred by the bailee.</li> </ul>
<b>e) Receive back the goods</b>	<ul style="list-style-type: none"> <li>▪ It is the duty of the bailor to receive back the goods, when returned by bailee.</li> <li>▪ If the bailor <b>wrongfully refuses</b> to receive back the goods, he shall be <b>liable to pay ordinary expenses</b> of custody of goods incurred by the bailee.</li> </ul> <p><b>Example:</b> X delivered his car to S for five days for safe keeping. However, X did not take back the car for one month. In this case, S can claim the necessary expenses incurred by him for the custody of the car.</p>

**6. DUTIES OF BAILEE [SEC 151 TO 157, 150, 161 & 163]**

<b>a) Takes reasonable care (sec. 151 and 152)</b>	<ul style="list-style-type: none"> <li>▪ The bailee must take such care of goods as a <b>man of ordinary prudence would take care of his own goods.</b></li> <li>▪ The bailee shall not be liable for any loss or destruction of goods if-                             <ul style="list-style-type: none"> <li>a) He is <b>not negligent</b>; or</li> <li>b) The loss was caused <b>due to an act of God or other unavoidable reasons.</b></li> </ul> </li> </ul> <p><i>Illustration</i></p> <ul style="list-style-type: none"> <li>a) If X bails his ornaments to 'Y' and 'Y' keeps these ornaments in his own locker at his house along with his own ornaments and if all the ornaments are lost/stolen in a riot 'Y' will not be responsible for the loss to 'X'. If on the other hand 'X' specifically instructs 'Y' to keep them in a bank, but 'Y' keeps them at his residence, then 'Y' would be responsible for the loss [caused on account of riot].</li> <li>b) A deposited his goods in B's godown. On account of unprecedented floods, a part of the goods were damaged. It was held that, B is not liable for the loss.</li> </ul> <p><b>Exception: Bailee when not liable for loss, etc., of thing bailed [Section 152]:</b></p> <ul style="list-style-type: none"> <li>▪ The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.</li> </ul>	
<b>b) Not to make inconsistent use of goods (sec. 153 and 154)</b>	<ul style="list-style-type: none"> <li>▪ The bailee must not make any <b>inconsistent use</b> of the goods.</li> <li>▪ If the bailee makes any inconsistent use of goods, then                             <ul style="list-style-type: none"> <li>a) The bailment becomes <b>voidable</b> at the option of the <b>bailor.</b></li> <li>b) The bailee shall be liable for any loss or damage <b>even if such loss is caused due to an act of God or other unavoidable reasons.</b></li> </ul> </li> </ul> <p><i>Illustration</i></p> <ul style="list-style-type: none"> <li>a) A lets to B, for hire a horse for his own riding. B drives the horse in his carriage. As per section 153, the bailment is voidable at the option of A.</li> <li>b) A lends a horse to B for his own riding only. B allows C, a member of his family to ride the horse. C rides with care but the horse accidentally falls and is injured. As per section 154, B is liable to compensate B for the injury to the horse.</li> <li>c) A hires a horse in Calcutta from B expressly to march to Banaras. A rides with due care but marches to Cuttack instead. The horse accidentally falls and is injured. As per section 154, A is liable to make compensation to B for the injury to the horse.</li> </ul>	
<b>c) Not to mix goods</b>	<b>Situation</b>	<b>Consequences</b>
	<b>Goods are mixed with bailor's consent (sec. 155)</b>	<ul style="list-style-type: none"> <li>▪ The parties shall have a <b>proportionate interest in such mixture.</b></li> </ul>

	<p><b>Goods are mixed without bailor's consent but the goods are separable</b></p> <ul style="list-style-type: none"> <li>The bailee shall pay the <b>expenses of separation</b>.</li> <li>The bailee shall be liable to <b>pay damages to the bailor</b> for any loss caused to him.</li> </ul>
	<p><b>Goods are mixed without bailor's consent and goods are not separable</b></p> <ul style="list-style-type: none"> <li>The bailee shall be liable to <b>pay damages to the bailor</b> for any loss caused to him.</li> </ul> <p><b>Illustrations</b></p> <p>a) A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark. As per section 156, A is entitled to have his 100 bales returned and B is bound to bear all the expenses incurred in the separation of the bales and any other incidental damages.</p> <p>b) A bails a barrel of cape flour worth INR 45 to B. B, without A's consent, mixes the flour with country flour of his own worth INR 25 a barrel. As per section 157, B must compensate A for the loss of his flour.</p>
<b>d) Return the goods</b>	<ul style="list-style-type: none"> <li>The bailee must return the goods <b>without waiting for demand from bailor</b> if, <ul style="list-style-type: none"> <li>the time specified in the contract has expired; or</li> <li>the purpose specified in the contract is accomplished.</li> </ul> </li> <li>In case there are 2 or more joint owners of the goods, the bailee may deliver them back to or according to the directions of, <b>one joint owner without the consent of all</b>, in the absences of any agreement to the contrary (<b>Section 165</b>).</li> <li>If the goods are not so returned, <ul style="list-style-type: none"> <li>the goods shall be at the <b>risk of the bailee</b>; and</li> <li>the bailee shall be liable for <b>any loss or damage</b>, even if such damage is caused without any fault or negligence of the bailee or due to an act of God or other unavoidable reasons.</li> </ul> <p><b>Example</b> – X delivered books to Y to be bound. Y promised to return the books within a reasonable time. X pressed for the return of the book. But Y, failed to deliver them back even after the expiry of reasonable time. Subsequently the books were burnt in an accidental fire at the premises of Y. In this case Y was held liable for the loss.</p> </li> </ul>
<b>e) Return accretion to goods</b>	<ul style="list-style-type: none"> <li>The bailee must return to the bailor, <b>any accretion</b>.</li> </ul> <p><b>Illustration</b></p> <p>A leaves a cow in the custody of B to be taken care of. The cow gives birth to a calf. As per section 163, B is bound to deliver the calf as well as the cow to A.</p>
<b>f) Not to set up an adverse title</b>	<ul style="list-style-type: none"> <li>Bailee does not have right to allege that the bailor had no authority to bail the goods.</li> </ul>

## 7. RIGHTS OF A BAILOR

[SEC. 153, 159, 163, 180, 181]

Broadly rights of bailor are also the duty of the bailee can be categorized as under:

<b>a) Terminate the bailment (sec. 153)</b>	<p><b>If</b> the bailee does <b>any act inconsistent with the terms and conditions</b> of the contract of bailment, <b>Then</b> the bailment becomes <b>voidable at the option of the bailor</b>.</p> <p><b>Example:</b> A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.</p>
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<b>b) Demand back the goods</b>	<b>If</b> the bailment is gratuitous; and for a specific period, <b>Then</b> a) the <b>bailor may compel the bailee</b> to return the goods before expiry of the period of bailment; but b) the <b>bailor shall indemnify the bailee</b> for any loss incurred by the bailee.
<b>c) Right to accretion of goods</b>	The bailee must <b>return to the bailor any accretion</b> to the goods bailed.
<b>d) Right to File suit against wrongdoer</b>	The bailor has the right to sue- a) a third party who causes any <b>damage to the goods.</b> b) a third party who <b>deprives the bailee from using the goods.</b>
<b>e) Right to Sue the bailee</b>	The bailor may sue the bailee for enforcing all the liabilities and duties of him.
<b>f) Right to Compensation</b>	If any damage is caused to the goods bailed because of the unauthorised use of the goods or unauthorised mixing of the goods, the bailor has a right to claim compensation for the same.

**8. RIGHTS OF A BAILEE****[SEC. 165, 166, 167, 170, 180]**

As a matter of fact, all the duties of the bailor are the rights of the bailee. In addition to that, the bailee has the following other rights also.

<b>a) Rights to indemnity</b>	The bailee has the rights to be indemnified by the bailor, if- ➤ bailor has <b>no title to the goods</b> ; and ➤ as a consequence, the bailee suffers some loss.	
<b>b) Right to claim compensation in case of faulty goods (Sec. 150):</b>	<ul style="list-style-type: none"> <li>▪ A bailee is entitled to receive compensation from the bailor or any loss caused to him due to the failure of the bailor to disclose any faults in the goods known to him.</li> <li>▪ If the bailment is for hire, the bailor will be liable to compensate even though he was not aware of the existence of such faults.</li> </ul>	
<b>c) Right to Deliver the Goods to any one of the Joint Bailors [Section 165]</b>	<ul style="list-style-type: none"> <li>▪ It is the duty as well as the rights of the bailee to return the goods to the bailor.</li> <li>▪ In case of <b>joint bailors</b>, the goods may be returned to <b>any of joint bailors.</b></li> </ul> <p><b>Note: If the bailor has no title to the goods</b>; and the <b>bailee in good faith</b>, delivers them back to, or according to the <b>directions of the bailor</b>, <b>the bailee is not responsible to the owner in respect of such delivery.</b></p> <p><b>Example:</b> A, B and C are the joint owners of a harvesting combine. They delivered it on hire to D for one month. After the expiry of one month, D may return the “combine” to any one of the joint owners namely, A, B or C.</p>	
<b>d) Recover charges incurred</b>	<b>Extraordinary expenses</b>	<ul style="list-style-type: none"> <li>▪ The bailor is liable to pay the extraordinary expenses.</li> <li>▪ The bailee may recover the extraordinary expenses paid by him.</li> </ul>
	<b>Ordinary expenses</b>	<ul style="list-style-type: none"> <li>▪ Normally, <b>bailee has to bear the ordinary risk</b> and has <b>no right to recover</b> it from bailor.</li> <li>▪ However, if the bailment is gratuitous for the benefit of the bailor, the bailor is liable to pay the ordinary necessary expenses i.e. the bailee has the rights to recover the ordinary necessary expenses incurred by him.</li> </ul>
<b>e) Suit for deciding the title</b>	<ul style="list-style-type: none"> <li>▪ Bailee may apply to the court for deciding the title of goods if a person, other than the bailor, claims that the goods belong to him.</li> </ul> <p><b>Example:</b> A, a dealer in T.V. delivered a T.V. to B for using in summer vacation. Subsequently, C claimed that the T.V. belonged to him as it was delivered only for repairs, to A and thus, B should deliver it to him. In this case, B may apply to the Court</p>	

	to decide the question of ownership of the T.V. so that he may deliver it to the right owner.
<b>f) File suit against wrongdoer</b>	<p>The bailee as well as the bailor has the <b>right to sue-</b></p> <p>a) a third party who causes any <b>damage to the goods.</b></p> <p>b) a third party who <b>deprives the bailee from using the goods.</b></p> <p><b>Apportionment of relief or compensation obtained by such suits [Sec 181]:</b></p> <p>Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.</p>
<b>g) Right of particular lien for payment of services [Section 170]:</b>	<p>Where the bailee has</p> <p>i) in accordance with the purpose of bailment,</p> <p>ii) rendered any service involving the exercise of labour of skill,</p> <p>iii) in respect of the goods,</p> <p>he shall have in the absence of a contract to the contrary, right to retain such goods, until he receives due remuneration for the services, he has rendered in respect of them.</p> <p>Bailee has, however, only a right to retain the article and not to sell it. The service must have entirely been formed within the time agreed or a reasonable time and the remuneration must have become due.</p> <p><b>Illustrations</b></p> <p>a) A delivers a rough diamond to B, a jeweler to be cut and polished, which is accordingly done. As per section 170, B is entitled to retain the diamond till he is paid for the service he has rendered.</p> <p>b) A gives cloth to B, a tailor to make into a coat. B promises A to deliver the coat as soon as it is finished and to give three months credit for the price. As per section 170, B is not entitled to exercise lien during the credit period allowed even if the price remains unpaid.</p>
<b>h) Right of general lien (Sec. 171)</b>	<p>Bankers, factors, wharfingers, attorneys of a High Court and policy brokers will be entitled to retain, as a security for a general balance of amount, any goods bailed to them in the absence of a contract to the contrary. By agreement other types of bailees excepting the above given five (Bankers, factors, wharfingers, attorneys of a High Court and policy brokers) may also be given this right of general lien.</p> <p><b>For instance,</b> a banker enjoys the right of a general lien on cash, cheques, bills of exchange and securities deposited with him for any amounts due to him.</p> <p><b>For instance,</b> 'A' borrows INR 500/- from the bank without security and subsequently again borrows another INR 1000/- but with security of say certain jewellery. In this illustration, even where 'A' has returned INR 1000/- being the second loan, the banker can retain the jewellery given as security to the second loan towards the first loan which is yet to be repaid.</p> <p>Under the right of general lien, the goods cannot be sold but can only be retained for dues. The right of lien can be waived through a contract.</p>

**9. RIGHT OF THIRD PERSON CLAIMING GOODS BAILED****[SECTION 167]**

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

**10. TERMINATION OF BAILMENT**

<b>a) Expiry of stipulated period</b>	<ul style="list-style-type: none"> <li>If the period of bailment is fixed by the parties, the bailment terminates on expiry of such fixed period.</li> </ul>
<b>b) Fulfillment of the purpose</b>	<ul style="list-style-type: none"> <li>If the bailment is made for an object, the bailment terminates on accomplishment of such object.</li> </ul>
<b>c) Before expiry of fixed period</b>	<ul style="list-style-type: none"> <li>The bailor may compel the bailee to return the goods before expiry of the period of bailment if           <ol style="list-style-type: none"> <li>the bailment was made gratuitously; and</li> <li>the bailor indemnifies the bailee for the loss incurred by the bailee.</li> </ol> </li> </ul>
<b>d) Inconsistent use of goods</b>	<ul style="list-style-type: none"> <li>If the bailee makes an inconsistent use of goods,           <ol style="list-style-type: none"> <li>the bailment becomes voidable at the option of the bailor; and the bailment terminates if the bailor avoids the contract of bailment.</li> </ol> </li> </ul>
<b>e) Death of bailor or bailee</b>	<ul style="list-style-type: none"> <li>In case of gratuitous bailment, the bailment terminates if the bailor or the bailee dies.</li> </ul>
<b>f) Destruction of goods</b>	<ul style="list-style-type: none"> <li>The bailment is terminated if the goods bailed are destroyed.</li> </ul>

## 11. FINDER OF GOODS

[SEC. 71, 168 AND 169]

A finder of goods has the same rights and duties as that of a bailee. In addition, he has the following rights:

<b>a) Rights to recover expenses</b>	<i>Nature of rights</i>	<ul style="list-style-type: none"> <li>The finder of goods has the right to recover the <b>expenses voluntarily incurred</b> by him for           <ol style="list-style-type: none"> <li>finding the true owner; and</li> <li>preserving the goods.</li> </ol> </li> </ul>
	<i>Manner of exercising rights</i>	<ol style="list-style-type: none"> <li>Right of <b>particular lien</b>.</li> <li><b>No right to sue the true owner</b>.</li> </ol>
<b>b) Rights to recover the reward (sec. 168)</b>	<i>Nature of rights</i>	<ul style="list-style-type: none"> <li>He has a right to recover the <b>reward declared by true owner</b> for finding the goods.</li> </ul>
	<i>Manner of exercising rights</i>	<ol style="list-style-type: none"> <li>Right of particular lien.</li> <li><b>Right to sue</b> the true owner.</li> </ol>
<b>c) Right of Sale of Goods (sec 169)</b>	<i>Condition</i>	<ul style="list-style-type: none"> <li>Generally, the finder has <b>no right to sell the goods</b> found in normal course. However, he may sell the goods if           <ol style="list-style-type: none"> <li>the true owner cannot, with reasonable diligence, be found.</li> <li>if the true owner is found but he refuses to pay the lawful expenses incurred by the finder of goods.</li> </ol> </li> </ul>
	<i>Additional condition</i>	<ol style="list-style-type: none"> <li>The goods are in danger of           <ul style="list-style-type: none"> <li>➤ Perishing; or</li> <li>➤ Losing a greater part of its value.</li> </ul> </li> <li>The lawful charges of the finder, in respect of the goods found, amount to <math>\frac{2}{3}</math><sup>rd</sup> value of the good.</li> </ol>

## 12. DISTINCTION BETWEEN GRATUITOUS BAILMENT AND NON-GRATUITOUS BAILMENT

Basis	Gratuitous Bailment	Non-Gratuitous Bailment
<b>Meaning</b>	Bailment without any charge or reward is called as gratuitous bailment.	If some charges are paid, either by the bailee or the bailor, in consideration of

Basis	Gratuitous Bailment	Non-Gratuitous Bailment
		bailment of goods, it is called as non-gratuitous bailment.
<b>Consideration</b>	No consideration is present in case of gratuitous bailment.	Consideration is always present in case of non-gratuitous bailment.
<b>Liability for non-disclosure of unknown faults</b>	Bailor is liable to disclosure only such faults as are known to him.	Bailor must disclosure to bailee all the faults in the goods, whether or not such faults is known to him.
<b>Duty to pay ordinary necessary expenses</b>	In case of gratuitous bailment for the benefit of the bailor, the bailor is liable to reimburse to bailee all the necessary expenses incurred by bailee.	In case of non-gratuitous bailment, bailee is not entitled to recover any necessary expenses incurred by him.
<b>Rights of pre-mature termination of bailment</b>	Bailor has the rights to terminate the gratuitous bailment at any time even though the bailment was for a particular period.	Bailor has no rights to terminate the non-gratuitous bailment before the expiry of period of bailment.
<b>Effect of death of bailor or bailee</b>	Death of bailor or bailee operates as automatic termination of gratuitous bailment.	In case of non-gratuitous bailment, the bailment is not terminated by death of bailor or bailee.

### 13. DISTINCTION BETWEEN BAILEE'S PARTICULAR AND GENERAL LIEN

Basis	Bailee's Particular Lien	Bailee's General Lien
<b>Nature of right</b>	Particular lien implies a right of the bailee to retain specific goods bailed for non-payment of amount.	General lien alludes to the right to keep possession of goods belonging to other against general balance of account.
<b>Applicability</b>	It is automatic	A general lien is not automatic but is recognized through on agreement. It is exercised by the bailee only by name
<b>Conditions for exercising lien</b>	Particular lien can be exercised only when some labour or skill has been expended on the goods resulting in an increase in value of goods.	General lien may be exercised even though no labour or skill has been expended on the goods.
<b>Rights to whom?</b>	Every bailee is entitled to particular lien.	General lien can be exercise by only such person as are specified u/s 171 e.g., Bankers, Factors, Wharfingers, Attorneys of High Court, policy brokers. Any other bailee may exercise general lien if there is an agreement to this effect.

## UNIT IV - PLEDGE

### 1. MEANING OF CERTAIN TERMS

[SECTION 172]

<b>Pledge</b>	The bailment of goods <ul style="list-style-type: none"> <li>➤ as security for payment of a debt or</li> <li>➤ performance of a promise</li> </ul> is called Pledge.
<b>Pawnor</b>	Bailor in case of a pledge is called as pawnor.
<b>Pawnee</b>	Bailee in case of pledge is called as pawnee.

<b>Example</b>	A lends money to B against the security of jewellery deposited by B with him i.e. A. This bailment of jewellery is a pledge as security for lending the money. B is a pawnor and the A is a pawnee.
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**2. ESSENTIALS OF A VALID CONTRACT OF PLEDGE****[SECTION 172]**

<b>a) Contract</b>	▪ There must be a contract; <b>expressed or implied.</b>
<b>b) Goods</b>	▪ Pledge can be made of <b>goods only.</b>
<b>c) Delivery</b>	▪ There must be delivery of goods by one person to another person.
<b>d) Purpose of delivery</b>	▪ The goods must be delivered as <b>security for:</b> a) Payment of a debt; or b) Performance of a promise.
<b>e) Return of Goods</b>	▪ The delivery must be on condition that the goods shall be: ➤ <b>Returned;</b> or ➤ <b>Disposed of as per the directions of pawnor</b> when the purpose is accomplished.

**3. RIGHTS OF PAWNEE****[SECTION 173 AND 176]**

<b>a) Retain the pledged goods i.e. rights of lien</b>	<ul style="list-style-type: none"> <li>▪ The pawnee has the rights to retain the goods pledged with him <b>until he is paid</b> <ul style="list-style-type: none"> <li>a) Money due under the pledge;</li> <li>b) Interest on debt not paid; and</li> <li>c) Necessary expenses for preservation of goods.</li> </ul> </li> </ul> <p><b>Example:</b> Where 'M' pledges stock of goods for certain loan from a bank, the bank has a right to retain the stock not only for adjustment of the loan but also for payment of interest.</p>
<b>b) Receive extraordinary expense</b>	<ul style="list-style-type: none"> <li>▪ The pawnee has the right to recover <b>extraordinary expenses</b> incurred by him for preservation of goods pledged with him.</li> <li>▪ However, he has <b>no right to retain the goods</b> in case of non-payment of extraordinary expenses.</li> </ul>
<b>c) Rights to sell the goods</b>	<p><b>Condition for sale of goods</b></p> <ul style="list-style-type: none"> <li>▪ The pawnor has <b>failed to pay debt or perform his promise.</b></li> <li>▪ The pawnee has given a <b>reasonable notice to the pawnor</b> of his intention to sell the goods.</li> </ul>
	<p><b>Effects of sale of goods</b></p> <ul style="list-style-type: none"> <li>▪ <b>If proceeds of sale &lt; amount due</b> - The pawnee may recover the deficit from pawnor.</li> <li>▪ <b>If proceeds of sale &gt; amount due</b> - The pawnee shall pay the surplus to the pawnor.</li> </ul>
<b>d) Rights to sue the pawnor</b>	<ul style="list-style-type: none"> <li>▪ If the pawnor fails to pay the debt or perform his promise, the pawnee has the rights to sue the pawnor.</li> </ul>

**4. DUTIES OF PAWNOR****[SECTION 175]**

<b>a) Pay the debt</b>	The pawnor is <b>liable to pay the debt or perform his promise</b> , as the case may be.
<b>b) Pay deficit</b>	If the pawnee sells the goods due to default by the pawnor, the pawnor must pay the deficit.
<b>c) Pay extraordinary expenses</b>	The pawnor is liable to pay to the pawnee <b>any extraordinary expenses</b> incurred by the pawnee for preservation of goods.
<b>d) Disclose faults in goods</b>	The pawnor is liable to disclose all the faults which may put the pawnee to extraordinary risk.

e) <b>Indemnify the pawnee</b>	If loss is caused to the pawnee <b>due to defect in pawnor's title</b> to the goods, the pawnor must indemnify the pawnee.
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## 5. DUTIES OF PAWNEE

a) <b>Not to use the goods</b>	The pawnee has <b>no right to use the goods</b> . However, he may use the goods if he has been so authorized by the pawnor.
b) <b>Return the goods</b>	The pawnee must return the goods if the pawnor pays the debt or performs his promise.
c) <b>Take reasonable care</b>	The pawnor must take such care of goods pledged, as a <b>man of ordinary prudence would take care of his own goods</b> .
d) <b>Not to mix goods</b>	The pawnee must not mix his own goods with the goods pledged.
e) <b>Return increase in goods</b>	The pawnee must return to the pawnor any <b>accretion to the goods pledged</b> with him.

## 6. RIGHTS OF PAWNOR

[SECTION 177]

a) <b>Redeem the goods pledged</b>	<b>Meaning of redemption</b>	Right to recover back the goods by making payment of the debt or performance of promise.
	<b>Time for redemption</b>	Where time of redemption is fixed, the pawnor may exercise redemption <ol style="list-style-type: none"> <li>a) within the time so fixed; or</li> <li>b) even after expiry of time so fixed, provided             <ul style="list-style-type: none"> <li>➤ The pawnee has not sold the goods; and</li> <li>➤ The pawnor pays to the pawnee all expenses arising on account of his default.</li> </ul> </li> </ol>
b) <b>Enforce Pawnee's duties</b>	<ul style="list-style-type: none"> <li>▪ The pawnor has the <b>right to enforce the duties of pawnee</b> if the pawnee fails to fulfil his duties.</li> </ul>	
c) <b>Receive increase in goods</b>	<ul style="list-style-type: none"> <li>▪ The pawnor has the right to recover from pawnee <b>any accretion in goods pledged</b>.</li> </ul>	
d) <b>Rights to receive notice of sale</b>	<ul style="list-style-type: none"> <li>▪ In case of <b>default by the pawnor to pay the debt or perform his promise</b>, the pawnee has the <b>right to sell the goods after giving a reasonable notice</b> to the pawnor.</li> <li>▪ If the pawnee fails to give notice, the pawnor has the right to recover the loss incurred by him.</li> </ul>	

## 7. PLEDGE BY NON-OWNERS

Ordinarily, it is the owner of the goods, or any person authorized by him in that behalf, who can pledge the goods. But in order to facilitate mercantile transactions, the law has recognised certain exceptions.

These exceptions are for bonafide pledges made by those persons who are not the actual owners of the goods, but in whose possession the goods have been left.

### 7.1. Pledge by Mercantile Agent [Section 178]

Where any goods are pledged by a **mercantile agent**, even though he is **not authorised by the owner** of the goods to make such pledge, **such pledge shall be as valid** as if he were expressly authorised by the owner to pledge the goods, **if-**

- a) The mercantile agent was in **possession of goods** or documents of title to the goods with **consent of owner**;



- b) The mercantile agent pledged the goods acting in the **ordinary course of business**;
- c) The **pawnee acted in good faith** and had no notice that the pawnee (viz; mercantile agent) had no authority to pledge.

**Explanation:** The expression ‘mercantile agent’ and ‘document of title’ shall have the meaning as assigned to them in the Sale of Goods Act, 1930.

The necessary conditions of validity under the section 178 are as follows:

- i) The person pledging the goods must be a mercantile agent,
- ii) Mercantile agent must be in possession either of the goods or the documents of title to goods,
- iii) Such possession must be with the consent of the owner. If possession has been obtained dishonestly or by a trick, a valid pledge cannot be effected,
- iv) Pledge must have been made by the mercantile agent, when acting in the ordinary course of business of a mercantile agent,
- v) The pledgee must act in good faith;
- vi) The pledgee should have no notice of the pledger's defect of title. If the pledgee knows that the pledger has a defective title, the pledge will not be valid.

### 7.2. Pledge by Person in Possession under Voidable Contract [Section 178A]

When the pawnor has obtained possession of other goods pledged by him under a contract voidable u/s 19 or u/s 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a goods title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

### 7.3. Pledge where Pawnor has Only a Limited Interest [Section 179]

Where person pledges good in which he has only a limited interest, the pledge is valid to the extent of that interest.

#### Example

Mr. X finds a defective mobile phone lying on the road. He picks it up, gets it repaired for INR 5000. He later pledges the mobile phone for INR 2,000. The true owner can recover the mobile phone only on paying INR 5000.

### 7.4. Pledge by a co-owner in possession:

Where the goods are owned by many people and with the consent of other owners, the goods are left in the possession of one of the co-owners. Such a co-owner may make a valid pledge of the goods in his possession.

### 7.5. Pledge by seller or buyer in possession:

A seller, in whose possession, the goods have been left after sale or a buyer who with the consent of the seller, obtains possession of the goods, before sale, can make a valid pledge, provided the pawnee acts in good faith and he has no knowledge of the defect in title of the pawnor.

For example, A buys a cycle from B. But leaves the cycle with the seller. B then pledges the cycle with C, who does not know of sale to B, and acted in good faith. This is valid pledge.

## 8. DISTINCTION BETWEEN BAILMENT AND PLEDGE

Basis	Bailment	Pledge
<b>Meaning</b>	Transfer of goods by one person to another for some specific purpose is known as bailment	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
<b>Terms Applicable</b>	The person delivering the goods under a contract of bailment is called as “Bailor”.	The person who delivers the good as security is called the “Pawnor”. The person to whom the goods are delivered as security is called the “pawnee”

Basis	Bailment	Pledge
	The person to whom the goods are delivered under a contract of bailment is called as "Bailee"	
<b>Purpose</b>	Bailment may be made for any purpose (as specified in the contract of bailment, e.g.: for safe custody, for repairs, for processing of goods)	Pledge is made for the purpose of delivering the goods as security for payment of a debt, or performance of a promise.
<b>Consideration</b>	The bailment may be made for consideration or without consideration	Pledge is always made for a consideration.
<b>Right to sell the goods</b>	The bailee has no right to sell the goods even if the charges of bailment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed	The pawnee has right to sell the goods if the pawnor fails to redeem the goods.
<b>Right to use of goods</b>	Bailee can use the goods only for a purpose specified in the contract of bailment and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.

## UNIT V - CONTRACT OF AGENCY

### 1. INTRODUCTION TO CONTRACT OF AGENCY

<b>Meaning of agent</b>	An agent is person employed to <ul style="list-style-type: none"> <li>➤ <b>do any act for another</b>; or</li> <li>➤ <b>represent another</b> in dealings with third persons.</li> </ul>
<b>Meaning of principal</b>	Principal is the person <ul style="list-style-type: none"> <li>➤ for whom an act is done by the agent; or</li> <li>➤ who is represented by the agent in respect of dealing with third persons.</li> </ul>
<b>Test of agency</b>	Where a person has the capacity to <ol style="list-style-type: none"> <li>a) <b>create contractual relations between the principal and a third party</b>; and</li> <li>b) <b>bind the principal by his own acts</b>,</li> </ol> there exists a relationship of agency. If the answer to these questions is in affirmative (Yes), then there is a relationship of agency.
<b>Rules forming the basis of agency</b>	<ul style="list-style-type: none"> <li>▪ Whatever the principal can do by himself, he may get the same done through an agent except where the act involved is of personal nature.</li> <li>▪ What a person does by another (i.e. agent), he does by himself. <b>Thus, the acts of the agent are the acts of the principal.</b></li> <li>▪ The Rule of Agency is based on the maxim "<i>Qui facit per alium, facit per se</i>" i.e., he who acts through an agent is himself acting.</li> </ul>

### 2. SALIENT FEATURES OF AGENCY

[SEC. 183, 184, 185 AND 226]

<b>a) Who may employ Agent? (sec 183)</b>	Any person may employ an agent if <ul style="list-style-type: none"> <li>➤ he is of the <b>age of majority</b>; and</li> <li>➤ he is of <b>sound mind</b>.</li> </ul>
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<b>b) Who can be an agent? (sec. 184)</b>	<ul style="list-style-type: none"> <li>▪ <b>Any person</b> may become an agent.</li> <li>▪ <b>Even a minor or a person of unsound mind can become an agent.</b> However, such agent is not liable under the contract of agency.</li> </ul> <p><b>Example:</b></p> <p>P appoints Q, a minor, to sell his car for not less than INR 2,50,000. Q sells it for INR 2,00,000. P will be held bound by the transaction and further shall have no right against Q for claiming the compensation for having not obeyed the instructions, since Q is a minor and a contract with a minor is 'void-ab-initio'.</p>
<b>c) Consideration not Necessary</b>	<ul style="list-style-type: none"> <li>▪ No consideration is necessary to create an agency. The acceptance of the office of an agent is regarded as a sufficient consideration for the appointment. (sec. 185)</li> </ul>
<b>d) Liability of agent (Sec 184)</b>	<ul style="list-style-type: none"> <li>▪ Generally, <b>an agent is liable to the principal.</b></li> <li>▪ An agent is not liable to the principal if he is a minor or is of unsound mind.</li> </ul>
<b>e) Principal is liable for the acts of agent (sec. 226)</b>	<ul style="list-style-type: none"> <li>▪ The principal is liable for all the acts of an agent which are <b>lawful and within the scope of agent's authority.</b></li> <li>▪ The contracts entered into by the agent on behalf of the principal, have the same legal consequences as if these contracts were made by the principal himself.</li> </ul>

### 3. MODES OF CREATION OF AGENCY

[SEC. 187, 189, 196, 214 AND 237]

<b>a) Express agreement (Sec. 187)</b>	<ul style="list-style-type: none"> <li>▪ A person may employ another person as his agent by entering into an express agreement with him. The agreement may be either <b>oral or written.</b></li> </ul> <p><b>Example:</b></p> <p>i) A is residing in Delhi and he has a house in Kolkata. A appoints B by a deed called the power of attorney, as a caretaker of his house. Agency is created by express agreement.</p> <p>ii) Example: If a customer of a bank wishes to transact his banking business through an agent, the bank will require written evidence of the appointment of the agent and will normally ask to see the registered power of attorney appointing the agent.</p>
<b>b) Implied agreement (Sec. 237)</b>	<ul style="list-style-type: none"> <li>▪ An agency which is to be understood from the <b>conduct and behaviour of the parties</b> is called as implied agency.</li> <li>▪ When an agent has, without authority, done acts or incurred obligations to third parties on behalf of his principal, the principal is bound by such acts or obligations, if he has by his word or conduct induced such third person to believe that such acts and obligations were within the scope of the agent's authority.</li> </ul> <p><b>Illustrations</b></p> <p>a) If a person realises rent and gives it to the landlord, he impliedly acts for the landlord as an agent.</p> <p>b) A owns a shop in Rampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purpose of shop, and of paying for them out of A's funds with A's knowledge. As per section 187, A is bound by the purchases made by B, since B has an implied authority from A to order goods from C in the name of A for the purpose of the shop.</p> <p>c) A consigns goods to B for sale and gives him instructions not to sell below INR 1,000. C, being ignorant of B's instruction, enters into a contract with B to buy the goods for INR 700. As per section 237, A is bound by the contract.</p>

<p><b>c) Agency by estoppel [Sec 237]</b></p>	<ul style="list-style-type: none"> <li>▪ <b>If</b> a person makes a representation to a third person that a certain person is his agent; and the third party, believing such representation to be true, enters into a contract with the pretended agent,</li> <li>▪ <b>then</b> the person making the representation is prevented from denying the truth of agency. He may be held liable as a principal by such third party.</li> </ul> <p>Thus, an agency by estoppel may be created when following essentials are fulfilled:</p> <ol style="list-style-type: none"> <li>i) the principal must have made a representation;</li> <li>ii) the representation may be express or implied;</li> <li>iii) The representation must state that the agent has an authority to do certain act although really he has no authority;</li> <li>iv) The principal must have induced the third person by such representation; and</li> <li>v) The third person must have believed the representation and made the contract on the belief of such representation.</li> </ol> <p><b>Example:</b></p> <ol style="list-style-type: none"> <li>i) A consigns goods to B for sale and gives him instructions not to sell below a fixed price. C being ignorant of B's instruction enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract. A cannot plead that he had given to B instructions not to sell the goods below certain price. An agency by estoppel is, consequently, deemed between A and B.</li> <li>ii) If Piyal (the principal) has for several months permitted Sunil to buy goods on credit from Prasad and has paid for the goods bought by Sunil, Piyal cannot later refuse to pay Prasad who had supplied goods on credit to Sunil in the belief that he was Piyal's agent and was buying the goods on behalf of Piyal. Piyal is stopped from now asserting that Sunil is not his agent because on earlier occasions he permitted Prasad to believe that Sunil was his agent and Prasad had acted in that belief.</li> </ol>	
<p><b>d) Agency by necessity (Agent's authority in emergency) – Conditions</b></p>	<ol style="list-style-type: none"> <li>1) There was an actual and definite necessity for acting on behalf of the principal.</li> <li>2) The agent was not in a position to communicate with the principal.</li> <li>3) The act was done for the purpose of protecting the interest of his principal.</li> <li>4) The agent has exercised such reasonable care as a man of <b>ordinary prudence would have exercised in his own case.</b></li> <li>5) The act was bonafide.</li> </ol> <p><b>Illustration:</b></p> <ol style="list-style-type: none"> <li>i) A consigns some goods to B directing B to send them immediately to C, at Cuttack. In the opinion of B, the goods will spoil if sent to Cuttack. As per section 189, B may sell the goods, if they will not bear the journey to Cuttack without spoiling.</li> <li>ii) Raja has a large farm on which Shyam is the caretaker. When Raja is in Canada, there is a huge fire on the farm. Shyam becomes an agent of necessity for Raja so as to save the property from being destroyed by fire. Raja (the principal) will be liable for any expenses, Shyam (his agent of necessity) incurred to put out the fire and save the farm from destruction during Raja's absence from the country.</li> </ol>	
<p><b>e) Agency by ratification</b></p>	<p><b>Meaning</b></p>	<p><b>If</b> a person (viz., pretended agent) acts on behalf of another person (viz., the alleged principal)</p> <ul style="list-style-type: none"> <li>➤ <b>without the knowledge or consent of the alleged principal;</b> and</li> <li>➤ afterwards, the <b>alleged principal accepts such an act,</b></li> </ul> <p><b>Then,</b> agency by ratification comes into existence.</p>

	<ul style="list-style-type: none"> <li>▪ Simply speaking, 'ratification' means approving a previous act or transaction (sec. 196).</li> <li>▪ Ratification may be <b>expressed or implied</b> by the conduct of the person on whose behalf the acts are done (sec. 197).</li> </ul> <p><b>Illustration</b></p> <p>X who is Y's agent has on 10<sup>th</sup> January 2019 purchases goods from Z on credit without Y's permission. After the purchase, on 20<sup>th</sup> January 2019, Y tells X that he will accept responsibility to pay for the purchases although at the time of purchase the agent had no authority to buy on credit. Y's subsequent statement on 20<sup>th</sup> January 2019 amounts to a ratification of the agent's (X's) purchase of goods on 10<sup>th</sup> January 2019.</p>
	<p><b>Effects of ratification</b></p> <ul style="list-style-type: none"> <li>▪ The principal is bound by the acts ratified by him as if such acts had been performed by his authority.</li> <li>▪ Ratification <b>relates back to the actual date of the act that is ratified</b>, and not from the date when the act was ratified (sec. 196).</li> </ul>

### 3.1. ESSENTIALS OF A VALID RATIFICATION

[SEC. 198, 199 AND 200]

<p><b>a) Expressed or Implied (Sec 197)</b></p>	<ul style="list-style-type: none"> <li>▪ Ratification may be <b>expressed or may be implied</b>.</li> </ul> <p><b>Example</b></p> <p>i) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.</p> <p>ii) A, without B's authority, lends B's money to C. Afterwards B accepts interests on the money from C. B's conduct implies a ratification of the loan.</p>
<p><b>b) Knowledge requisite for valid ratification [Section 198]</b></p>	<ul style="list-style-type: none"> <li>▪ No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.</li> </ul> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>▪ A has an authority from P to buy certain goods at the market rate. He buys at a higher rate but P accepts the purchase. Afterwards P comes to know that the goods purchased by A for P belonged to A himself. The ratification is not binding on P.</li> </ul> <p>If, however the alleged principal is prepared to take the risk of what the purported agent has done, he can choose to ratify without full knowledge of facts.</p>
<p><b>c) Whole transaction (Sec. 199)</b></p>	<ul style="list-style-type: none"> <li>▪ A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.</li> <li>▪ There can be ratification of an act in entirety or its rejection in entirety. The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest.</li> </ul>
<p><b>d) No damage to third party (Sec. 200)</b></p>	<ul style="list-style-type: none"> <li>▪ Ratification cannot be made if it would result in damage to the third party.</li> </ul> <p><b>Illustrations</b></p> <p>a) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C who is in possession of it. As per section 200, the demand of chattel by A cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.</p> <p>b) A holds a lease from B, terminable on three months' notice. C, not being authorized by A, gives notice of termination of lease to A. As per section 200, the notice cannot be ratified by B, so as to be binding on A.</p>

<b>e) Within reasonable time</b>	▪ Ratification must be made within reasonable time of the act purported to be ratified.
<b>f) Communication</b>	▪ Ratification must be <b>communicated to the third party</b> so as to bind him.
<b>g) Act to be ratified must be valid</b>	▪ Act to be ratified should not be void or illegal, for e.g. payment of dividend out of capital is void and cannot be ratified.
<b>h) Acts within principal's power</b>	▪ Ratification can be made only for such act which principal had the power to do.
<b>i) By the principal</b>	▪ Ratification can be made only by such person for whom the act was done.
<b>j) Contractual capacity</b>	▪ The principal must have contractual capacity <b>both</b> at the time of entering into the contract and at the time of ratification.
<b>k) Existence of principal</b>	▪ The principal must be in existence at the time when the act was done in his name.

#### 4. EXTENT OF AGENT'S AUTHORITY

[SECTION. 188]

The authority of an agent means his capacity to bind the principal to third parties. The agent can bind the principal only if he acts within the scope of his authority. The extent of an agent's authority, whether expressed or implied is determined by:

- the nature of the act or the business he is appointed to do
- things which are incidental to the business or are usually done in the course of such business,
- the usage of trade or business.

Whatever be the nature or extent of the agent's authority, it will always include the authority to do:

- every lawful thing necessary for the purpose of carrying it out,
- every lawful thing justified by various customs of trades,
- in an emergency, all such acts for the purpose of protecting the principal from loss as will be done by a person of ordinary prudence in his own case under similar circumstances.

The agent's authority is governed by two principles, namely (a) in normal circumstances and (b) in emergency.

##### (a) Agent's authority in normal circumstances [Section 188]:

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

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

**Example 1:** A is employed by B, residing in London, to recover at Mumbai a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

**Example 2:** A constitutes B as his agent to carry on his business of a shipbuilder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

##### (b) Agent's authority in an emergency [Section 189]:

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

To constitute a valid agency in an emergency, following conditions must be satisfied.

- Agent should not be in a position or have any opportunity to communicate with his principal within the time available.
- There should have been actual and definite commercial necessity for the agent to act promptly.

- iii) the agent should have acted bonafide and for the benefit of the principal.
- iv) the agent should have adopted the most reasonable and practicable course under the circumstances, and
- v) the agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

**Example 1:** An agent for sale may have goods repaired if it be necessary.

**Example 2:** A consigns provisions to B at Kolkata, with directions to send them immediately to C at Cuttack. B may send the provisions at Kolkata, if they will not bear the journey to Cuttack without spoiling.

## 5. KINDS OF AGENTS

<b>Special agent</b>	<ul style="list-style-type: none"> <li>▪ An agent who is appointed to <b>perform a particular act</b>.</li> <li>▪ Special agent has limited authority. He cannot bind the principal in any matter other than that for which he is employed.</li> <li>▪ The authority of the special agent comes to an end as soon as the act for which he is appointed is completed.</li> </ul>
<b>General agent</b>	<ul style="list-style-type: none"> <li>▪ An agent who is employed to do <b>all acts connected with a particular business</b> of the principal.</li> <li>▪ A general agent has the authority to bind his principal with all the <b>acts connected with the business</b> for which he is employed.</li> <li>▪ The authority of the general agent <b>continues until it is put to an end</b>.</li> </ul>
<b>Universal agent</b>	<ul style="list-style-type: none"> <li>▪ An agent who is authorized to do <b>all the acts</b> which the principal can lawfully do and delegate.</li> </ul>
<b>Mercantile or commercial agent</b>	<p>Mercantile agent means an agent having the authority to –</p> <ul style="list-style-type: none"> <li>➤ Sell the goods;</li> <li>➤ Consign the goods for the purpose of sale;</li> <li>➤ Buy the goods;</li> <li>➤ Raise money on the security of the goods</li> </ul> <p>acting as mercantile agent in the <b>ordinary course of business</b>.</p>
<b>Non-mercantile agent</b>	<ul style="list-style-type: none"> <li>▪ An agent who does not deal in mercantile transactions. These include attorneys, solicitors, guardian, promoters, <b>wife</b> etc.</li> </ul>
<b>Del credere agent</b>	<ul style="list-style-type: none"> <li>▪ He is a mercantile agent, who in consideration of an extra commission, guarantees his principal that person with whom he enters into contract on behalf of the principal, shall perform his obligation.</li> <li>▪ He occupies the <b>position of a guarantor as well as an agent</b>.</li> </ul>
<b>Pretended agent</b>	<ul style="list-style-type: none"> <li>▪ A person who untruly represents himself to be authorized agent of another, and thereby induces a third party to deal with him is called as pretended agent.</li> </ul>
<b>Sub Agent</b>	<ul style="list-style-type: none"> <li>▪ A person employed by, and acting under the control of, the original agent in the business of the agency.</li> </ul>
<b>Substituted Agent</b>	<ul style="list-style-type: none"> <li>▪ Discussed in subsequent paras</li> </ul>

## 6. DELEGATION OF AUTHORITY

[SEC. 190]

<b>General rule</b>	An agent <b>cannot lawfully employ another to perform acts</b> , which he has expressly or impliedly undertaken to perform personally.
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	<p>Thus, appointment of sub agent is not lawful, because the agent is a delegatee and a delegatee cannot further delegate. This is based on the Latin principle “<b>delegatus non potest delegare</b>”.</p> <p>A contract of agency is of a fiduciary character. It is based on the confidence reposed by the principal on the agent and that is why a delegatee cannot further delegate.</p>
<b>Exceptions - where an agent can appoint Sub-agent:</b>	<ul style="list-style-type: none"> <li>a) There is a <b>custom or usage of trade to that effect.</b></li> <li>b) Where <b>power of the agent to delegate can be inferred from the conduct</b> of both the principal and the agent.</li> <li>c) Where the <b>principal is aware of the intention of the agent to appoint sub agent</b> but he does not object to it.</li> <li>d) When principal <b>permits appointment of a sub-agent.</b></li> <li>e) If the <b>nature of the agency is such that the sub-agent is necessary.</b></li> <li>f) Where the <b>act to be done is purely ministerial not involving confidence or use of discretion.</b></li> <li>g) Where <b>unforeseen emergencies</b> arise rendering appointment of a sub-agent necessary.</li> </ul>

**6.1. LEGAL RELATIONSHIP BETWEEN PRINCIPLE, SUB-AGENT AND AGENT [SEC 191, 192 & 193]**

<b>If sub-agent is properly appointed</b>	<ul style="list-style-type: none"> <li>a) Principal is bound to the third parties for the acts of sub-agent.</li> <li>b) The agent is responsible to the principal for the acts of sub-agent.</li> <li>c) The sub-agent is responsible to the agent for the acts done by him.</li> <li>d) The sub-agent is not responsible to the principal, except in case of fraud or willful wrong.</li> </ul> <p><b>Example:</b> A, a carrier, agreed to carry 60 bags of cotton waste from Morvi to Bhavnagar by a truck. A asked B, another carrier, to carry the goods. The goods were damaged in transit. Held, A was liable even though it was proved that B was the carrier.</p>
<b>If sub-agent is appointed without authority</b>	<ul style="list-style-type: none"> <li>a) Principal is not bound to the third parties for the acts of sub-agent.</li> <li>b) The agent is responsible to the principal and third parties for the acts of sub-agent.</li> <li>c) The sub-agent is responsible to the agent for the acts done by him.</li> <li>d) The sub-agent is not responsible to the principal.</li> </ul> <p><b>Ratification</b></p> <p>It is the agent who is the principal of sub agent. Where the sub-agent purportedly acts in the name of the first principal, that first principal may ratify the act of sub agent.</p> <p>However, if the sub agent acts in his own name or in the name of the agent who has without authority delegated to the sub agent the business which is in fact of the principal, the principal cannot ratify the acts of sub agent.</p>

**6.2. SUBSTITUTED AGENT**

Substituted Agent is a person appointed by the agent to act for the principal, in the business of agency, with the knowledge and consent of the principal.

Substituted agents are not sub agents. They are agents of the principal. Where the principal appoints an agent and if that agent identifies another person to carry out the acts ordered by principal, then the second person is not to be treated as a sub agent but only as an agent of the original principal.

**Relation between principal and person duly appointed by agent to act in business of agency [Sec 194]:**



Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

**Example 1:** A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

**Example 2:** A authorizes B, a merchant in Kolkata, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is a solicitor for A.

### Agent's duty in naming such person [Section 195]:

While selecting a "substituted agent" the agent is bound to exercise same amount of diligence as a man of ordinary prudence and if he does so he will not be responsible for acts or negligence of the substituted agent.

**Example 1:** A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

**Example 2:** A consigns goods to B, a merchant, for sale B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

## 7. DUTIES OF AGENT

**i) Duty to execute mandate:** The first and foremost duty of every agent is to carry out the mandate of his principal. He should perform the work which he has been appointed to do. Any failure in this respect would make the agent absolutely responsible for the principal's loss.

In *Pannalal Jankidas V Mohanlal*, a commission agent purchased goods for his principal and stored them in a godown pending their dispatch. The agent was under instruction to insure them. He actually charged the premium for insurance but failed to insure the goods. The goods were lost in an explosion in Bombay harbor. The agent was held liable to compensate the principal for his loss minus the amount received under the Bombay Explosion (Compensation) Ordinance, 1944.

**ii) Duty to follow instructions or customs:** According to Section 211, an agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business.

When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

**Example 1:** A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investment.

**Example 2:** B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

**iii) Duty of Reasonable care and skill:** According to section 212, an agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill.

The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss of damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

**Example 1:** A, a merchant in Kolkata, has an agent, B, in London, to whom a sum of money is paid on A's

account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss- as, e.g. by variation of rate of exchange-but not further.

**Example 2:** A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

**Example 3:** A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

**Example 4:** A, a merchant in England, directs B, his agent at Mumbai, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

**iv) Agent' duty to communicate with principal [Section 214]:** It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

**v) Duty to Avoid Conflict of interest (Duty not to deal on his own account):**

**Right of principal when agent deals, on his own account, in business of agency without principal's consent:**

According to Section 215, if an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may

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

**Example 1:** A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

**Example 2:** A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allow B to buy, in ignorance of the existence of the mine. A, on discovering that B know of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

**Principals right to benefit gained by agent dealing on his account in business of agency-** According to section 216 If an agent, without the knowledge of his principal deals in the business of the agency on his own account instead of on account of his principal, the principal is

- entitled to claim from the agent any benefit which may have resulted to him from the transaction.

**Example:** A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

**vi) Duty not to make secret profits:** It is the duty of an agent not to make any secret profit in the business of agency. His relationship with the principal is of fiduciary nature and this requires absolute good faith in the conduct of agency.

Secret Profit means any advantage obtained by the agent over and above his agreed remuneration and which he would not have been able to make but for his position as agent.

**vii) Duty to render proper accounts [Section 213]:** An agent is bound to render proper accounts to his principal on demand. Rendering accounts does not mean showing the accounts but the accounts supported by

vouchers.

- viii) Duty not to Delegate:** According to section 190, An agent cannot lawfully employ to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of agency, a sub- agent, must be employed.
- ix) Agent's duty to pay sums received for principal [Section 218]:** Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.
- x) Duty not to use any confidential information received in the course of agency against the principal.**

## 8. RIGHTS OF AN AGENT

- i) Right of retain out of sums received on principal's account [Section 217]:** This section empowers the agent to retain, out of any sums received on account of the principal in the business of the agency for the following payments:
  - a) all moneys due to himself in respect of advances made
  - b) in respect of expenses properly incurred by him in conducting such business
  - c) such remuneration as may be payable to him for acting as agent.

The right can be exercised on any sums received on account of the principal in the business of agency.

- ii) Right to remuneration [Section 219]:** The agent in the normal course is entitled for remuneration as per the contract. In the absence of any agreed amount of remuneration, he is entitled for usual remuneration which is customary in the business. However, an agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted [Section 220].

**Example 1:** A employs B to recover INR 1,00,000 from C, and to lay it out on good security. B recovers the INR 1,00,000 and lays out INR 90,000 on good security, but lays out INR 10,000 on security which he ought to have known to be bad, whereby A loses INR 2,000. B is entitled to remuneration for recovering the INR 1,00,000 and for investing the INR 90,000. He is not entitled to any remuneration for investing the INR 10,000, and he must make good the INR 2,000 to B.

**Example 2:** A employs B to recover INR 1,00,000 from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

- iii) Agent's lien on principal's property [Section 221]:** In the absence of any contract to the contrary, an agent is entitled to retain the goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursement and services in respect of the same has been paid or accounted for him.

The conditions of this right are:

- a. The agent should be lawfully entitled to receive from the principal a sum of money by way of commission earned or disbursement made or services rendered in the proper execution of the business of agency
- b. The property over which the lien is to be exercised should belong to the principal and it should have been received by the agent in his capacity and during the course of his ordinary duties as agent.
- c. The agent has only a particular lien.

The agent's right to lien is lost in the following cases:

- a. When the possession of the property is lost.
- b. When the agent waives his right. Waiver may arise out of agreement express or implied.
- c. The agent's lien is subject to a contract to the contrary.

- iv) Right to indemnity:**

- a. Right of indemnification for lawful acts [Section 222]:** The principal is bound to indemnify the agent

against all consequences of lawful acts done in exercise of his authority.

**Example:** 'A' of Delhi appoints 'B' of Mumbai as agent to sell his merchandise. As a result, 'B' contracts to deliver the merchandise to various parties. But A fails to send the merchandise to B and B faces litigations for non-performance. Here, A is bound to protect B against the litigations and all costs, expenses arising of that.

The right to indemnity extends to all losses and expenses incurred by the agent in the conduct of the business. Where, for example, a stockbroker, on the instructions of a solicitor, contracted to sell certain shares and had to incur liability to the purchaser by reason of the owner's refusal to complete the sale, the stockbroker was held to be entitled to recover indemnity from the principal.

- b. Right of indemnification against acts done in good faith [Section 223]:** Where the agent acts in good faith on the instruction of principal, agent is entitled for indemnification of any loss or damage from the principal.

**Example:** Where P appoints A as his agent and directs him to sell certain goods which in fact turned out to be not those belonging to P and if third parties sue A for this act, A is entitled for reimbursement and indemnification for such act done in good faith.

However, the agent cannot claim any reimbursement or indemnification for any loss etc. arising out of acts done by him in violation of any penal laws of the country.

- c. Non-liability of employer of agent to do a criminal act:** According to section 224, where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

**Example 1:** A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

**Example 2:** B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

- v) Right to compensation for injury caused by principal's neglect [Section 225]:** Section 225 provides that the principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill. Thus, every principal owes to his agent the duty of care not to expose him to unreasonable risks.

**Example:** A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make compensation to B.

## 9. LIABILITY OF PRINCIPAL TO THIRD PARTIES FOR THE ACTS OF AGENT [SEC. 226 TO 228 AND 238]

<p><b>a) Principal is liable for the acts of agent (Sec. 226)</b></p>	<ul style="list-style-type: none"> <li>▪ The Principal is liable for all the acts of an agent which are <b>lawful and within the scope of agent's authority.</b></li> <li>▪ The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself.</li> <li>▪ <b>Illustrations</b> <ul style="list-style-type: none"> <li>a) A buys goods for INR 10,000 from B, knowing that he is an agent for their sale, but not knowing who the principal is. Afterwards, A comes to know that C is the B's principal. In a previous transaction, A had to recover INR 4,000 from B. As per section 226, C is entitled to claim from A, the price of the goods. A cannot, in a suit by C, set-off against that claim INR 4,000 recoverable from B.</li> </ul> </li> </ul>
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	<p>b) A, being B's agent, with authority to receive money on his behalf, receives from C, INR 45,000 due to B. As per section 226, C is discharged of his obligation to pay INR 45,000 to B.</p>
<b>Agent is not liable towards third parties</b>	<ul style="list-style-type: none"> <li>▪ An agent is not personally liable on any contract entered into by him on behalf of the principal.</li> </ul>
<b>b) When agent exceeds his authority (Sec.227 and 228)</b>	<p>Whether the acts done within the authority are separable from the acts done beyond authority?</p> <p><b>If yes</b> - The principal is <b>not bound for excess acts</b> done by the agent (Sec. 227).  <b>If no</b> - The principal is <b>not bound by the entire transaction</b> (Sec. 228).</p> <p><b>Illustrations</b></p> <p>a) A, being owner of a ship and cargo authorizes B to procure an insurance for INR 4,000 on the ship. B procures a policy for INR 4,000 on the ship and another for INR 2,000 on the cargo. As per section 227, A is bound to pay INR 4,000 but not INR 2,000.</p> <p>b) A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for sum of INR 6,000. As per section 227, A may repudiate the whole transaction.</p> <p><b>Exception: Liability of Principal Inducing Belief that Agent's Unauthorized Acts were Authorized [Sec 237]</b></p> <p>When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.</p> <p><b>Example 1:</b> A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.</p> <p><b>Example 2:</b> A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.</p>
<b>c) Consequences of notice given to agent (Sec. 229)</b>	<p>Any notice given to or information obtained by the agent, in the course of the business, for the principal, shall, as between the principal and third parties, have the same legal effect as if it had been given to or obtained by the principal.</p> <p><b>Example:</b></p> <p>a) A is employed by B to buy from C certain goods of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C against the price of the goods.</p> <p>b) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.</p>
<b>d) Effect of misrepresentation or fraud by agent and its effect on Principal's Liability (Sec. 238)</b>	<ul style="list-style-type: none"> <li>▪ Misrepresentation made or fraud committed, by agents <b>acting in the course of their business for their principals</b>, have the <b>same effect</b> as if such misrepresentations or frauds had been <b>made or committed by the principals</b>;</li> <li>▪ but misrepresentations made, or frauds committed, by agents, <b>in matter which do not affect their authority, do not affect their principals.</b></li> </ul> <p><b>Illustrations</b></p>

	<p>a) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized by B to make. As per section 238, the contract is voidable, as between B and C, at the option of C.</p> <p>b) A, the captain of B's ship, signs bills of lading without having received on board, the goods mentioned therein. As per section 238, the bills of lading are void as between B and the pretended consignor.</p>
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## 10. PERSONAL LIABILITY OF AGENT

[SEC. 230 TO 234]

<b>General rule – No liability of Agent towards third parties.</b>	<ul style="list-style-type: none"> <li>▪ Only the principal can enforce and can be held liable on a contract entered into by the agent.</li> <li>▪ The agent is not personally liable on a contract entered into by him on behalf of the principal.</li> </ul>
<b>Exceptions – Agent is personally liable in certain cases</b>	<ol style="list-style-type: none"> <li>1) When agent acts for sale or purchase of goods for a <b>principal resident abroad</b>. i.e., foreign principal.</li> <li>2) Where it is <b>expressly provided in the contract</b> that the agent shall be personally liable.</li> <li>3) Where agent <b>does not disclose the name (identity) of his principal</b>.</li> <li>4) Where the <b>details of principal are disclosed but cannot be sued</b>, e.g., foreign sovereigns, ambassadors etc.</li> <li>5) When the <b>principal is not in existence at the time when the act was done</b>, i.e., the agent acted for a non-existent principal.</li> <li>6) When the <b>agent exceeds his authority or commits a breach of warranty of authority</b>.</li> <li>7) When he <b>acts as a pretended agent</b> (i.e., where he falsely represents that he has the authority to act on behalf of the principal), <b>and the alleged principal does not ratify his acts</b>.</li> <li>8) When he <b>receives or pays money by mistake or fraud</b>.</li> <li>9) Where an <b>agent signs a negotiable instrument without mentioning that he is signing as an agent</b>.</li> <li>10) Where the <b>usage of trade or custom makes an agent personally liable</b>.</li> </ol>
<b>Rights of Third Parties (sec. 231 to 234)</b>	<p><b>i) Right of parties to a contract made by agent not disclosed (sec. 231)</b></p> <ul style="list-style-type: none"> <li>▪ If an agent makes a contract with a person who neither, knows nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against if the agent had been the principal.</li> <li>▪ If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who the principal was, in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.</li> </ul> <p><b>Example:</b> SS bought for himself a ticket of IPL match at Wankahde Stadium through AB because on personal grounds Stadium management would not have issued the ticket to SS. Stadium management may repudiate the contract and refuse SS to enter the stadium.</p> <p><b>ii) Performance of contract with agent supposed to be principal (sec. 232)</b></p>

- Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the right and obligations subsisting between the agent and the other party of the contract.

**Example:** A, who owes 50,000 rupees to B, sells 1,00,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set off A's debt.

### iii) The Option of The Third Person to Sue the Agent or The Principal:

#### a) Right of person dealing with agent personally liable [Section 233]:

In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

**Example:** A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

#### b) Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable [Section 234]:

When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

## 11. TERMINATION OF AGENCY

[SEC. 201 TO 210]

### A. By the acts of parties

<b>a) By agreement</b>	<ul style="list-style-type: none"> <li>The principal and the agent may mutually agree to terminate the agency, at any time.</li> </ul>
<b>b) By revocation</b>	<ul style="list-style-type: none"> <li>An agency may be terminated by the principal by revoking the authority of the Agent.</li> <li>However, irrevocable agency as given u/s 202 and 204 cannot be revoked to the prejudice of agent.</li> <li>When agency is for <b>fixed period</b>, the principal <b>must make compensation</b> to the agent, for premature revocation of agency without sufficient cause.</li> <li>Where agency is <b>not for fixed period</b>, <b>reasonable notice</b> must be given of termination, otherwise the agent must make compensation to the principal.</li> <li>Revocation may be <b>expressed or implied</b> from the conduct of the principal (Sec.207).</li> </ul> <p><b>Illustrations</b></p> <p>a) A empowers B to let A's house. Afterwards A lets it himself. As per section 207, A's act of letting the house himself implies revocation of B's authority.</p> <ul style="list-style-type: none"> <li>The termination of the authority of an agent is <b>effective only when it is communicated</b> to agent and third party. (Sec. 208).</li> </ul> <p><b>Illustrations</b></p> <p>a) A directs B to sell goods for him, and agrees to give B, 5% commission on the price fetched by the goods. A, afterwards by letter, revokes B's authority. B, after the letter is sent but before he receives it, sells the goods for INR 1,00,000. As per section 208,</p>

	<p>the sale of goods by B is binding on A, and B is entitled to INR 5,000 as his commission.</p> <p>b) A, at Chennai, by letter directs B to sell for him some cotton lying in a warehouse in Mumbai, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Chennai. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.</p> <p>c) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.</p>
<b>c) By the agent renouncing the business of agency</b>	<ul style="list-style-type: none"> <li>▪ An agency may be terminated by the agent renouncing the business of the agency.</li> <li>▪ Renunciation may be expressed or implied from the conduct of the agent.</li> <li>▪ When agency is for <b>fixed period</b>, the agent must make <b>compensation to the principal</b>, for premature renunciation of agency without sufficient cause.</li> <li>▪ Where agency is <b>not for fixed period</b>, <b>reasonable notice</b> must be given of renunciation, <b>otherwise</b> the agent must <b>make compensation</b> to the principal.</li> </ul>

### B. By operation of law

1. Completion of business of agency.
2. Death or insanity of the principal or agent.
3. Principal becoming insolvent
4. Where the principal or the agent, being a company, is dissolved.
5. Destruction of subject matter of agency.
6. Expiration of period where agency was for a fixed period.

## 12. IRREVOCABLE AGENCY

[SEC. 202 AND 204]

<b>Agency coupled with interest</b>	<ul style="list-style-type: none"> <li>▪ Such agency cannot be terminated to the extent of such interest.</li> </ul>
<b>Part exercise of authority by the agent (Sec.204)</b>	<ul style="list-style-type: none"> <li>▪ Where the agent has partly exercised the authority, the principal cannot revoke the authority, to the extent of obligations which arise from acts already done in the agency.</li> </ul>
<b>Personal liability incurred by agent</b>	<ul style="list-style-type: none"> <li>▪ Where the agent has incurred personal liability, the agency is irrevocable.</li> </ul> <p><b>Illustrations</b></p> <p>a) A authorizes B to buy 1,000 bales of cotton on account of A. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. As per section 204, A cannot revoke B's authority so far as regards payments for the cotton.</p> <p>b) A authorizes B to buy 1,000 bales of cotton on account of A. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. As per section 204, A can revoke B's authority to pay for the cotton.</p>

## 13. AGENCY COUPLED WITH INTEREST

[SEC. 202]

- When agency is created for **securing some benefit to the agent over and above his remuneration as an agent**, it is called as agency coupled with interest.



- The interest should exist at the time of creation of agency. If the interest arises after the creation of agency, then it would not be called as agency coupled with interest.
- Agency coupled with interest cannot be terminated to the prejudice of such interest. Such agency does not terminate even on the death or insanity of the principal.
- Thus, such agency is **irrevocable to the extent of such interest**.

#### Illustration

- a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. As per section 202, A cannot revoke the authority of B. Also, the agency cannot be terminated even in case of insanity or death of A.
- b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. As per sec 202, A cannot revoke the authority of B. Also, the agency cannot be terminated even in case of insanity or death of A.

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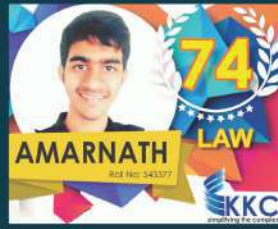
ARISE AWAKE AND STOP NOT  
TILL YOUR GOAL IS ACHIEVED

-Swami Vivekanand

### About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
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# CHAPTER 2

## THE NEGOTIABLE INSTRUMENTS

### ACT, 1881

*Plan to work and work your plan  
because failing to plan is planning to  
fail.*

#### 1. INTRODUCTION

- ✚ The law relating to negotiable instruments is the law of the commercial world which was enacted to facilitate the activities in trade and commerce, making provisions for giving sanctity to the instruments of credit which would be convertible into money and easily transferable from one person to another.
- ✚ In the absence of such instrument, the trade and commerce activities were likely to be adversely affected as it was not practicable for the trading community to carry bulk of the currency in force everywhere.
- ✚ The main object of this Act is to legalise the system by which instruments approved by it could pass from one hand to another by negotiating/transferring like any other goods.
- ✚ The Act applies to the whole of India, but nothing herein contained affects the Reserve Bank of India Act, 1934, (section 21 which provides the Bank to have the right to transact Government business in India), or affects any local usage relating to any instrument in an oriental language.

#### 2. MEANING AND CHARACTERISTICS OF NEGOTIABLE INSTRUMENTS

[SECTION 13]

Negotiable instrument refers to

- a) a promissory note; or
- b) a bill of exchange; or
- c) a cheque
  - payable either to order; or to the bearer.

Negotiable instrument means an instrument

- the property in which is acquired by anyone who takes it bonafide; and
- for value;
- **notwithstanding any defect in the title of any prior party.**

In other words, **negotiable instrument means an instrument which confers upon a HDC a valid title.**

**Essentials or Characteristics of a Negotiable Instrument [Section 13]**

- a) Freely transferable from one person to another.
- b) Transferable infinitum (i.e. negotiable instrument can be transferred any number of times till it is paid).
- c) HDC gets a good title to negotiable instrument even though the title of the transferor is defective.
- d) A negotiable instrument may name more than one payee jointly or alternatively.

### Presumptions to Negotiable Instruments [Section 118]

Presumptions made in relation of	Presumptions drawn
Until the contrary is proved, the following presumption shall be made regarding:	
<b>Consideration</b>	Every negotiable instrument was made or drawn for consideration
<b>Date</b>	Every negotiable instrument bearing a date was made or drawn on such date
<b>Time of acceptance</b>	Every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity
<b>Time of transfer</b>	Every transfer of a negotiable instrument was made before its maturity;
<b>Order of endorsements</b>	Endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon
<b>Stamps</b>	Lost promissory note or bill of exchange was duly stamped
<b>Holder</b>	Holder of a negotiable instrument is a holder in due course

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud or for unlawful consideration, the burden of proving that the holder is a holder in due course **lies upon him**.

### 3. PROMISSORY NOTE

[SECTION 4]

A 'promissory note' is an instrument in

- writing (not being a bank-note or a currency-note) containing an unconditional undertaking
- signed by the maker
- to pay a certain sum of money only to
  - a) a certain person; or
  - b) the order of a certain person; or
  - c) the bearer of the instrument.

### Essentials or characteristics of a Promissory Note

S No.	Basis	Remarks
1	<b>In writing</b>	<ul style="list-style-type: none"> <li>▪ Promissory Note must be in writing. <b>An oral promise to pay is NOT sufficient.</b></li> </ul>
2	<b>Express promise to pay</b>	<ul style="list-style-type: none"> <li>▪ There must be an express promise to pay.</li> <li>▪ <b>Mere acknowledgement of indebtedness is not sufficient.</b></li> </ul> <p><i>Examples</i></p> <ol style="list-style-type: none"> <li>i) "I acknowledge myself to be indebted to B in Rs. 5,000, to be paid on demand, for value received". The promise to pay is definite and therefore this is a valid promissory note.</li> <li>ii) "Mr. B, I owe you Rs. 1,000." There is no promise to pay and therefore this is not a valid promissory note.</li> </ol>

S No.	Basis	Remarks
3	<b>Definite and unconditional promise</b>	<ul style="list-style-type: none"> <li>The promise to pay must be <b>definite and unconditional</b>.</li> <li>If a promise to pay is dependent upon an event which is certain to happen, although the time of its happening is uncertain, the promise to pay is unconditional.</li> </ul> <p><i>Examples</i></p> <ul style="list-style-type: none"> <li>i) "I promise to pay B Rs. 500 seven days after my marriage with C." The promise is conditional since the promise is dependent upon marriage of the promisor with C, which may or may not happen.</li> <li>ii) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum." The promise is conditional since the promise is dependent upon the estate inherited by the promisor.</li> <li>iii) "I promise to pay B Rs. 500 on D's death." The promise is not conditional, but definite since death of D is certain. Therefore, the promissory note is valid.</li> </ul>
4	<b>Signed by maker</b>	<ul style="list-style-type: none"> <li>A promissory note must be <b>signed by the maker</b>.</li> <li>The signatures may be made on any part of the instrument.</li> </ul>
5	<b>Promise to pay a certain sum</b>	<p><i>Examples</i></p> <ul style="list-style-type: none"> <li>i) "I promise to pay B Rs. 500 and all other sums which shall be due to him." Since the amount payable is not certain, it is not a valid promissory note.</li> <li>ii) "I promise to pay B Rs. 500 after deducting there from any money which he owes me." Since, amount payable is not certain, it is not valid promissory note.</li> </ul>
6	<b>Promise to pay money only</b>	<ul style="list-style-type: none"> <li>A promissory note must contain a promise to <b>pay money and money only</b>.</li> <li>If the promise contains any other acts to be done in addition, it is not a promissory note.</li> </ul> <p><i>Example</i></p> <ul style="list-style-type: none"> <li>i) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next." It is not a valid promissory note since the promisor is required to deliver his black horse also, which is not 'money'.</li> </ul>
7	<b>Payee must be certain</b>	<ul style="list-style-type: none"> <li>The name of payee must be specified in the promissory note, otherwise it will be invalid.</li> <li>As per the provisions of the RBI Act, 1934, <b>a promissory note cannot be made payable to bearer</b>.</li> </ul>
8	<b>Stamped</b>	<ul style="list-style-type: none"> <li>A promissory note must be stamped.</li> </ul>

## Specimen of Promissory notes

	Mr. X (Maker)
	1/13, Laxmi Nagar, New Delhi
	Nov 10, 2018
INR 10,000/-	
Six months after date, I promise to pay Mr. Z ( <b>Payee</b> ) or to his order the sum of Rupees Ten Thousand, for value received.	
To,	
Mr. Z (Drawee)	
F-406, Saket, New Delhi	Signature Mr. X

## 4. BILL OF EXCHANGE

## [SECTION 5]

A 'bill of exchange' is an instrument in writing

- containing an unconditional order
- signed by the maker
- directing a certain person
- to pay a certain sum of money only to
  - a) a certain person; or
  - b) the order of a certain person; or
  - c) the bearer of the instrument.

**Essentials characteristics of a Bill of Exchange**

- a) It must be in writing.
- b) It must contain an express order to pay.
- c) The order to pay must be definite and unconditional.
- d) It must be signed by the drawer.
- e) The sum contained in the order must be certain.
- f) The order must be to pay money only.
- g) Drawer, drawee and payee must be certain (usually, same person is the drawer and payee).
- h) It must be stamped.

**Note:** As per the provisions of the RBI Act, 1934, a bill of exchange cannot be made payable to bearer on demand.

**Parties to a bill of exchange**

<b>Drawer</b>	<ul style="list-style-type: none"> <li>▪ The person who draws the bill (i.e., the person who makes the bill) is called as Drawer.</li> <li>▪ His liability is secondary and conditional.</li> <li>▪ His liability is <b>primary and conditional until the bill is accepted.</b></li> </ul>
<b>Drawee</b>	<ul style="list-style-type: none"> <li>▪ The person on whom the bill is drawn is called as Drawee.</li> <li>▪ On acceptance of the bill           <ul style="list-style-type: none"> <li>➤ he is called as Acceptor;</li> <li>➤ he becomes liable for the payment of the bill;</li> </ul> </li> </ul>



	➤ his <b>liability is primary and unconditional.</b>
<b>Payee</b>	▪ The person to whom money is to be paid is named in the bill.

### Specimen of Bill of Exchange

<p>Mr. X (Drawer) 1/13, Laxmi Nagar, New Delhi Nov 10, 2018</p> <p>INR 10,000/-</p> <p>Six months after date, pay to Mr. Y (Payee) a sum of Rupees Ten Thousand, for value received.</p> <p>To, Mr. Z (Drawee) F-406, Saket, New Delhi</p>	<p>Signature Mr. X</p>
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## 5. CHEQUE

## [SECTION 6]

A cheque is a bill of exchange drawn on a specified banker.

It is always payable on demand and it **includes**

- the electronic image of truncated cheque; and
- a cheque in electronic form.

### Essentials characteristics of a cheque

- 1) It must be in writing.
- 2) It must contain an express order to pay.
- 3) The order to pay must be definite and unconditional.
- 4) It must be signed by the drawer.
- 5) The sum contained in the order must be certain.
- 6) The order must be to pay money only.
- 7) Drawer, drawee and payee must be certain.
- 8) **It is always drawn upon a specified banker.**
- 9) **It is always payable on demand.**
- 10) A cheque must contain all the characteristics of a bill of exchange. However, it **does not require stamping or acceptance.**

### Parties to a cheque

<b>Drawer</b>	<ul style="list-style-type: none"> <li>▪ The person who draws the cheque, i.e., the person who makes the cheque is called Drawer.</li> <li>▪ His <b>liability is primary and conditional.</b></li> </ul>
<b>Drawee</b>	<ul style="list-style-type: none"> <li>▪ The bank on whom the cheque is drawn is called Drawee.</li> <li>▪ It makes the payment of the cheque.</li> </ul>
<b>Payee</b>	<ul style="list-style-type: none"> <li>▪ The person to whom money is to be paid (i.e., the person in whose favour cheque is issued) is named in the cheque.</li> </ul>

**Specimen of Cheque**

	Date: .....
Pay .....	
a sum of Rupees.....	Rs.
A/C No. 12345678910	
ABC Bank 622, Vijay Nagar, Indore (M. P.)	Signature
01212 1125864 000053 38	

**6. TRUNCATED CHEQUE AND CHEQUE IN ELECTRONIC FORM**

**Truncated Cheque**

A truncated cheque means a cheque which has been

- converted from a physical form into an electronic form during the course of a clearing cycle
- either by the clearing house or bank;
- whether paying or receiving payment;
- for transmission or substituting the further physical movement of cheque in writing.

**Cheque in electronic form**

A cheque in the electronic form means a cheque **drawn in electronic form**

- by using any computer resource and
- signed in a secure system
- with digital signature (with or without biometrics signature).

**Difference between electronic cheque and truncated cheque**

Basis	Truncated Cheque	Electronic Cheque
<b>Use of Paper</b>	A truncated cheque is a paper cheque, which has been converted into electronic form during the course of clearing.	Paper is not used at any stage in creation of an electronic cheque.
<b>Use of digital signature</b>	The paper cheque, which is afterwards truncated, contains no digital signature. The signatures in ink appear on the truncated cheque.	Digital signatures must be used to create an electronic image of a cheque. Thus, an electronic cheque contains digital signature.
<b>Form of original writing</b>	The original writing of a truncated cheque is on paper, duly signed in ink. After the paper cheque is converted into electronic form, it is truncated, and thus, it becomes a truncated cheque.	The original writing of an electronic cheque is in electronic form.

**Duties of collecting banker in relation to a truncated cheque [Sec. 131]**

The collecting banker shall verify with

- **due diligence and ordinary care**
- the prima facie genuineness of the cheque to be truncated;

- as to whether any fraud, forgery or tampering is apparent on the face of the instrument.

### Rights of paying bank

In case of any reasonable suspicion about the genuineness of the electronic image of a truncated cheque (e.g., suspicion as to fraud, forgery, tampering or destruction of the instrument), the paying banker is entitled to

- demand any further information** regarding the truncated cheque;
- demand the presentment of truncated cheque** itself for verification.

### Difference between Cheque and Bill of Exchange

S No.	Basis	Bill of exchange	Cheque
1	<b>Drawee</b>	Any person (including a banker) can be a drawee in case of a bill.	A cheque can be drawn only upon a banker, i.e., only a banker can be a drawee in case of a cheque.
2	<b>Liability of drawer</b>	The liability of drawer is secondary and conditional. However, until a bill is accepted, the liability of the drawer is primary.	The liability of drawer is always primary. The drawee bank is simply a custodian of moneys of the customer (i.e., drawer).
3	<b>Payable to bearer on demand</b>	A bill cannot be made payable to bearer on demand.	A cheque can be made payable to bearer on demand.
4	<b>Maturity Date</b>	A bill may be payable on demand or otherwise than on demand.	A cheque is always payable on demand.
5	<b>Validity period</b>	There is no validity period in case of a bill.	The cheque remains valid only for 3 months from the date of its issue. After validity period, a cheque becomes a <b>stale cheque</b> , and it cannot be paid.
6	<b>Stamping</b>	A bill must be stamped.	A cheque does not require stamping.
7	<b>Acceptance</b>	A bill requires acceptance if it is payable certain period after sight, or it contains an express term requiring acceptance.	Acceptance of a cheque is not required.
8	<b>Discharge by qualified acceptance</b>	If the drawee gives a qualified acceptance, then, all the parties to the bill, not consenting to qualified acceptance, are discharged.	Since acceptance of a cheque is not required, there is no question of qualified acceptance, and discharge of a party in case of qualified acceptance.
9	<b>Days of grace</b>	Three days of grace are allowed in case of every bill payable otherwise than on demand.	Since a cheque is always payable on demand, no days of grace are allowed in case of a cheque.
10	<b>Crossing</b>	A bill cannot be crossed.	A cheque can be crossed.
11	<b>Discharge by non-presentment</b>	If a bill is not presented for payment, the drawer is discharged from liability.	Even if a cheque is not presented for payment, the drawer is not discharged from liability. However, if the bank fails in the meantime, the drawer is not liable.
12	<b>Noting or protest</b>	If a bill is dishonoured, it may be noted.	A cheque cannot be noted or protested in case of dishonour.
13	<b>Criminal liability for dishonour</b>	In case of dishonour of a bill, sec. 138 does not apply.	The drawer of the cheque is criminally liable for dishonour of a cheque, since sec. 138 applies in case of dishonour of a cheque.

## 7. ACCEPTANCE

[Section 7 and 86]

<b>Meaning</b>	The drawee signs the bill and <ul style="list-style-type: none"> <li>➤ delivers it to the holder of the bill; <b>or</b></li> <li>➤ gives notice of acceptance to the holder of the bill,</li> </ul> the drawee becomes the acceptor.
<b>Essentials of a valid acceptance (Sec. 7)</b>	a) Written (whether on the face or back of the bill). b) Signed on the bill (Signature without the word 'accepted' is also valid). c) Delivery or intimation to the holder that the bill has been accepted.
<b>Types of acceptance (Sec. 86)</b>	<b>General</b> - Acceptance of bill without any qualification. <b>Qualified</b> - Acceptance of bill subject to some qualification (e.g., accepting the bill subject to the condition that the payment of bill shall be made only on happening of a specified event).
<b>Examples of qualified acceptance</b>	a) Where acceptance is conditional, declaring the payment to be dependent on the happening of an event stated therein. b) Where the drawee accepts the bill only for a part of the sum ordered to be paid. c) Where, no place of payment being specified in the bill, the drawee agrees to make the payment at a specified place, and <b>not otherwise or elsewhere</b> . d) Where, a place of payment being specified in the bill, the drawee agrees to make the payment at some other place and <b>not otherwise or elsewhere</b> . e) Where the drawee agrees to make the payment at a time other than that the time stated in the bill.
<b>Effect of qualified acceptance (Sec. 86)</b>	a) The holder may object to the qualified acceptance. In such a case, it shall be treated that the bill is <b>dishonoured due to non-acceptance</b> . b) He may give his consent to the qualified acceptance. In such a case, <b>all the prior parties, not consenting to it, are discharged</b> .

## 8. AMBIGUOUS INSTRUMENTS

[Section 27]

<b>Option of the holder</b>	<ul style="list-style-type: none"> <li>▪ Where an instrument may be <b>construed either</b> as a promissory note or a bill of exchange, the holder has to <b>option</b> to treat the instruments as a promissory note or a bill of exchange.</li> <li>▪ Once the holder exercises such option, the instruments shall be thereafter treated accordingly.</li> </ul>
<b>Examples</b>	<ol style="list-style-type: none"> <li>1. A bill drawn upon a fictitious person</li> <li>2. A bill drawn by a person upon himself.</li> </ol>

## 9. CAPACITY OF A PERSON TO BE A PARTY TO A NEGOTIABLE INSTRUMENT

[Section 26]

<b>Person must be capable of contracting</b>	Only a person who is capable of contracting can make, draw, accept, endorse, deliver or negotiate a negotiable instrument
<b>Liability in case of a minor</b>	<ul style="list-style-type: none"> <li>▪ A minor may draw, endorse, deliver and negotiate any negotiable instrument.</li> <li>▪ All the parties shall be bound on such negotiable instrument.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ However, the minor shall not be bound on such negotiable instrument.</li> <li>▪ <b>Example:</b> A draws a cheque in favour of M, a minor. M endorses the same in favour of X. The cheque is dishonoured by the bank on grounds of inadequate funds. Here in this case, M being a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, M is not liable. X can, thus, proceed against A.</li> </ul>
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### 10. CLASSIFICATION OF NEGOTIABLE INSTRUMENT

<b>Order instrument</b>	<ul style="list-style-type: none"> <li>▪ A negotiable instrument payable to a particular person; or his order; or the order of a particular person.</li> </ul>
<b>Bearer instrument</b>	<p>a) A negotiable instrument which is payable to bearer.</p> <p>b) A negotiable instrument on which the last endorsement is in blank.</p> <p>As per the provisions of the RBI Act, 1934,</p> <ul style="list-style-type: none"> <li>➤ A promissory note cannot be made payable to bearer.</li> <li>➤ A Bill of Exchange cannot be made payable to bearer on demand.</li> </ul>
<b>Instrument Payable on demand</b>	<p>a) A negotiable instrument on which maturity date is not specified.</p> <p>b) A negotiable instrument which is expressed to be payable on demand.</p> <p><b>Note:</b> A cheque is always payable on demand.</p> <p><b>Note:</b> A demand instrument may be presented for payment at any time.</p> <p><b>Note:</b> A demand instrument is not entitled to any days of grace.</p>
<b>Time instrument</b>	<p>a) An instrument in which time for payment (i.e., maturity date) is specified.</p> <p>b) A time instrument may be payable</p> <ul style="list-style-type: none"> <li>➤ on a specific day; or</li> <li>➤ after a specified period (e.g., specified number of days or specified number of months); or</li> <li>➤ a certain period after sight; or</li> <li>➤ a certain period after <b>happening of an event which is certain to happen.</b></li> </ul>
<b>Inland instrument</b>	<p>A negotiable instrument is an inland instrument if</p> <ul style="list-style-type: none"> <li>➤ it is drawn or made in India; <b>and</b></li> <li>➤ it is payable in India or is drawn on a person resident in India.</li> </ul>
<b>Foreign instrument</b>	<p>A negotiable instrument which is not an inland instrument is called foreign instrument.</p> <p>In other words, following are classified as foreign instruments:</p> <p>a) Bills drawn outside India and made payable in or drawn upon any person resident in any country outside India,</p> <p>b) Bills drawn outside India and made payable in India, or drawn upon any person resident in India;</p> <p>c) Bills drawn in India made payable outside India or drawn upon any resident outside India, but not made payable in India.</p> <p>In the absence of a contract to the country, the liability of the maker or drawer of a foreign promissory note or bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument (Section 134).</p> <p>For example, a bill of exchange is drawn by A in Berkley where the rate of interest is 15%</p>

and accepted by B payable in Washington where the rate of interest is 6%. The bill is endorsed in India and is dishonoured. An action on the bill is brought against B in India. He is liable to pay interest at the rate of 6% only. But if A is charged as drawer, he is liable to pay interest at 15%.

### 11. MEANING OF 'AT SIGHT', 'ON PRESENTMENT', 'AFTER SIGHT'

[Section 21]

- In a promissory note or bill of exchange – The expressions 'at sight' and 'on presentment' means **on demand**.
- In a promissory note – the expressions 'after sight' means **after presentment for sight**.
- In a bill of exchange – the expression 'after sight' means **after acceptance**.

### 12. MATURITY OF NEGOTIABLE INSTRUMENT

[Section 22]

**Maturity of a negotiable instrument** – It means the date on which the negotiable instrument falls due for payment.

**Days of grace** - An instrument which is payable otherwise than on demand is entitled to **3 days of grace**.

While determining the maturity date of a Negotiable instrument, the date of presentment for acceptance or sight, or of protest for non- acceptance, or on which the event happens, **shall be excluded**.

#### Calculation of Date of Maturity

Calculation of	Maturity Date
Negotiable instrument payable on a specified day	Specified day + 3 <sup>rd</sup> day
Negotiable instrument payable on a stated number of days after date	Date on which negotiable instrument is drawn + stated number of days + 3 <sup>rd</sup> day
Negotiable instrument payable on stated number of days after sight	Date on which negotiable instrument is presented for sight + stated number of days + 3 <sup>rd</sup> day
Negotiable instrument payable on stated number of days after happening of a certain event	Date on which such event happens + stated number of days + 3 <sup>rd</sup> day
Negotiable instrument payable on stated number of months after date	Corresponding day of the relevant month* (i.e., Date on which negotiable instrument is drawn + stated number of months) + 3 <sup>rd</sup> day
Negotiable instrument payable on stated number of months after sight	Corresponding day of the relevant month* (i.e., Date on which negotiable instrument is presented for sight + stated number of months) + 3 <sup>rd</sup> day
Negotiable instrument payable on stated number of months after happening of a certain event	Corresponding day of the relevant month* (i.e., Date on which such event happens + stated number of months) + 3 <sup>rd</sup> day
If the day of maturity is a public holiday**	Immediately <b>preceding business day</b>
If the day of maturity is an emergency or unforeseen public holiday	Immediately <b>succeeding business day</b>

\*If in the relevant month, there is no corresponding day, last day of such month shall be taken.

\*\*The expression "Public Holiday" includes Sundays and any other day declared by the Central Government, by notification in the Official Gazette, to be a public holiday.

#### **Illustration**

Bharat executed a promissory note in favour of Bhushan for INR 5 crores. The said amount was payable three days

after sight. Bhushan, on maturity, presented the promissory note on 1<sup>st</sup> January, 2017 to Bharat. Bharat made the payments on 4<sup>th</sup> January, 2017. Bhushan wants to recover interest for one day from Bharat. Advise Bharat, in the light of provisions of the Negotiable Instruments Act, 1881, whether he is liable to pay the interest for one day?

### Solution

**Claim of Interest:** Section 24 of the Negotiable Instruments Act, 1881 states that where a bill or note is payable after date or after sight or after happening of a specified event, the time of payment is determined by excluding the day from which the time begins to run.

Therefore, in the given case, Bharat will succeed in objecting to Bhushan's claim. Bharat paid rightly "three days after sight". Since the bill was presented on 1<sup>st</sup> January, Bharat was required to pay only on the 4<sup>th</sup> and not on 3<sup>rd</sup> January, as contended by Bharat.

## 13. NEGOTIABLE INSTRUMENT MADE WITHOUT CONSIDERATION

[Section 43]

<b>Liability of parties if there is no consideration</b>	A negotiable instrument <ul style="list-style-type: none"> <li>➤ made, drawn, accepted, endorsed, or transferred</li> <li>➤ <b>without consideration,</b></li> <li>➤ or for a consideration which fails,</li> <li>➤ <b>creates no obligation of payment</b></li> <li>➤ between the parties to the transaction.</li> </ul>
<b>Rights of holder for consideration</b>	However, if any such party has transferred the instrument <ul style="list-style-type: none"> <li>➤ to a <b>holder for a consideration,</b></li> <li>➤ <b>such holder, and every subsequent holder</b> deriving title from him,</li> <li>➤ <b>may recover the amount</b> due on such instrument</li> <li>➤ from the transferor for consideration or any prior party thereto.</li> </ul>
<b>No right of accommodated party to recover from accommodating party</b>	No party for whose accommodation <ul style="list-style-type: none"> <li>➤ a negotiable instrument has been made, drawn, accepted or endorsed can,</li> <li>➤ if he has paid the amount thereof</li> <li>➤ recover such amount</li> <li>➤ from any person who became a party to such instrument for his accommodation.</li> </ul>

## 14. PARTIAL ABSENCE OR FAILURE OF MONEY CONSIDERATION

[Section 44]

### Effect of partial absence of money consideration

When the consideration for which a person signed a promissory note, bill of exchange or cheque

- consisted of money; and
- was originally **absent in part**, or has **subsequently failed in part**,
- the *sum which a holder standing in immediate relation with such signer is entitled to receive from him*,
- is **proportionally reduced**.

### Meaning of 'parties standing in immediate relation'

- a) The drawer of a bill of exchange stands in immediate relation with acceptor.
- b) The maker of promissory note, bill of exchange or cheque stands in immediate relation with the payee.
- c) The endorser stands in immediate relation with his endorsee.

**Illustration**

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill.

B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue.

In such case, A can only recover Rs. 400.

**Illustration**

A owes a certain sum of money to B. A does not know the exact amount and hence he makes out a blank cheque in favour of B, signs and delivers it to B with a request to fill up the amount due, payable by him. B fills up fraudulently the amount larger than the amount due, payable by A and endorses the cheque to C in full payment of dues of B. Cheque of A is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of B and C.

**Solution**

Section 44 of the Negotiable Instruments Act, 1881 is applicable in this case. According to Section 44 of this Act, B who is a party in immediate relation with the drawer of the cheque is entitled to recover from A only the exact amount due from A and not the amount entered in the cheque. However, the right of C, who is a holder for value, is not adversely affected and he can claim the full amount of the cheque from B.

Sl. No.	Instruments with/without Consideration	Liabilities of the Parties
1.	Instrument made without Consideration	Creates no obligation of payment between the parties to the transaction.
2.	Instrument made with consideration consisted of money, absent in part	A holder standing in immediate relation with such signer is entitled to receive from him, the proportionally reduced sum.
3.	On partial failure of consideration not consisting of money	A holder standing in immediate relation with such signer is entitled to receive from him, the proportionally reduced sum.

**15. PARTIAL FAILURE OF NON-MONETARY CONSIDERATION****[Section 45]**

Where a part of the consideration for which a

- person signed a promissory note, bill of exchange or cheque,
- though not consisting of money is ascertainable in money without collateral enquiry,
- and there has been a failure of that party,
- the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

**16. INCHOATE INSTRUMENT****[Section 20]**

Refers to a **wholly blank or partially blank paper** which is **signed** by a person and is **stamped**. The person signing such paper delivers it to another person.

On delivery of such paper by the person signing such paper, the holder gets a **prima facie authority to make or complete** upon it a negotiable instrument.

**Rights of parties in case of an inchoate instruments**

- a) A person other than HDC cannot recover anything in excess of the amount intended to be paid there under by the person delivering the said paper.



- b) HDC can recover the whole amount specified in the instrument, but not exceeding the amount covered by the stamp.

### Example

A person signed a blank acceptance and kept it in his drawer and some person stole it and filled it up for INR 20,000 and negotiated it to an innocent person for value, it was held that the signer to the blank acceptance was not liable to the holder in due course because he never delivered the instrument intending it to be used as a negotiable instrument.

Further, as a condition of liability, the signer as a maker, drawer, endorser or acceptor must deliver the instrument to another. In the absence of delivery, the signer is not liable.

Furthermore, the paper so signed and delivered must be stamped in accordance with the law prevalent at the time of signing and on delivering otherwise the signer is not estopped from showing that the instrument was filled without his authority.

## 17. NEGOTIATION – MEANING AND METHODS

[Section 14, 47, 48, 57]

Negotiation means **transfer** of a negotiable instrument to any other person so as to **make that person the holder of such negotiable instrument.** (Sec. 14)

### Methods of Negotiation

- a) **Negotiation by Delivery (Sec. 47)** - A bearer instrument may be negotiated by **delivery**. The delivery must be **voluntary**.

#### Exception

A promissory note, bill of exchange or cheque delivered on the condition that it is not to take effect except in a certain event, is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

#### Illustrations

- i) A is the holder of a negotiable instrument payable to bearer. A delivers the negotiable instrument to B's agent, and B's agent acting on behalf of B, keeps it with him. The negotiable instrument has been negotiated.
- ii) A is the holder of a negotiable instrument payable to bearer. The negotiable instrument is in the hands of A's banker, who is at that time B's banker also. A directs the banker to transfer the negotiable instrument to B's credit. The banker does so, and accordingly now possess the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

- b) **Negotiation by Endorsement and Delivery (Sec. 48)** - An order instrument can be negotiated only by way of **endorsement and delivery**.

If a person, after making an endorsement, but before making its delivery, dies, and afterwards, the delivery is made by the legal representative of the deceased, it does not result in a valid negotiation (Sec. 57).

### Illustration

M drew a cheque amounting to INR 2 lakh payable to N and subsequently delivered to him. After receipt of cheque N endorsed the same to C but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. Does this amount to Indorsement under the Negotiable Instruments Act, 1881?

### Solution

No, P does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him. (Section 48, the Negotiable Instruments Act, 1881).

**18. DELIVERY****[Section 46]**

<b>Importance of delivery</b>	<ul style="list-style-type: none"> <li>The making, acceptance or endorsement of a promissory note, bill of exchange or cheque is completed by delivery of NI as a <b>whole, actual or constructive</b>.</li> </ul>
<b>Delivery by whom?</b>	<ul style="list-style-type: none"> <li>As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or endorsing the instruments, or by a person authorized by him in that behalf.</li> </ul>
<b>Effect of conditional delivery</b>	<ul style="list-style-type: none"> <li><b>Other than a Holder in due course</b> - may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.</li> <li><b>Holder in due course</b> – No person can put a defense that the delivery was made conditional i.e. HDC is entitled to recover entire amount due on Instrument.</li> </ul>

**19. ENDORSEMENT – MEANING AND ESSENTIAL CHARACTERS****[Section 15, 16]**

Endorsement means

- signing on the face or back of negotiable instrument;
- or on a slip of paper annexed to the negotiable instrument
- by the holder of negotiable instrument
- for the purpose of negotiating such negotiable instrument.

The person who makes the endorsement is called the endorser.

**Essential Characteristics**

- Writing** - The endorsement must be in writing.
- Signed** - The endorsement shall not be valid unless it is signed.
- By holder** - The endorsement shall be valid only if the negotiable instrument is signed by the holder.

**Example**

X, who is the holder of a negotiable instrument writes on the back thereof: “pay to Y or order” and signs the instrument. In such a case, X is deemed to have endorsed the instrument to Y.

If X delivers the instrument to Y, X ceases to be the holder and Y becomes the holder.

**Effect of indorsement [Section 50]**

The indorsement of a negotiable instrument followed by delivery transfers to the endorsee the property therein along with the right of further negotiation. However, the indorsement may by express words, restrict or exclude such rights.

**Kinds of Endorsement [Section 16, 50, 52, 56]**

<b>General endorsement i.e. endorsement in blank</b>	<ul style="list-style-type: none"> <li>General endorsement means an endorsement made by the endorser without writing the name of the endorsee.</li> <li><b>Effect</b> - <i>Order instrument is converted into bearer instrument.</i></li> </ul>
<b>Special endorsement i.e., endorsement in full</b>	<ul style="list-style-type: none"> <li>Where the endorsement contains a direction to pay the amount to a specified person i.e. name of the endorsee is mentioned, it is called as special endorsement.</li> </ul>
<b>Restrictive endorsement</b>	<ul style="list-style-type: none"> <li>An endorsement which restricts the right of further negotiation is called as restrictive endorsement. It merely entitles the holder of the instrument to receive the amount on the instrument for a specific purpose.</li> </ul>

	<p><b>Examples:</b></p> <p>B signs the following endorsements on different negotiable instruments payable to bearer,</p> <ol style="list-style-type: none"> <li>“pay the contents to C only”.</li> <li>“pay C for my use”.</li> <li>“pay C on order for the account to B”.</li> <li>“the within must be credited to C”.</li> </ol> <p>These indorsements exclude the right of further negotiation by C.</p> <ol style="list-style-type: none"> <li>“pay C”.</li> <li>“pay C value in account with the Oriental Bank”.</li> <li>“pay the contents to C, bring part of the consideration in a certain deed of assignment executed by C to endorser and others”.</li> </ol> <p>These indorsements do not exclude the right of further negotiation by C.</p>	
<b>Partial endorsement</b>	<ul style="list-style-type: none"> <li>▪ An endorsement which purports to transfer only a part of the amount of the instrument is called as partial endorsement.</li> <li>▪ Partial endorsement is not valid at law.</li> </ul>	
<b>Conditional endorsement</b>	<b>Sans Recourse</b>	<ul style="list-style-type: none"> <li>▪ Endorser relieves himself from the liability to all subsequent endorsees.</li> <li>▪ Where an endorser so excludes his liability, and afterwards becomes the holder of the instrument, all intermediate endorsers shall be liable to him.</li> </ul>
		<p><b>Illustration</b></p> <ol style="list-style-type: none"> <li>The holder of a negotiable instrument makes an endorsement by using the words ‘without recourse’. By reason of this endorsement, he incurs no liability.</li> <li>A is the holder of a negotiable instrument. Excluding his personal liability by using the words ‘without recourse’, he negotiates the instrument to B. B endorses it to C, who endorses it to A. A becomes the holder of the negotiable instrument. A has the rights of an endorse against B and C.</li> </ol>
	<b>Sans Frais</b>	<ul style="list-style-type: none"> <li>▪ Endorser relieves himself from any liability with respect to any expenses that may be incurred in case of dishonour of the negotiable instrument.</li> </ul>
	<b>Facultative</b>	<ul style="list-style-type: none"> <li>▪ Endorser waives any of his rights.</li> </ul>
	<b>Contingent/ Conditional</b>	<ul style="list-style-type: none"> <li>▪ Endorser makes his liability dependent upon happening of some event.</li> </ul>

## 20. WHO MAY NEGOTIATE

[Section 51]

Every maker, drawer, payee or endorsee or all of several joint makers, drawers, payees or endorsees, of a negotiable instrument can negotiate the same if following conditions are satisfied:

- negotiability of such instrument has not been restricted or excluded as mentioned in sec. 50,
- the maker or drawer or endorser is in lawful possession or is holder of the instrument.

**Illustration:** A bill is drawn payable to A or order. A endorses it to B, the endorsement not containing the words 'or order' or any equivalent words. B may negotiate the instrument.

## 21. INSTRUMENT ACQUIRED AFTER DISHONOUR OR WHEN OVERDUE

[Section 59]

The holder of a negotiable instrument, who has acquired it after dishonor, whether by non-acceptance or non-payment, with notice thereof, or after maturity,

- HDC** – Entitled to receive amount due on such instrument from the transferor or any party prior to him.
- Other holder or endorsee** - Has rights against the other parties, same as the rights of his transferor.

### Illustration

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds but endorsed the bill to A. A's title is subject to the same objections as the drawer's title.

## 22. INSTRUMENT NEGOTIABLE TILL PAYMENT OR SATISFACTION

[Section 60]

A negotiable instrument may be negotiated by the

- Maker, drawee or acceptor** – Till the date of maturity
- Other holder or endorsee** - After maturity until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

## 23. NEGOTIATION BACK

[Section 90]

<b>Meaning</b>	<p>If an endorser,</p> <ul style="list-style-type: none"> <li>➤ after negotiating a negotiable instrument,</li> <li>➤ again becomes its holder,</li> </ul> <p>it is called Negotiation Back.</p>
<b>Effect</b>	<ul style="list-style-type: none"> <li>▪ The holder cannot enforce payment against an intermediary party to whom he was previously liable.</li> <li>▪ The holder can enforce payment against all the parties to whom he was not previously liable.</li> <li>▪ However, the holder can sue all the prior parties (<b>including all intermediary parties</b>), if he had made <b>sans recourse endorsement</b>.</li> </ul>

## 24. HOLDER AND HOLDER IN DUE COURSE

### Holder [Section 8]

- Holder is a person who is **entitled to the possession** of negotiable instrument in his **own name**.
- He must be **entitled to receive or recover the amount** due on negotiable instrument from the parties liable on negotiable instrument.

### Holder in due course [Section 9]

- In case of a negotiable instrument payable to **bearer**, he must be the possessor of the negotiable instrument, and in case of a negotiable instrument payable to **order**, he must be the payee or endorsee of the negotiable instrument.
- He must have become the **holder for consideration**.

- c) He must have obtained the possession of negotiable instrument **before maturity**.
- d) He must have obtained the negotiable instrument in **good faith and without negligence**, i.e., without sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

### Example

A draws a cheque for INR 5,000 and hands it over to B by way of gift. B is a holder but not a holder in due course as he does not get the cheque for value and consideration. His title is good and bonafide. As a holder he is entitled to receive INR 5000 from the bank on whom the cheque is drawn.

### Example

On a Bill of Exchange for INR 1 lakh, X's acceptance to the Bill is forged. 'A' takes the Bill from his customer for value and in good faith before the Bill becomes payable. In this case, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it.

A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.

## 25. PRIVILEGES OF HOLDER IN DUE COURSE

[Section 20, 36, 43, 46, 53 and 58]

- 1) Every prior party to a negotiable instrument is liable to a HDC (Sec. 36).
- 2) A holder who derives title from HDC has the same rights as of that HDC (Sec. 53). Thus, once a negotiable instrument passes through the hands of a HDC, it gets cleansed of all its defects provided the holder himself is not a party to the fraud or illegality which affected the negotiable instrument in some stage of its journey.
- 3) No prior party can set up a defense that the negotiable instrument was drawn, made or endorsed by him without any consideration (Sec. 43).
- 4) No prior party can set up a defense that the negotiable instrument was lost or was obtained from him by an offence or fraud or for an unlawful consideration. Thus, HDC gets a valid title to the negotiable instrument even though the title of the transferor was defective (Sec. 58).
- 5) No prior party can allege that negotiable instrument was delivered conditionally or for a special purpose only (Sec. 46).

### Special Cases

#### (i) In case of Inchoate Instrument:

A person signing and delivering to another a stamped but otherwise inchoate instrument (When you execute an unfilled up but duly signed negotiable instrument such as a cheque or a promissory note, it is an inchoate negotiable instrument) is debarred from asserting, as against a holder in due course, that the instrument has not been filled in accordance with the authority given by him, the stamp being sufficient to cover the amount (Section 20).

**Example:** A signs his name on a blank but stamped instrument which he gives to B with an authority to fill up as a note for a sum of INR 3 000 only. But B fills it for INR 5,000. B then transfers it to C for a consideration of 5000 who takes it in good faith. Here in the case, C is entitled to recover the full amount of the instrument because he is a holder in due course whereas B, being a holder cannot recover the amount because he filled in the amount in excess of his authority.

#### (ii) In case of fictitious bill:

In case a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for acceptor to allege as against the holder in due course that such name is fictitious (Section 42).

**(iii) In case of conditional instrument or 'escrow':**

In case a bill or note is negotiated to a holder in due course, the other parties to the bill or note cannot avoid liability on the ground that the delivery of the instrument was conditional or for a special purpose only (Sections 46 and 47).

**(iv) In case of instrument obtained by unlawful means or for unlawful consideration;**

The person liable in a negotiable instrument cannot set up defence against the holder in due course that the instrument had been lost or obtained from the former by means of an offence or fraud or for an unlawful consideration (Section 58). Thus, a holder in due course acquires a title free from all defects.

**(v) In case original validity of the instrument is denied;**

No maker of a promissory note, and no drawer of a bill or cheque and no acceptor of a bill for the honour of the drawer shall, in a suit thereon by a holder in due course be permitted to deny the validity of the instrument as originally made or drawn (Section 120). In short, a holder in due course gets a good title to the bill.

**(vi) In case Payee's capacity to indorse is denied:**

No maker of a promissory note and no acceptor of a bill payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to endorse the same (Section 121). In short, a holder in due course gets a good title to the bill.

**26. DIFFERENCE BETWEEN HOLDER AND HOLDER IN DUE COURSE**

S No.	Basis of distinction	Holder	Holder in due course
1	<b>Consideration</b>	A person becomes a holder even if he obtains the negotiable instrument without any consideration.	A person becomes a HDC only if he obtains the negotiable instrument for consideration.
2	<b>Before maturity</b>	A person becomes a holder even if he obtains the negotiable instrument after the maturity of the negotiable instrument.	A person becomes a HDC only if he obtains the negotiable instrument before its maturity.
3	<b>Good faith, i.e., bonafide</b>	A person becomes a holder, even if he does not obtain the negotiable instrument in good faith	For being a HDC, a person must obtain the negotiable instrument in good faith.
4	<b>Privileges</b>	A holder is not entitled to the privileges, which are available for HDC	A HDC is entitled to various privileges as specified under the Negotiable Instruments Act, 1881.
5	<b>Right to sue</b>	A holder cannot sue all the prior parties	A HDC can sue all the prior parties.

**27. PAYMENT IN DUE COURSE****[Section 10]**

- Payment is made as per apparent tenor.
- Payment is made in good faith.
- Payment is made without negligence.
- Payment is made to the person who is in the possession of the negotiable instrument.
- Payment is made in money only.

**Where Amount is Stated Differently in Figures and Words [Section 18]**

Amount stated in words shall be the amount undertaken or ordered to be paid.

**28. CROSSING**

**Meaning** - Crossing means a direction given by the drawer of the cheque to the drawee bank, not to pay the cheque at the counter of the bank, but to pay it to a person who presents it through a banker.

**Purpose** - Crossing makes it possible to trace the person to whom the payment has been made. Thus, it makes the cheque safe.

**Types of Crossing (Section 123 to 131A)**

Nature of Crossing	Requirements	Effects
<b>General crossing</b>	<ul style="list-style-type: none"> <li>The cheque must contain two parallel transverse lines.</li> </ul>	<ul style="list-style-type: none"> <li>The cheque must be paid only to a banker.</li> </ul>
<b>Special Crossing</b>	<ul style="list-style-type: none"> <li>The cheque must contain the name of a banker.</li> <li>Special crossing may be made only once.</li> </ul>	<ul style="list-style-type: none"> <li>Cheque must be paid only to the banker to whom it is crossed.</li> <li>Special crossing cannot be converted into general crossing.</li> </ul>
<b>Not negotiable crossing</b>	<ul style="list-style-type: none"> <li>The cheque must contain the words 'not negotiable'.</li> <li>The cheque must be crossed generally or specially.</li> </ul>	<ul style="list-style-type: none"> <li>The cheque nevertheless remains negotiable.</li> <li>The title of the transferee shall not be better than the title of the transferor.</li> </ul>
<b>A/c Payee crossing, i.e., restrictive crossing</b>	<ul style="list-style-type: none"> <li>The cheque must contain the words 'A/c Payee' or 'A/c payee only'.</li> <li>The cheque must be crossed generally or specially.</li> </ul>	<ul style="list-style-type: none"> <li>The cheque does not remain negotiable anymore.</li> </ul>

**Protection to Paying Banker [Section 85 and 126]**

Nature of cheque	Conditions subject to which protection is available to paying banker
<b>Cheque payable to order</b>	<ul style="list-style-type: none"> <li>Payment is made in due course.</li> <li>The protection shall be available notwithstanding that any <b>endorsement subsequently turns out to be a forgery.</b></li> </ul>
<b>Cheque originally payable to bearer</b>	<ul style="list-style-type: none"> <li>Payment is made in due course to the bearer of the cheque.</li> <li>The protection shall be available notwithstanding that any endorsement appears on the cheque.</li> </ul>
<b>Cheques crossed Generally</b>	<ul style="list-style-type: none"> <li>Payment is made in due course to any banker.</li> </ul>
<b>Cheques crossed Specially</b>	<ul style="list-style-type: none"> <li>Payment is made in due course to the banker to whom the cheque is crossed.</li> </ul>
<b>No protection in case of forged signatures of drawer</b>	<ul style="list-style-type: none"> <li>Sec. 85 or any other section does not give any protection to the paying banker in case the <b>signatures of the drawer are forged.</b></li> <li>Thus, the paying banker shall be liable if it makes the payment of the cheque on which drawer's signatures are forged. Accordingly, the paying banker should carefully verify the genuineness of drawer's signatures.</li> </ul>

**29. LIABILITY OF PAYING BANKER****[Section 129]**

The paying banker shall be liable to the true owner of the cheque for any loss sustained by him in the following two cases:

- Where the paying banker pays a cheque crossed generally otherwise than to a banker.
- Where the paying banker pays a cheque crossed specially otherwise than to the specified banker.

**30. PROTECTION TO COLLECTING BANKER****[Section 131]**

If a banker has received payment

- for a customer of a cheque crossed generally or specially to himself, **in good faith**,
- it shall not be liable to original owner of the cheque
- in case the title of the cheque proves defective
- by reason only of having received such payment.

**31. GROUNDS FOR DISHONOUR OF A CHEQUE DESPITE HAVING SUFFICIENT BALANCE**

Banker **must refuse** to honour a customer's cheque in the following cases:

1. Stop payment
2. Death of customer
3. Insolvency of customer
4. Defect in the title of holder
5. Assignment of funds by customer
6. Loss of cheque
7. Irregular endorsement
8. Different signatures
9. Receipt of application for closure of account
10. Stale cheque i.e., outdated cheque
11. Post-dated cheque
12. Materially altered cheque, mutilated cheque, cheque of doubtful validity, incomplete cheque
13. Undated cheque.

Banker **may refuse** a customer's cheque in the following cases:

1. Insufficient funds
2. Funds not applicable
3. Presentment at different branch
4. Presentment after banking hours.

**32. EFFECT OF NON-PRESENTATION OF CHEQUE WITHIN REASONABLE TIME****[Section 84]**

Where the drawer has **sufficient balance** when he issues the cheque, and when the cheque ought to be presented for payment;

- however, the holder fails to present the cheque within a reasonable time of issue of the cheque; and
- meanwhile i.e., after issue of the cheque but before presentation of the cheque by the holder,
- the bank fails, and consequently the drawer suffers actual damages,

in such case, the drawer will not be liable.

**Examples:**

- 1) A draws a cheque for INR 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.
- 2) A draws a cheque at Patiala on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.



**33. LIABILITY OF PARTIES TO NI [SEC. 27 TO 30, 32, 35, 36, 38, 40 & 41]**

<b>Agency (Sec. 27)</b>	<ul style="list-style-type: none"> <li>▪ Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorised agent acting in his name.</li> <li>▪ A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or endorsing bills of exchange so as to bind his principal.</li> <li>▪ An authority to draw bills of exchange does not imply an authority to endorse.</li> </ul>
<b>Liability of agent signing (Sec. 28)</b>	<p>An agent who signs his name on a promissory note, bill of exchange or cheque</p> <ul style="list-style-type: none"> <li>➤ without indicating thereon that he signs as agent, or</li> <li>➤ that he does not intend thereby to incur personal responsibility,</li> <li>➤ is liable personally on the instrument,</li> <li>➤ except to those who induced him to sign upon the belief that the principal only would be held liable.</li> </ul>
<b>Liability of legal representative signing (Sec. 29)</b>	<p>A legal representative of a deceased person who signs his name on a promissory note, bill of exchange or cheque is</p> <ul style="list-style-type: none"> <li>➤ liable personally thereon</li> <li>➤ unless he expressly limits his liability to the extent of the assets received by him as such.</li> </ul>
<b>Liability of drawer (Sec. 30)</b>	<ul style="list-style-type: none"> <li>▪ The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to the drawer.</li> </ul>
<b>Liability of drawee on dishonour (Sec. 31)</b>	<ul style="list-style-type: none"> <li>▪ If the <b>drawer has sufficient funds</b> in the account and <b>such funds are properly applicable</b> to payment of the cheque; then <b>drawee must pay the cheque.</b></li> <li>▪ If default is made by drawee i.e. payee banker, then the drawee shall compensate the drawer for the loss caused to him.</li> </ul>
<b>Liability of maker of note and acceptor of bill (Sec. 32)</b>	<ul style="list-style-type: none"> <li>▪ <b>Before maturity of Bill of Exchange or Promissory Note</b> Unless otherwise mentioned, the maker of a promissory note and the acceptor are bound to pay the amount thereof <b>at maturity</b> according to the apparent tenor of the note or acceptance respectively.</li> <li>▪ <b>After maturity of Bill of Exchange or Promissory Note</b> The acceptor or maker is bound to pay the amount to the holder <b>on demand.</b></li> </ul>
<b>Liability of endorser (sec. 35)</b>	<ul style="list-style-type: none"> <li>▪ Every endorser is liable to every subsequent holder, in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provide due notice of dishonour has been given to, or received by, such endorser.</li> <li>▪ The endorser, however, can expressly exclude or make his liability conditional.</li> <li>▪ Every endorser after dishonour is liable upon an instrument payable on demand.</li> </ul>
<b>Liability of prior parties to holder in due course (Sec. 36)</b>	<ul style="list-style-type: none"> <li>▪ Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.</li> </ul>
<b>Prior party a principal debtor in respect of each</b>	<ul style="list-style-type: none"> <li>▪ Each prior party is liable thereon as a principal debtor in respect of each subsequent party.</li> </ul> <p><b>Illustration.</b> A draws a bill payable to his own order on B, who accepts. A afterwards endorses the bill to C, C to D and D to E. As between E and B, B is the principal debtor,</p>

<b>subsequent party (sec. 38)</b>	and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.
<b>Discharge of endorser's liability (sec. 40)</b>	<ul style="list-style-type: none"> <li>▪ Where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.</li> </ul> <p><b>Illustration</b></p> <p>Amitabh is the holder of a bill of exchange made payable to the order of Hema Malini, which contains the following endorsements in blank;  First endorsement, "Hema Malini"  Second endorsement, "Chunky Pandey"  Third endorsement, "Dharmendra"  Fourth endorsement, "Esha Deol"  Amitabh strikes out, without the consent of Esha Deol, the endorsement by Chunky Pandey and Dharmendra. Amitabh is not entitled to recover anything from Esha Deol.</p>
<b>Acceptor bound, although endorsement forged (Sec 41)</b>	<ul style="list-style-type: none"> <li>▪ An acceptor of a bill of exchange already endorsed is not relieved from liability by reason that such endorsement is forged, if he knows or had reason to believe the endorsement to be forged when he accepted the bill.</li> </ul>

**34. MATERIAL ALTERATION****[Section 20, 49, 87 and 125]**

An alteration is called as material alteration if it alters

- **the character or operation** (i.e., **the legal effect**) of a negotiable instrument; or
- the **rights and liabilities of any of the parties** to a negotiable instrument.

"The following alteration are specifically declared to be material: any alteration of (i) the date, (ii) the sum payable, (iii) the time of payment, (iv) the place of payment, or the addition of a place of payment."

**Following are the examples of material alteration:**

- i) Alteration of date e.g. time of payment accelerated or postponed, or where date in the instrument inserted subsequent to the execution of instrument.
- ii) Alteration of rate of interest (if specified).
- iii) Alteration of the sum payable, e.g. a bill for INR 5000 altered into a bill for INR 500.
- iv) Alteration in the time of payment, e.g. a bill payable 3 months after date is altered to be payable 1 month after date.
- v) Alteration of the place of payment e.g. change of bank at which the bill is payable. Likewise, alteration by addition of place for payment e.g. where a place of payment is not given but is subsequently added without the acceptor's consent.
- vi) Alteration by addition of parties (from one maker/payee to two makers/payees).
- vii) Alteration by tearing material part of the instrument.
- viii) Alteration by increasing or affixing stamps.
- ix) Alteration by erasure of an "account payee" crossing.
- x) Alteration of an order cheque to a bearer cheque, except by or with consent of the drawer.

**The following alterations do not affect the liability of parties thereto**

- 1) If the alteration is unintentional and due to pure accident (e.g. accidental disfigurement of document).
- 2) Alteration made by a stranger without the consent of holder and without any fraud and negligence on his part
- 3) An alteration made to correct a clerical error or a mistake, thus, if instead of 1823, the date entered was 1832, the agent of drawer held entitled to correct mistake. Such correction is deemed to be giving effect to the original intention of the parties.
- 4) Alteration with the consent of the parties liable thereto.
- 5) An alteration made before the completion or the issue of negotiable Instrument.
- 6) A material alteration doesn't affect the liability of those parties who become liable after the alteration is made. Sec. 88 provides that the acceptor or indorser is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.
- 7) An alteration which is not material e.g. when a bill payable to bearer is converted to bill payable to order/or an incomplete name of a person converted into the complete name of same person.

### 8) Alterations permitted by Sec. 87 (Exceptions to Sec. 87)

- a) **Sec. 20** – Incomplete instrument (e.g. column of sum left blank) can be filled up by the holder.
- b) **Sec. 49** – It enables the holder of an instrument indorsed in blank to convert it into indorsement in full (BY writing above the indorser's signature a direction to pay to any other person as indorsee). Thus, addition of parties allowed here.
- c) **Sec. 125**- the holder of an uncrossed cheque may cross it, or may convert general into special crossing or may make it 'not negotiable'.
- d) **Apparent alteration** – The alteration should be apparent on the face of the instrument otherwise it remains a valid security in the hands of a HDC. Sec. 89 provides that where an instrument has been materially altered but doesn't appear to have been so altered, the party paying it will be discharged by payment in due course.

But in such case, acceptor is liable only for the original tenor of the instrument and not for its altered tenor.

Similarly, where a cheque at the time of presentment is crossed but the crossing is not apparent, the banker will be discharged by payment in due course.

**Example 1:** A promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument. As per the above provision of the Negotiable Instruments Act, 1881 this is not a material alteration as a promissory note where no date of payment is specified will be treated as payable on demand. Hence adding the words "on demand" does not alter the business effect of the instrument.

**Example 2:** State whether the following alterations are material alterations under the Negotiable Instruments Act, 1881?

- a) The holder of the bill inserts the word "or order" in the bill,
- b) The holder of the bearer cheque converts it into account payee cheque,

### Answer:

The following materials alterations have been authorised by the Act and do not require any authentication:

- a) filling blanks of inchoate instruments [Section 20]
- b) Conversion of a blank endorsement into an endorsement in full [Section 49]

## 35. DISHONOUR BY NON-ACCEPTANCE

## [SECTION 91]

A bill is dishonoured by non-acceptance if it is duly presented for acceptance, but the bill is not accepted.

In this case, the holder gets an **immediate right to sue all the prior parties.**

### Cases in which a bill is dishonoured by non-acceptance

- a) Where a bill is not accepted by the drawee within 48 hours of presentment of bill.  
If the holder allows to the drawee more than 48 hours for acceptance, all the prior parties not consenting to the same are discharged from liability to such holder.
- b) In case there are two or more drawees who are not partners, if the bill is not accepted by all the drawees.
- c) Where the drawee is a fictitious person.
- d) When the drawee cannot be found even after a reasonable search.
- e) When the drawee is incompetent to contract.
- f) Where the drawee gives a qualified acceptance and the holder does not give his consent to the qualified acceptance.

**Effect:** The holder gets an **immediate title to sue all the prior parties.**

**Note:** A promissory note or a cheque cannot be dishonoured by non-acceptance since a promissory note or a cheque does not require any acceptance.

## 36. PROVISIONS WITH RESPECT TO PRESENTMENT, PAYMENT AND INTEREST [SEC. 61 TO 65 AND 72 TO 83]

<p><b>Presentment for acceptance (Sec. 61)</b></p>	<p>a) <b>If no time or place is specified therein for presentment</b></p> <p>A BOE payable a certain period after sight must be presented to the drawee for acceptance,</p> <ul style="list-style-type: none"> <li>➤ within a reasonable time after it is drawn, and</li> <li>➤ in business hours on a business day.</li> </ul> <p>In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search be found the bill is dishonoured.</p> <p>b) <b>If the bill is directed to be presented to drawee at a particular place</b></p> <p>BOE <b>must be presented at that place</b>, and if at the due date for presentment, the place cannot be found after reasonable search, the bill is dishonoured.</p> <p><b>Note:</b> When authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.</p>
<p><b>Presentment of promissory note for sight (sec. 62)</b></p>	<ul style="list-style-type: none"> <li>▪ A promissory note, payable at a certain period after sight, must be presented to the maker <ul style="list-style-type: none"> <li>➤ within a reasonable time after it is made and</li> <li>➤ in business hours on a business day.</li> </ul> </li> <li>▪ In default of such presentment, no party thereto is liable thereon to the person making such default.</li> </ul>
<p><b>Drawee's time of deliberation (sec. 63)</b></p>	<ul style="list-style-type: none"> <li>▪ The holder can allow the drawee maximum <b>48 hours (exclusive of public holidays)</b> to consider whether he will accept it.</li> </ul>
<p><b>Presentment for payment (sec. 64)</b></p>	<p>a) Promissory notes, bills of exchange and cheque must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder. In</p>

	<p>default of such presentment, the other parties thereto are not liable thereon to such holder.</p> <p>b) Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.</p>
<b>Hours for presentment (sec.65)</b>	<p>a) Presentment for payment must be made during the usual hours of business.</p> <p>b) If an instrument is presented for payment to a banker, it must be presented within banking hours.</p>
<b>Presentment of instrument payable at demand (sec, 74)</b>	<ul style="list-style-type: none"> <li>▪ Within a reasonable time after it is received by the holder.</li> </ul>
<b>Presentment by or to agent, representative of deceased, or assignee of insolvent (sec. 75)</b>	<ul style="list-style-type: none"> <li>▪ Presentment for acceptance or payment may be made to the duly authorised agent of the drawer, maker or acceptor, as the case may be.</li> <li>▪ Where the drawee, maker or acceptor has died, presentment for acceptance or payment may be made to his legal representative.</li> <li>▪ Where the drawee, maker or acceptor has been declared an insolvent, presentment for acceptance or payment may be made to his assignee.</li> </ul>
<b>When presentment unnecessary (sec. 76)</b>	<p>No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment in any of the following cases:</p> <p>a) If the maker, drawee or acceptor intentionally prevents the presentments of the instrument.</p> <p>b) If the instrument being payable at his place of business, he closes such place on a business day during the usual business hours.</p> <p>c) If the instruments being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours.</p> <p>d) As against any party, if after maturity, with knowledge that the instrument has not been presented he-</p> <ul style="list-style-type: none"> <li>i) Makes a part payment on account of the amount due on the instrument; or</li> <li>ii) Promises to pay the amount due therein whole or in part; or</li> <li>iii) Waives his right to take advantage of any default in presentment for payment.</li> </ul>
<b>To whom payment should be made (sec. 78)</b>	<p>Payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.</p>
<b>Interest when rate specified (sec.79)</b>	<p>When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified on the amount of the principal money due thereon, from the date of the instrument until-</p> <ul style="list-style-type: none"> <li>- Tender or realisation of such amount; or</li> <li>- Such date after the institution of a suit to recover such amount as the court directs.</li> </ul>
<b>Interest when no rate specified</b>	<p>a) When no rate of interest is specified in the instrument,</p> <ul style="list-style-type: none"> <li>➤ notwithstanding any agreement relating to interest between any parties to the instrument,</li> <li>➤ interest shall be calculated at the rate <b>18% per annum</b></li> </ul>

	<p>- from the date at which the payment should have been made by party charged until tender or realisation of such amount; or such date after the institution of a suit to recover such amount as the court directs.</p> <p>b) When the party charged is the endorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.</p>
<b>Delivery of instrument on payment or indemnity in case of loss (sec. 81)</b>	<p>a) Any person who is liable to pay a N.I. and called upon by the holder thereof to pay, is entitled to have it shown before the payment.</p> <p>b) Further, on payment, he is entitled to have N.I. delivered to him.</p> <p>c) In case, after payment, N.I. is lost or cannot be produced, he is entitled to be indemnified against any further claim thereon against him.</p> <p>d) Where the cheque is an electronic image of a truncated cheque, even after the payment, the banker who received the payment shall be entitled to retain the truncated cheque.</p>

**37. ACCEPTANCE OF BILL DRAWN IN FICTITIOUS NAME****[Section 42]**

An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is **not relieved from liability to any holder in due course by reason that such name is fictitious.**

**Illustration**

X draws a bill on Y but signs it in the fictitious name of Z. The bill is payable to the order of Z. The bill is duly accepted by Y. M obtains the bill from X thus becoming its holder in due course. Can Y avoid payment of the bill? Decide in the light of the provisions of the Negotiable Instruments Act, 1881.

**Solution**

**Bill drawn in fictitious name:** The problem is based on the provision of Section 42 of the Negotiable Instruments Act, 1881. In case a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for the acceptor to allege as against the holder in due course that such name is fictitious.

Accordingly, in the instant case, Y cannot avoid payment by raising the plea that the drawer (Z) is fictitious. The only condition is that the signature of Z as drawer and as endorser must be in the same handwriting.

**38. HOLDER'S RIGHT TO DUPLICATE OF LOST BILL****[Section 45A]****Right of holder to obtain duplicate of lost bill**

Where a bill of exchange has been lost before it is overdue,

- the person who was the holder of it may apply
- to the drawer to give him another bill of the same tenor,
- giving security to the drawer, if required,
- to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

**Remedy in case of refusal by drawer**

If the drawer, on request by the holder to provide to him a duplicate of the lost bill, refuses to give such duplicate bill, the drawer may be compelled to do so.

**39. DRAWEE IN CASE OF NEED****[Section 7 and 115]**

Drawee in case of need refers to any person whose name may be given in a bill as 'drawee in case of need'.

His liability arises on the bill only when the bill is not accepted by the drawee named in the bill.

The bill is not dishonoured until it has been dishonoured by drawee in case of need.

#### 40. ACCEPTANCE FOR HONOUR

[Section 108 and 112]

When a bill of exchange has been dishonoured by non-acceptance and any person accepts it for honour of the drawer or of any indorsers, such person is called "an Acceptor for honour".

The payment which he makes is known as "payment for honour. In other words, it is an undertaking by a third party to accept and pay a bill of exchange that was dishonored, either by non-acceptance (see dishonor by non-acceptance) or by non-payment (see dishonor by non-payment) by the party on whom it was drawn. It is also called acceptance supra protest.

How acceptance for honor must be made: A person desiring to accept for honor must, [by writing on the bill under his hand], declare that he accepts under protest the protested bill for the honor of the drawer or of a particular indorser whom he names, or generally for honor.

#### **Essentials of valid acceptance for honor**

- 1) The holder must consent to acceptance for honor. The holder cannot be compelled to accept for honor.
- 2) The bill must have been noted or protested for the non-acceptance or for better security.
- 3) Acceptance for honor can be made by a person who is not already liable on the bill. Drawee of the bill when he refuses to accept the bill becomes a stranger. He may therefore accept the bill for honor of any party thereto.
- 4) It must be made by writing on the bill.
- 5) It must be for the whole amount due on the bill
- 6) Acceptance must be for the honor of any party already liable on the bill.
- 7) Acceptance for honor must be made before to bill is overdue.
- 8) Stranger paying for honor must, before payment, declare before a Notary Public the party for whose honor he pays and the Notary Public must have recorded such a declaration.

#### **Liability of acceptor for honour**

- a) He is liable to pay the amount of the bill, if the drawee does not pay on maturity.
- b) He is liable only to the parties subsequent to the party for whose honour the bill is accepted.

#### **Rights of acceptor for honour**

He is entitled to recover the amount paid by him from the party for whose honour the bill was accepted, and from all the parties prior to such party.

#### 41. PAYMENT FOR HONOUR

[Section 113 and 114]

A person who pays a bill for honour of any other person is called as 'payer for honour'.

#### **Conditions for 'payment for honour'**

- a) The bill must have been noted for non-payment.
- b) Payment for honour is made for the honour of any party already liable under the bill with the consent of the holder of the bill.
- c) The payment must be recorded by Notary Public.

#### **Rights of payer for honour**

- a) The payer for honour is entitled to all the rights of a holder.
- b) He can recover all the sums paid by him from —
  - the party for whose honour he pays; and

- all parties prior to such party.

## 42. DISHONOUR BY NON-PAYMENT

[Section 92]

A negotiable instrument shall be dishonoured by non-payment if default in payment is made by the following parties.

<b>Promissory Note</b>	▪ <b>Maker</b>
<b>Bill of Exchange</b>	▪ <b>Acceptor (Drawee, in case the bill does not require acceptance)</b>
<b>Cheque</b>	▪ <b>Drawee</b>

**Note:** Where a promissory note was sent by registered post and the party liable refused to receive the post, the bill was held to be dishonoured.

## 43. NOTICE OF DISHONOUR

[Section 93 to 98]

### Notice by whom, and to whom? (sec.93)

In case of dishonour of a negotiable instrument by non-acceptance or non-payment,

- the holder, or some party who remains liable on instrument,
- must give notice that the instrument has been so dishonoured
- to all other parties whom the holder seeks to make severally liable thereon.

Notice must contain the fact of dishonour of negotiable instrument.

### Object of notice of Dishonour

The object of notice of dishonour is to inform (or warn) the party or the person who is liable on instrument about the dishonour of the instrument.

Also, in the case of drawer to enable him to protect himself as against the drawee or acceptor who has dishonoured his bill. The notice is necessary whatever the nature of the instrument i.e. whether it is payable at sight or on demand or whether it is an accommodation bill.

In order to make the drawer liable, on the dishonour by the drawee or the acceptor, it is necessary that a 'notice of dishonour' must have been given to him.

The omission on the part of holder to give due notice of dishonour would discharge the drawer not only from his liability upon the cheque, but also upon the original debtor consideration. The doctrine of notice of dishonour is based upon the principle of just and equity.

### Modes of giving notice

Notice of dishonour may be given

- to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative or, where he has been declared insolvent, to his assignee;
- may be oral or written; may,
- if written, be sent by post within reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid (Sec. 94).

### Party receiving must transmit notice of dishonour

Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within reasonable time, unless such party otherwise receives due notice as provided by Sec. 93 (Sec. 95).



Thus, a person receiving notice must transmit it to prior parties whom he wishes to make liable to himself because the holder may have omitted to give notice to some of the prior parties.

### Agent of presentment

When instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour (Sec. 96).

### When party to whom notice given is dead

When the party to whom notice of dishonour is dispatched is dead, but the party dispatching the notice is ignorant of his death, the notice is sufficient (Sec. 97).

**Effect of Default:** A party to whom notice of dishonour is not given is discharged from liability on the negotiable instrument.

However, it is not necessary to give notice of default to maker of dishonoured promissory note or acceptor of a dishonoured bill/cheque and these parties are not discharged from their liability on the negotiable instrument.

### When notice of dishonour is unnecessary or excused (Section 98)

- a) **Waiver:** When notice of dishonour is dispensed with by a party.
- b) Where the drawer of the cheque has countermanded payment, notice to drawer is not required to be given.
- c) When the party entitled to notice cannot be found even after due search.
- d) to charge the drawers, when the acceptor is also a drawer;
- e) Where the party bound to give notice is unable to give notice without any fault of his own.
- f) **Promise to pay:** when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

### Illustrations

Is notice of dishonour necessary in the following cases:

- i) X having a balance of INR 1,000 with his bankers and having no authority to over draw, drew a cheque for INR 5,000/-. The cheque was dishonoured when duly presented for repayment.
- ii) X, drawer of a Bill informs Y, the holder of the bill that the bill would be dishonoured on the presentment for payment.

### Solution

Notice of dishonour is not necessary in both the cases. [Section 98 of the Negotiable Instruments Act, 1881].

## 44. NOTING AND PROTESTING

[Section 99 to 103]

### Noting [Sec 99]

Noting refers to recording the fact of dishonour of a negotiable instrument by non-acceptance or non-payment on the negotiable instrument. Noting is optional and not mandatory.

Noting must be done within reasonable time after dishonour and must specify the date of dishonour, the reason for such dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured.

### Procedure and contents of noting

- The dishonoured bill is handed over to a Notary Public.
- Notary Public presents it again for acceptance/payment.
- If drawee/acceptor refuses to accept or pay the bill, the Notary Public records the fact of dishonour on the bill.

## Contents

'Noting' must contain the following particulars (Sec. 90):

- a) The fact of dishonour
- b) The date of dishonour,
- c) The reasons, if any, assigned for such dishonour,
- d) If the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured; and
- e) The notary's charges.

## Protest [Sec 100]

When a promissory note or bill of exchange has been dishonoured by non- acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

## Contents of protest

Protest is based upon noting. A protest, in order to be valid, must contain all the particulars of Noting.

Noting	Protest
P/N, BoE, Cheque has been dishonoured by non-acceptance or non-payment— the holder may cause such dishonour to be noted by a notary public upon- <ul style="list-style-type: none"> <li>● the instrument, or</li> <li>● upon a paper attached thereto, or</li> <li>● partly upon each</li> </ul>	P/N or BoE has been dishonoured by non-acceptance or non-payment— the holder may, cause such dishonour to be <ul style="list-style-type: none"> <li>● noted, and</li> <li>● certified</li> </ul> by a notary public

## Notice of protest

When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest (Sec. 102).

## 45. DISCHARGE OF A NEGOTIABLE INSTRUMENT

<b>Payment in due course</b>	<ul style="list-style-type: none"> <li>▪ A negotiable instrument is discharged if the party primarily liable on the negotiable makes the payment in due course.</li> <li>▪ When the payment is made, the negotiable instrument must be cancelled or the fact of payment must be recorded on negotiable instrument.</li> </ul>
<b>Cancellation</b>	<ul style="list-style-type: none"> <li>▪ Where the holder cancels the name of the party primarily liable on the negotiable instrument, with intent to discharge him, the negotiable instrument is discharged.</li> </ul>
<b>Release</b>	<ul style="list-style-type: none"> <li>▪ Where the holder releases or renounces his rights against the party primarily liable on the negotiable instrument, the negotiable instrument is discharged.</li> </ul>
<b>Negotiation back</b>	<ul style="list-style-type: none"> <li>▪ Where the party primarily liable on a negotiable instrument becomes the holder of the negotiable instrument, the negotiable instrument is discharged.</li> </ul>
<b>Operation of law</b>	<ul style="list-style-type: none"> <li>▪ A negotiable instrument is discharged if it becomes time barred.</li> </ul>

## 46. DISCHARGE OF A PARTY

[Section 82 to 90]

<b>Payment</b>	<ul style="list-style-type: none"> <li>Where payment is made by any party liable on the negotiable instrument (other than the party primarily liable on the negotiable instrument), such a party and all parties subsequent to him are discharged.</li> </ul>
<b>Cancellation</b>	<ul style="list-style-type: none"> <li>Where the holder cancels the name of any party liable on the negotiable instrument (other than the party primarily liable on the negotiable instrument), such a party and all parties subsequent to him are discharged.</li> </ul>
<b>Release</b>	<ul style="list-style-type: none"> <li>Where the holder releases any party liable on the negotiable instrument (other than the party primarily liable on the negotiable instrument), such a party and all parties subsequent to him are discharged.</li> </ul>
<b>Negotiation back</b>	<ul style="list-style-type: none"> <li>Where a party already liable on the negotiable instrument (other than the party primarily liable on the negotiable instrument) becomes the holder of the negotiable instrument, such a party and all intermediate parties are discharged.</li> </ul>
<b>Allowing drawee more than 48 hours to accept</b>	<ul style="list-style-type: none"> <li>If the holder allows <b>more than 48 hours, exclusive of public holidays</b>, to the drawee to accept the bill, all the prior parties not consenting to the same are discharged from liability to such holder.</li> </ul>
<b>Qualified acceptance</b>	<ul style="list-style-type: none"> <li>Where the holder consents to <b>qualified acceptance</b>, all the prior parties not consenting to the same are discharged.</li> </ul>
<b>Material alteration</b>	<ul style="list-style-type: none"> <li>Every party <b>not consenting to a material alteration</b> of a NI is discharged.</li> </ul>
<b>Operation of law</b>	<ul style="list-style-type: none"> <li>A party is discharged if he is declared as an insolvent by the Court.</li> </ul>

#### 47. HUNDI – MEANING AND KINDS

Hundi means a bill of exchange drawn in an oriental language, i.e., local language.

Negotiable Instruments Act, 1881 applies to Hundis if there is no local usage of trade or custom prevailing in the area in which Hundi is drawn.

However, if there is any custom or usage prevailing in such area, the same will apply to Hundis, and therefore Negotiable Instruments Act, 1881 shall not apply to Hundis.

<b>Nam Jog hundi</b>	<ul style="list-style-type: none"> <li>Hundi payable to a party named in the Hundi or to his order.</li> </ul>
<b>Dhani Jog hundi</b>	<ul style="list-style-type: none"> <li>Hundi payable to the Dhani or the owner, i.e., the bearer.</li> </ul>
<b>Darshani hundi</b>	<ul style="list-style-type: none"> <li>Hundi payable at sight.</li> </ul>
<b>Miadi hundi or Muddati hundi</b>	<ul style="list-style-type: none"> <li>Hundi payable after a specified period of time.</li> </ul>
<b>Shahjog hundi</b>	<ul style="list-style-type: none"> <li>Hundi payable to a Shah.</li> </ul>
<b>Jokhmi hundi</b>	<ul style="list-style-type: none"> <li>Hundi drawn in respect of goods shipped on the vessel and is payable only when the goods reach their destination safely.</li> </ul>
<b>Peth</b>	<ul style="list-style-type: none"> <li>Duplicate copy of a hundi.</li> </ul>
<b>Perpeth</b>	<ul style="list-style-type: none"> <li>Triplicate copy of a hundi.</li> </ul>
<b>Khoka</b>	<ul style="list-style-type: none"> <li>Hundi which has already been paid or discharged.</li> </ul>

#### 48. BOUNCING OR DISHONOUR OF CHEQUE

[Section 138 to 142A]

If a cheque issued by the drawer is dishonoured due to **insufficiency of funds**, the drawer is punishable with

- Imprisonment upto 2 years (Maximum); or

- Fine upto 2 times the amount of cheque (Maximum); or
- Both.

### Conditions for attracting liability u/s 138

<p><b>Cheque issued to discharge a liability</b></p>	<ul style="list-style-type: none"> <li>▪ The liability u/s 138 arises only if the drawer had issued the cheque to discharge a <b>legally enforceable debt or other liability</b>.</li> <li>▪ Thus, where the drawer issues a cheque as a gift or charity, he is not liable under section 138 even if cheque is dishonoured.</li> <li>▪ <b>Presumption in favour of holder (Sec. 139)</b> When a cheque is dishonoured, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability. The effect of this presumption is to place the evidential burden on the accused i.e. drawer.</li> </ul>
<p><b>Dishonour due to insufficiency of funds</b></p>	<p>The cheque must have been dishonoured due to insufficiency of funds in the account of the drawer.</p>
<p><b>Effect of 'stop payment'</b></p>	<p>Where the drawer makes '<b>stop payment' order to the banker</b> (i.e., he <b>countermands payment</b>) resulting in dishonour of the cheque,</p> <ul style="list-style-type: none"> <li>➤ it has the <b>same effect as if the cheque had been dishonoured due to insufficiency of funds</b>.</li> </ul> <p>Thus, the proceedings u/s 138 may be initiated against the drawer.</p> <p><b>Example</b></p> <p>X issued a post-dated cheque to Y on the account of discharge of its liability. Further, X instructed to the bank to make the stop payment due to unavailability of the adequate amount in the account.</p> <p>Here, in this instance section 138 of the Act is attracted as when a cheque is dishonoured on account of stop payment instructions sent by the drawer to his banker in respect of a post-dated cheque irrespective of insufficiency of funds in the account.</p> <p>A post-dated cheque is deemed to have been on the date it bears and the three months period for the purposes of section 138 is to be counted from that date. So, X will be liable for dishonour of cheque. Once a cheque is issued by the drawer a presumption under section 139 must follow.</p>
<p><b>Presentment of cheque within validity period</b></p>	<p>The cheque must have been presented for payment to the bank</p> <ul style="list-style-type: none"> <li>➤ within 3 months from the date on which it was drawn; or</li> <li>➤ within the period of validity; whichever is earlier.</li> </ul>
<p><b>Notice to drawer</b></p>	<p>The payee/holder must give a notice to the drawer of the cheque. The notice must fulfill the following conditions:</p> <ol style="list-style-type: none"> <li>a) It must be in writing.</li> <li>b) It must be given within 30 days of receipt of information of dishonour of cheque from the bank.</li> <li>c) The notice must require the drawer to make payment of the money due on the cheque, i.e., the payee/holder must demand the money due under the cheque.</li> </ol>

<p><b>Default in payment by drawer</b></p>	<p>The liability u/s 138 is attracted only if,</p> <ul style="list-style-type: none"> <li>➤ within 15 days of receipt of notice from the payee/holder, the drawer fails to pay the whole of the money due under the cheque.</li> </ul> <p>If the drawer makes only a part payment, it is considered as a default by the drawer. Thus, the cause of action arises on 16<sup>th</sup> day from the day of receipt of notice from payee/holder.</p>
<p><b>Offences by companies (Sec. 141)</b></p>	<p>If the person committing an offence u/s 138 is a company,</p> <ul style="list-style-type: none"> <li>➤ <b>every person</b> who, at the time the offence was committed was</li> <li>➤ <b>in charge of, and was responsible for the conduct of the business of the company,</b></li> <li>➤ shall be deemed to be guilty of the offence and</li> <li>➤ shall be liable to be proceeded against and punished accordingly.</li> </ul> <p>Where a person is nominated as a director of a company/partner in a Firm by virtue of his holding any office or employment in the CG or SG or a financial corporation owned or controlled by the CG or SG, as the case may be,</p> <ul style="list-style-type: none"> <li>➤ he shall not be liable for prosecution under the chapter.</li> </ul> <p>Further, a person shall not be liable for punishment if he proves that</p> <ul style="list-style-type: none"> <li>➤ offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.</li> </ul> <p><b>Example:</b></p> <p>A promoter who has borrowed a loan on behalf of company, who is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently, the cheque was dishonoured and the complaint was lodged against him. Is he liable for an offence under section 138?</p> <p><b>Answer:</b></p> <p>According to Section 138 of the Negotiable Instruments Act, 1881 where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from/out of that account for discharging any debt or liability, and if it is dishonoured by banker on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable.</p> <p>However, in this case, the promoter is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company.</p> <p>Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Therefore, he has not committed an offence under section 138.</p>
<p><b>Cognizance of Offences - The payee/holder must make a complaint with the Court [Sec 142]</b></p>	<p>Following points are worth noting in this regard:</p> <ul style="list-style-type: none"> <li>✚ The complaint must be in writing.</li> <li>✚ The complaint must be made within 1 month from the date when cause of action arose, i.e., within 1 month from the last day on which drawer was liable to pay the money to the payee/holder.</li> <li>✚ The complaint shall be made with a Court not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class.</li> </ul>

	<p>✦ The complaint is to be filed with the Court within whose <b>jurisdiction</b></p> <p>a) in case the cheque is delivered for collection through an account - the branch of the bank where the payee or HDC, as the case may be, maintains the account, is situated;</p> <p>b) in case the cheque is presented for payment by the payee or HDC, otherwise through an account - the branch of the drawee bank where the drawer maintains the account is situated.</p> <p>Explanation— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”</p> <p><b>Example:</b> Mr. A holds an account in Navrangpura Branch, Ahmedabad of “XYZ” Bank, issues a cheque payable in favor of B. B, who holds an account with the M.S University Road Branch, Vadodara of the “PQR” bank, deposits the said cheque at Surat Branch of ‘PQR bank’ and the cheque is dishonored.</p> <p>The complaint will have to be filed before the court having jurisdiction where the M.S University road branch is situated.</p>
<p><b>Validation for transfer of pending cases (Sec. 142A)</b></p>	<p>If more than one case by the same payee / HDC against the same drawer is pending in different courts, then,</p> <p>➤ all such cases shall be transferred to the court having jurisdiction u/s 142(2).</p> <p>Notwithstanding anything contained in any order of any court, all cases transferred to the court having jurisdiction u/s 142(2) shall be deemed to have been validly transferred.</p> <p>If any complaint is pending in the court having jurisdiction u/s 142(2), all subsequent complaints arising out of section 138 against the same drawer shall be filed before same court. This provision shall apply notwithstanding anything contained in Sec. 142(2).</p>

#### 49. POWER OF COURT TO TRY CASES SUMMARILY

[SECTION 143]

##### (1) Trial of Offence:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials.

**In case of summary trial:** Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees.

**In case where no summary trial can be made:** Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily,

- the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

##### (2) Speedy Trial:

The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

**(3) Speedy and efficient Disposal:**

Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

**50. POWER TO DIRECT INTERIM COMPENSATION****[SECTION 143A]**

The Court trying an offence under section 138

- may order the drawer of the cheque to
- pay **interim compensation** to the complainant which shall
- **not exceed twenty per cent** of the **amount of the cheque**.

The interim compensation shall be paid **within sixty days from the date of the order** or within such **further period not exceeding thirty days** as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

If the **drawer of the cheque is acquitted**,

- the Court shall direct the complainant
- **to repay to the drawer the amount of interim compensation**,
- with **interest at the bank rate as published by the Reserve Bank of India**, prevalent at the **beginning of the relevant financial year**,
- **within sixty days from the date of the order**, or within such **further period not exceeding thirty days** as may be directed by the Court on sufficient cause being shown by the complainant.

The interim compensation payable under this section may be recovered as if it were a **fine under section 421 of the Code of Criminal Procedure, 1973**.

The amount of fine imposed u/s 138 or the amount of compensation awarded u/s 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.”

**Offences to be compoundable [Section 147]**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be **compoundable**.

**51. POWER OF APPELLATE COURT TO ORDER PAYMENT PENDING APPEAL AGAINST CONVICTION****[SECTION 148]**

In an appeal by the drawer against conviction under section 138,

- the Appellate Court may order the appellant to deposit such sum which shall be a
- **minimum of twenty percent of the fine or compensation** awarded by the Trial Court
- **within sixty days from the date of the order**, or within such **further period not exceeding thirty days** as may be directed by the Court on sufficient cause being shown by the appellant.

**Note:** This amount shall be in **addition to any interim compensation** paid by the appellant under section 143A.

**Note:** The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal.

If the **appellant is acquitted**, the Court shall

- direct the **complainant to repay to the appellant the amount so released**,
- with **interest at the bank rate as published by the Reserve Bank of India**, prevalent at the **beginning of the relevant financial year**,
- **within sixty days from the date of the order**, or within such **further period not exceeding thirty days** as may be directed by the Court on sufficient cause being shown by the complainant.”.

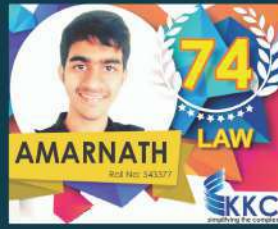
ARISE AWAKE AND STOP NOT  
TILL YOUR GOAL IS ACHIEVED

-Swami Vivekanand

### About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.

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# CHAPTER 3

## GENERAL CLAUSES ACT, 1897

*Plan to work and work your plan  
because failing to plan is planning  
to fail.*

### 1. OBJECT AND PURPOSE

<b>Objects</b>	<p>The General Clauses Act, 1897 has following objects:</p> <ol style="list-style-type: none"> <li>a) to shorten the language of Central Acts;</li> <li>b) to provide, as far as possible, for uniformity of expression in Central Acts, by giving definitions of a series of terms in common use;</li> <li>c) To state explicitly certain convenient rules for the construction and interpretation of Central Acts.</li> <li>d) To guard against slips and oversights by importing into every act certain common form clauses, which otherwise ought to be inserted in every central act</li> </ol> <p><b>Example:</b> Wherever the law provides that court will have the power to appoint, suspend or remove a receiver, the legislature simply enacted that wherever convenient the court may appoint receiver and it was implied within that language that it may also remove or suspend him.</p>
<b>Purpose</b>	<ul style="list-style-type: none"> <li>▪ Purpose of the Act is to place in one single statute different provisions relating to interpretation of words and legal principals which would otherwise have to be specified separately in many different Acts and Regulations.</li> <li>▪ So whatever General Clauses Act says, in relation to meaning of words or legal principles, it has to be read in every statute to which it applies. In absence of these words and legal principals in any Central Act or Regulation, the definition given in General Clauses Act shall apply.</li> <li>▪ The General Clauses Act, 1897 is called as '<b>Law of all Laws</b>'. Thus, we can see that the purpose of this Act itself enshrines the importance of the Act.</li> <li>▪ <b>Example:</b> A claim of the right to catch fish came under the consideration of the court in Ananda Behera v. State of Orissa. The court tended to decide whether the right to catch or carry fish is a movable or immovable property. It was observed-  Section 3(26) of the General Clauses Act, 1897 reads as under: - "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;"  The Transfer of Property Act does not define the term except to say that immovable property</li> </ul>

	<p>does not include standing timber, growing crops or grass.</p> <p>As fish do not come under that category the definition in the General Clauses Act applies and as a profit a prendre is regarded as a benefit arising out of land it follows that it is immovable property within the meaning of the Transfer of Property Act.”</p> <p>Thus, the court construed “right to catch or carry fish” as an immovable property</p> <ul style="list-style-type: none"> <li>▪ <b>Example:</b> The Supreme Court applied the provisions of section 24 of the General Clauses Act to the Mines Act, 1923 (Chief Inspector of Mines V. Karam Chand Thapar).</li> <li>▪ <b>Example:</b> The word ‘Affidavit’ used in section 7 during the incorporation of company, in the Companies Act, 2013, shall derive its meaning from the word ‘Affidavit’ as defined in the General Clauses Act, 1897.</li> </ul>
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## 2. EXTENT AND APPLICABILITY

<b>Applicability</b>	<ul style="list-style-type: none"> <li>▪ The Act not defines any “territorial extent” clause.</li> <li>▪ The General Clauses Act will apply to a provision which has been framed by the <b>Central Legislature (i.e., Central Acts)</b>.</li> <li>▪ It is also applicable to Rules and Regulations made under Central Act.</li> <li>▪ If a Central Act is extended to any territory, the General Clauses Act would also deemed to be applicable in that territory and would apply in the construction of that Central Act.</li> <li>▪ Notifications issued by the President is interpreted with the aid of the General Clauses Act.</li> <li>▪ Article 367 of the Constitution of India authorises use of General Clauses Act for the interpretation of constitution. Article 367 states that</li> <li>▪ “Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India”.</li> <li>▪ The provisions of the General Clauses Act are mere rules of interpretation and it applies automatically in each and every case. It all depends on the facts and circumstances of each case.</li> <li>▪ In many countries, Legislatures similar to the General Clauses Act are called Interpretation Acts.</li> <li>▪ There is a difference in the applicability of each section as regards the statutes to which it applies.</li> </ul> <p><b>Examples</b></p> <ol style="list-style-type: none"> <li>a) Section 3 of the General Clauses Act, which deals with the definitional clause, applies to the General Clauses Act itself and to all Central Acts and Regulations made after the commencement of the General Clauses Act in 1897.</li> <li>b) Similarly, section 4 of the General Clauses Act, which deals with the application of foregoing definitions to previous enactment, applies to Central Acts made after January 3, 1868 and to Regulations made after January 14, 1887.</li> </ol> <ul style="list-style-type: none"> <li>▪ It may also be noted that the Act also serves as a model for State General Clauses Act. It is evident that the State General Clauses Acts should conform to the General Clauses Act of 1897, for, otherwise, divergent rules of construction and interpretation would apply and. as a result, great confusion might ensue.</li> </ul>
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<b>Not applicable</b>	<ul style="list-style-type: none"> <li>It is not applicable to any provisions framed by authority who is not competent authority to pass Central Act i.e. this Act is not applicable to any Act other than Central Acts.</li> </ul>
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**3. DEFINITIONS****[SECTION 3]****Object**

Object of definitions contained in General Clauses Act are meant to provide for proper interpretation of all Central Acts made after commencement of this Act.

<b>Act – [Sec 3(2)]</b>	<ul style="list-style-type: none"> <li>'Act', used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions;</li> <li>An act required to be done cannot necessarily mean a positive act only and may also include acts which one is precluded from doing from decree. This definition is based on sections 32 and 33 of the Indian Penal Code and applies to civil wrongs as well as crimes.</li> <li>'Act' includes illegal omissions as well but it does not include an omission which is not illegal.</li> <li>In the illustration to section 36 of the Indian Penal Code, the act 'by which A causes Z's death consists of a series of acts, namely, the blows given in beating him, plus a series of illegal omissions, namely, wrongfully neglecting or refusing to supply him with food at proper times</li> </ul>
<b>Affidavit – [Sec 3(3)]</b>	<ul style="list-style-type: none"> <li>'Affidavit' shall include <b>affirmation and declaration</b> in the case of persons by law allowed to affirm or declare <b>instead of swearing</b>.</li> <li>The above definition is inclusive in nature.</li> <li>In simple language, affidavit means a <b>sworn statement in writing</b> made <b>under oath</b> or an affirmation before an authorised magistrate or officer.</li> </ul>
<b>Central Act [Sec. 3(7)]</b>	<ul style="list-style-type: none"> <li>Central Act mean an Act of Parliament.</li> </ul>
<b>Commencement [Sec 3(13)]</b>	<ul style="list-style-type: none"> <li>'Commencement' used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.</li> </ul>
<b>Document [Sec 3(18)]</b>	<ul style="list-style-type: none"> <li>'Document' shall include: <ul style="list-style-type: none"> <li>any matter written, expressed or described upon any substance,</li> <li>by means of letters, figures or marks, or by more than one of those means,</li> <li>which is intended to be used, or may be used, for purpose of recording that matter.</li> </ul> </li> <li><b>Example</b></li> <li>Books of account, office, order, emails.</li> <li><b>Note:</b> Indian currency notes is not covered under definition of Document.</li> </ul>
<b>Enactment [Sec 3(19)]</b>	<ul style="list-style-type: none"> <li>Enactments include: <ol style="list-style-type: none"> <li>A Regulation;</li> <li>Regulation of Bengal, madras or Bombay code;</li> <li>any Act (or a provision contained therein) made by the Union Parliament or the State Legislature.</li> </ol> </li> <li>Since "enactment" is defined to include also any provision of an Act, section 6 (Effect of repeal) would apply to a case where not only the entire Act is repealed, but also where any provision of an Act is repealed.</li> </ul>
<b>Financial year [Sec 3(21)]</b>	<ul style="list-style-type: none"> <li>'Financial year' shall mean the year commencing on the first day of April.</li> <li>The term Year has been defined u/s 3(66) which means calendar year which starts on 1<sup>st</sup> January and ends on 31<sup>st</sup> December.</li> </ul>

<p><b>Good Faith [Sec 3(22)]</b></p>	<ul style="list-style-type: none"> <li>▪ A thing shall be deemed to be done in ‘good faith’ where it is in fact done honestly, irrespective of whether it is done negligently or not.</li> <li>▪ The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.</li> <li>▪ For e.g.: An authority is not acting honestly where it had a suspicion that there was something wrong and did not make further enquiries</li> <li>▪ The term “Good faith” has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term “good faith” and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.</li> <li>▪ The expression “good faith” is not defined in the Indian Contract Act, 1872 and the definition given here in the General Clauses Act, 1897 does not expressly apply the term on the Indian Contract Act.</li> <li>▪ The definition of good faith as is generally understood in the civil law and which may be taken as a practical guide in understanding the expression in the contract Act is that nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.</li> </ul>
<p><b>Government [Sec. 3(23)]</b></p>	<ul style="list-style-type: none"> <li>▪ Government includes Central Government and State Government.</li> <li>▪ Government generally connotes three wings, the Legislature, the Executive and the Judiciary; but in a narrow sense it is used to connote the Executive only. Meaning to be assigned to that expression, therefore, depends on the context in which it is used.</li> </ul>
<p><b>Government Securities [Sec 3(24)]</b></p>	<ul style="list-style-type: none"> <li>▪ ‘Government securities’ shall mean securities of:             <ol style="list-style-type: none"> <li>a) The Central Government: or</li> <li>b) Any State Government.</li> </ol> </li> <li>▪ It shall not include securities of the Government of any part B State for any Act made before commencement of Constitution.</li> </ul>
<p><b>Immovable property [sec 3(26)]</b></p>	<ul style="list-style-type: none"> <li>▪ ‘Immovable property’ shall include             <ol style="list-style-type: none"> <li>a) land,</li> <li>b) benefits to arise out of land, and</li> <li>c) things attached to the earth, or permanently fastened to anything attached to the earth.</li> </ol> </li> <li>▪ Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.</li> <li>▪ <b>Example 1:</b> Trees must be regarded as immovable property because they are attached to or rooted in the earth.</li> <li>▪ An agreement to convey forest produce like tendu leaves, timber bamboos etc., the soil for making bricks, the right to build on and occupy the land for business purposes and the right to grow new trees and to get leaves from trees that grow in further are all included in the term immovable property</li> <li>▪ <b>Example 2:</b> Right of way to access from one place to another, may come within the definition of Immovable property whereas to right to drain of water is not immovable</li> </ul>

	<p>property. Any machinery fixed to the soil, standing crops can be held as immovable property according to the General Clauses Act, 1897</p> <ul style="list-style-type: none"> <li>▪ <b>Examples of immovable property</b> <ol style="list-style-type: none"> <li>a) Building and land.</li> <li>b) Trees must be regarded as immovable property because they are attached to or rooted in the earth</li> <li>c) An agreement to convey           <ul style="list-style-type: none"> <li>➤ forest produce like tendu leaves, timber bamboos etc</li> <li>➤ the soil for making bricks,</li> <li>➤ the right to build on and occupy the land for business purposes</li> <li>➤ right to grow new trees and to get leaves from trees that grow in further</li> </ul> </li> <li>d) Standing crop.</li> <li>e) Timber is not immovable property as it is not permanently attached to land.</li> <li>f) Right of way to access from one place to another is Immovable property.</li> <li>g) Any machinery fixed to the soil, is immovable property.</li> <li>h) Right to catch or carry fish is an immovable property.</li> </ol> </li> </ul> <p><b>Note:</b> Right to drain of water is not immovable property.</p>
<b>Imprisonment [sec 3(27)]</b>	<ul style="list-style-type: none"> <li>▪ 'Imprisonment' shall mean imprisonment of either description as defined in the Indian Penal Code.</li> <li>▪ By section 53 of the Indian Penal Code, the punishment to which offenders are liable under that Code are imprisonment which is of two descriptions, namely, rigorous, that is with hard labour and simple. So, when an Act provides that an offence is punishable with imprisonment, the Court may, in its discretion, make the imprisonment rigorous or simple</li> </ul>
<b>Indian law [Sec 3(29)]</b>	<ul style="list-style-type: none"> <li>▪ Indian Law includes Act, Ordinance, Rules, Regulation, Order, Bye Laws or other instrument which was in force in any part (State) of India before commencement of Constitutions or part of law (Part A or Part C) after commencement of Constitution. However, it does not include any Act of Parliament of United Kingdom.</li> </ul>
<b>Month [Sec 3(35)]</b>	<ul style="list-style-type: none"> <li>▪ 'Month' shall mean a month reckoned according to the British calendar.</li> <li>▪ The word "month occurring in sec 271 (1)(a)(i) of the Income-tax Act, 1961, was construed to mean a period of thirty days and not a month as defined in the General Clauses Act;</li> </ul>
<b>Moveable Property [Sec 3(36)]</b>	<ul style="list-style-type: none"> <li>▪ Property of every description, except immovable property.</li> <li>▪ Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property.</li> </ul>
<b>Oath [Sec 3(37)]</b>	<ul style="list-style-type: none"> <li>▪ 'Oath' shall include affirmation and declaration in the case of persons who are allowed by law to affirm or declare instead of swearing.</li> </ul>
<b>Offence [Sec 3(38)]</b>	<ul style="list-style-type: none"> <li>▪ 'Offence' shall mean any act or omission made punishable by any law for the time being in force.</li> </ul>
<b>Official gazette [Sec 3(39)]</b>	<ul style="list-style-type: none"> <li>▪ It means:           <ol style="list-style-type: none"> <li>a) Gazette of India; or</li> <li>b) Official Gazette of State.</li> </ol> </li> </ul>
<b>Person [Sec. 3(42)]</b>	<ul style="list-style-type: none"> <li>▪ 'Person' shall include any           <ol style="list-style-type: none"> <li>a) company or</li> <li>b) association or body of individuals, whether incorporated or not.</li> </ol> </li> </ul>

<b>Registered [Sec. 3(49)]</b>	<ul style="list-style-type: none"> <li>‘Registered’ used with reference to a document, shall mean registered in India under the law for the time being in force for the registration of documents.</li> </ul>
<b>Regulation [Sec. 3(50)]</b>	<ul style="list-style-type: none"> <li>‘Regulation’ shall mean a Regulation made by the President under Article 240 of the Constitution and shall include a Regulation made by the President under Article 243 thereof and a Regulation made by the Central Government under the Government of India Act, 1870, or the Government of India Act, 1915, or the Government of India Act, 1935.</li> </ul>
<b>Rule [Sec. 3(51)]</b>	<ul style="list-style-type: none"> <li>‘Rule’ shall mean a Rule made in exercise of a power conferred by any Enactment and shall include a Regulation made as a Rule under any Enactment.</li> </ul>
<b>Schedule [Sec. 3(52)]</b>	<ul style="list-style-type: none"> <li>‘Schedule’ shall mean a schedule to the Act or Regulation in which the word occurs.</li> </ul>
<b>Section [Sec. 3(54)]</b>	<ul style="list-style-type: none"> <li>‘Section’ shall mean a section of the Act or Regulation in which the word occurs.</li> </ul>
<b>Sub-section [Sec. 3(61)]</b>	<ul style="list-style-type: none"> <li>‘Sub -Section’ shall mean a sub-section of the section in which the word occurs.</li> </ul>
<b>Swear [Sec. 3(62)]</b>	<ul style="list-style-type: none"> <li>‘Swear’ shall include affirming and declaring in the case of persons who are allowed by law to affirm or declare instead of swearing.</li> <li>The terms “Affidavit”, “Oath” and “Swear” have the same definitions in the Act.</li> </ul>
<b>Writing [Sec. 3(65)]</b>	<ul style="list-style-type: none"> <li>Expressions referring to ‘writing’ shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.</li> </ul>
<b>Year [Sec. 3(66)]</b>	<ul style="list-style-type: none"> <li>‘Year’ shall mean a year reckoned according to the British calendar.</li> </ul>

#### 4. GENERAL RULES OF CONSTRUCTION

[SECTION 5 TO 13]

<b>Coming into Operation of Enactment [Sec 5]</b>	<ul style="list-style-type: none"> <li>Central Act shall come into force from date expressed in it.</li> <li>When Central Act does not express about when it will come into operation, then it shall come into operation on day on which it receives assent of:             <ol style="list-style-type: none"> <li>President</li> <li>Governor-General (in case where Central Act was made before commencement of Constitution).</li> </ol> </li> <li>If any specific date of enforcement is prescribed in the Official Gazette, Act shall into enforcement from such date.             <p><b>Example:</b> SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14<sup>th</sup> August, 2015 with effect from 1<sup>st</sup> January, 2016. Here, this Regulation shall come into enforcement on 1<sup>st</sup> January, 2016 rather than the date of its notification in the gazette.</p> </li> <li>In the case of <i>State of Uttar Pradesh v. Mahesh Narain, AIR 2013, SC 1778</i>, Supreme Court held that effective date of Rules would be when the Rules are <b>published vide Gazette notification</b> and not from date when the Rules were under preparation.</li> <li><b>Presumption Against Retrospectivity</b> <p>All Acts are applicable <b>prospectively</b>. However, <b>Act can be made applicable retrospectively if it is expressly provided.</b></p> <p><b>Examples:</b> The Companies Act, 2013 received assent of President of India on 29<sup>th</sup> August 2013 and was notified in Official Gazette on 30<sup>th</sup> August, 2013 with the enforcement of section 1 of the Act. Accordingly, the Companies Act, 2013 came into enforcement on the date of its publication in the Official Gazette.</p> </li> </ul>
<b>Effect of Repeal</b>	<ul style="list-style-type: none"> <li>Repeal means revoke or cancel or annulment or obliteration of a statute.</li> </ul>



<p><b>[Sec 6]</b></p>	<ul style="list-style-type: none"> <li>▪ A statute ceases to be operative for all purposes on repeal. The object of repeal is not to make changes but to remove enactments which have served their purpose or has no further reason for their existence.</li> <li>▪ Where an Act is repealed, it must be considered (except for transactions past and closed) as if it never happened. [<i>State of Uttar Pradesh v. Hirendra Pal Singh, (2011), 5 SCC 305</i>]</li> <li>▪ Where any Central Act repeals any enactment, the repeal shall not:             <ol style="list-style-type: none"> <li>a) <b>Revive anything not enforced</b> or prevailed during the period at which repeal is effected or;</li> <li>b) <b>Affect the previous operation</b> of any enactment so repealed or anything duly done or suffered thereunder; or</li> <li>c) <b>Affect any right</b>, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or</li> <li>d) <b>Affect any penalty</b>, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or</li> <li>e) <b>Affect any inquiry, litigation or remedy</b> with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.</li> </ol> <p>Such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.</p> </li> <li>▪ This section applies to repeals and not to omissions and applies when the repeal is of a Central Act or Regulation and not of a Rule. [<i>Kolhapur Canesugar Works Ltd. V, Union of India, AIR 2000, SC 811</i>]</li> <li>▪ <b>Distinction between ‘Repeal’ and ‘Deletion’ of provision</b> [<i>Navrangpura Gam Dharmada Milkat Trust v. Rmtuji Ramaji, AIR 1994 Guj 75</i>]</li> </ul> <p>‘Repeal’ ordinarily brings about complete obliteration of the provision as if it never existed, thereby affecting all rights and all causes of action related to the ‘repealed’ provision.</p> <p>‘Deletion’ ordinarily takes effect from the date of legislature effecting the said deletion, never to effect total wiping out of the provision as if it never existed.</p>
<p><b>Repeal of Act making textual amendment in Act or Regulation [Sec 6A]</b></p>	<ul style="list-style-type: none"> <li>▪ Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter,             <ul style="list-style-type: none"> <li>➤ then unless a different intention appears,</li> <li>➤ the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.</li> </ul> </li> </ul>
<p><b>Revival of Repeal Act [Sec 7]</b></p>	<p><b>Express Provision required for revival</b></p> <ul style="list-style-type: none"> <li>▪ If any enactment is repealed wholly or partly and if it is desired that any part of the repealed enactment be revived,             <ul style="list-style-type: none"> <li>➤ then it is necessary to state that fact and purpose specifically.</li> </ul> </li> <li>▪ If one Act is repealed by second Act which is again repealed by third Act, the <b>first Act is not revived unless the third Act makes an express provision to that effect.</b></li> <li>▪ In other words, to revive a repealed statute, it is necessary to state an intention to do so.</li> </ul>

<p><b>Construction of References to Repealed Enactments which is re-enacted by any other Act [Sec 8]</b></p>	<ul style="list-style-type: none"> <li>▪ Where this Act, or any Central Act or Regulation made after the commencement of this Act, <ul style="list-style-type: none"> <li>➤ repeals and re-enacts, with or without modification,</li> <li>➤ any provision of a former enactment,</li> <li>➤ then any references to the provision so repealed in any other enactment or in any instrument shall,</li> <li>➤ be construed as reference to the provision so re-enacted.</li> </ul> </li> <li>▪ In <i>Gauri Shankar Gaur v. State of U.P., AIR 1994 SC 169</i>, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments in new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.</li> <li>▪ <b>Example:</b> In section 115 JB of the Income tax Act, 1961, for calculation of book profits, the Companies Act, 1956 are required to be referred. With the advent of Companies Act, 2013, the corresponding change has not been made in section 115 JB of the Income tax Act, 1961. On referring of section 8 of the General Clauses Act, book profits to be calculated under section 115 JB of the Income Tax Act will be as per the Companies Act, 2013.</li> </ul>
<p><b>Commencement and Termination of Time [Sec 9]</b></p>	<ul style="list-style-type: none"> <li>▪ In any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.</li> <li>▪ Thus, ordinarily in computing time, the rule observed is to exclude the first day and to include the last day of series of days.</li> <li>▪ Where a person is given time to an act, i.e., to make a payment by a particular date, he is entitled to do that during the course of that day. In order words, that date is not to be excluded.</li> <li>▪ <b>Example:</b> A company declares dividend for its shareholder in its Annual General Meeting held on 30/09/2016. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2016 to 30/10/2016.  In this series of 30 days, 30/09/2016 will be excluded and last 30th day i.e. 30/10/2016 will be included.</li> </ul>
<p><b>Computation of time [Sec 10]</b></p>	<ul style="list-style-type: none"> <li>▪ Where Act provides that any action or proceeding is taken in any Court or office within prescribed period (days) and if Court is closed on the last date of the prescribed period, <ul style="list-style-type: none"> <li>➤ the action or proceeding can be taken on <b>next day</b> on which Court or office is open.</li> </ul> </li> <li>▪ In <i>K. Soosalrathnam v. Div. Engineer, N.H.C. Tirunelveli</i>, it was held by Madras High Court that “since the last date of the prescribed period was subsequent to the date of notification, declared to be a holiday, on the basis of the principles laid down in this section, the last date of prescribed period for obtaining the tender schedules was extended to the next working day”.</li> </ul>
<p><b>Measurement of distance [Sec 11]</b></p>	<ul style="list-style-type: none"> <li>▪ Unless otherwise specified, any distance shall be measured in a straight line or horizontal plane when there is any reference of any distance is made in any Central Act or Regulation.</li> </ul>
<p><b>Duty to be taken pro rata in enactment [Sec 12]</b></p>	<ul style="list-style-type: none"> <li>▪ In case any duty of customs or excise or in the nature thereof, <ul style="list-style-type: none"> <li>➤ is leviable on any given quantity, by weight, measure or value of any goods;</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>➤ then a like duty is leviable</li> <li>➤ according to the same rate on any greater or less quantity.</li> </ul> <p><b>Example:</b></p> <p>Where several debtors are liable for the whole debt and each is liable for his own share or proportion only, they are said to be bound pro rata.</p> <p><b>Example:</b></p> <p>When a company pays dividends to its shareholders, each investor is paid according to their holdings. If a company has 100 shares outstanding, for example, and issues a dividend of Rs. 2 per share, the total amount of dividends paid will be Rs. 200. No matter how many shareholders there are, the total dividend payments cannot exceed this limit. In this case, Rs.200 is the whole, and the pro rata calculation must be used to determine the appropriate portion of that whole due to each shareholder.</p> <p>Assume there are only four shareholders who hold 50, 25, 15, and 10 shares, respectively. The amount due to each shareholder is their pro rata share. This is calculated by dividing the ownership of each person by the total number of shares and then multiplying the resulting fraction by the total amount of the dividend payment.</p> <p>The majority shareholder's portion, therefore, is <math>(50/100) \times \text{Rs.}200 = \text{Rs.}100</math>. This makes sense because the shareholder owns half of the shares and receives half of the total dividends. The remaining shareholders get Rs. 50, Rs. 30, and Rs. 20, respectively.</p>
<p><b>Gender &amp; Number</b> [Sec 13]</p>	<ul style="list-style-type: none"> <li>▪ In any Act, unless otherwise specified,             <ol style="list-style-type: none"> <li>a) Words indicating <b>masculine gender (male) shall be considered to include females; and</b></li> <li>b) Words in the <b>singular shall include plural</b> and vice versa.</li> </ol> <p>In accordance with the rule that the words importing the masculine gender are to be taken to include females, the word men may be properly held to include women, and the pronoun 'he' and its derivatives may be construed to refer to any person whether male or female.</p> <p>So, the words 'his father and mother' as they occur in section 125(1)(d) of the CrPC, 1973 have been construed to include 'her father and mother' and a daughter has been held to be liable to maintain her father unable to maintain himself.</p> <p>But the general rule in section 13 has to be applied with circumspection of interpreting laws dealing with matters of succession. Thus, the words "male descendants" occurring in section 7 and 8 of the Chota Nagpur Tenancy Act, 1908 were not interpreted to include female descendants.</p> <p>Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of GC Act do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'</p> <p>Similarly, to construe previous year in section 2(11) of the Income Tax Act to include previous years would nullify the very definition of 'previous years' enacted therein.</p> </li> </ul>

## 5. POWERS AND FUNCTIONARIES

<p><b>Powers conferred to be exercisable from time to time</b> [Sec 14]</p>	<ul style="list-style-type: none"> <li>▪ When a power is given (i.e., conferred) to any authority to do particular act,             <ul style="list-style-type: none"> <li>➤ such power can be exercised from time to time as occasion requires;</li> <li>➤ unless different intention was expressed.</li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>▪ <b>Example:</b> Power to make a grant will include the power to refuse a grant also.</li> </ul>
<b>Power to appoint include power to appoint ex-officio [Sec 15]</b>	<ul style="list-style-type: none"> <li>▪ Where Central Act empowers <ul style="list-style-type: none"> <li>➤ appointment of person to fill any office or execute any function,</li> <li>➤ appointment may be made <i>either by name or by virtue of office</i>.</li> </ul> </li> <li>▪ Above provision is not applicable when Central Act expressly provide otherwise.</li> <li>▪ Ex-officio is a Latin word which means by virtue of one's position or office. Provision under this section states that where there is a power to appoint, the appointment may be made by appointing ex-officio as well.</li> </ul>
<b>Power to appoint include power to suspend [Sec. 16]</b>	<ul style="list-style-type: none"> <li>▪ Where, by any Central Act or Regulation, <ul style="list-style-type: none"> <li>➤ power to appointment is given to any Authority,</li> <li>➤ it also <i>includes power to suspend or dismiss</i> any person appointed</li> <li>➤ unless different intention is expressed.</li> </ul> </li> </ul> <p><b>Example</b></p> <ol style="list-style-type: none"> <li>a) Order 40, Rule 1(a) of CPC, 1908, which authorises a court to appoint a receiver, has been construed to embrace power of removing a receiver.</li> <li>b) Article 229(1) of the Constitution which empowers the Chief Justice to make appointment of officers and servants of a High Court has been interpreted to include a power to suspend or dismiss.</li> </ol>
<b>Substitution of Functionaries [Sec 17]</b>	<ul style="list-style-type: none"> <li>▪ <b>Sufficient to mention title of the Officer</b></li> </ul> <p>In any Central Act or Regulation made after the commencement of this Act,</p> <ul style="list-style-type: none"> <li>➤ it shall be sufficient,</li> <li>➤ for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office,</li> <li>➤ to mention the official title to the officer at present executing the functions, or</li> <li>➤ that of the officer by whom the functions are commonly executed.</li> </ul>
<b>Successors [Sec 18]</b>	<ul style="list-style-type: none"> <li>▪ <b>Effect of succession in case of functionaries or corporations</b></li> </ul> <p>In case of any Central Act or Regulation made after the commencement of this Act,</p> <ul style="list-style-type: none"> <li>➤ it shall be sufficient for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession,</li> <li>➤ to express its relations to the functionaries or corporations.</li> </ul>
<b>Official chiefs and subordinates [Sec 19]</b>	<ul style="list-style-type: none"> <li>▪ A Law relative to the Chief or Superior of an office shall be equally applicable to deputies or subordinates who is performing duties of that office in place of superior.</li> </ul> <p><b>Example:</b> It is not essential that same statutory authority that initiated a scheme under the Road Transport Corporation Act 1950, should also implement it. It can be implemented by successor authority as well. [<i>K.G. Krishnappa v. State, AIR 1959</i>]</p> <p><b>Example:</b> Similarly, in case under the Preventive Detention Act, where there is a change in the Advisory Board after service of the detention order, the new Advisory Board can consider the case pending before the earlier board.</p>

## 6. PROVISIONS AS TO THE ORDERS, RULES ETC. MADE UNDER ENACTMENTS

<b>Construction of Order etc. issued</b>	<ul style="list-style-type: none"> <li>▪ Where Central Act or Regulation authorize to issue any notification, order, scheme, rule or form,</li> </ul>
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<p><b>under Enactment [Sec 20]</b></p>	<ul style="list-style-type: none"> <li>➤ then <i>expression used in such notification, order, scheme, rule or form</i></li> <li>➤ shall have <i>same respective meaning as in the Act or Regulation</i></li> <li>➤ unless there is anything contrary expressed.</li> </ul> <ul style="list-style-type: none"> <li>▪ In <i>Subhash Ram Kumar v. State of Maharashtra, AIR 2003 SC 269</i>, it was held that           <ol style="list-style-type: none"> <li>a) ‘Notification’ in common English mean and imply a formal announcement of a legally relevant fact; and</li> <li>b) “Notification published in Official Gazette” means notification published by the authority of law. It is a formal declaration and should be in accordance with the declared policies or statute. Notification cannot be substituted by administrative instructions.</li> </ol> </li> <li>▪ <b>Example:</b> The term ‘collector’ used in Rule 4 of the Land Acquisition (Companies) Rule, 1963, will have same meaning as in Sec 3(c) of the Land Acquisition Act, 1894.</li> </ul>
<p><b>Power to Issue includes power to Amend etc. [Sec 21]</b></p>	<ul style="list-style-type: none"> <li>▪ Where any Central Act or Regulation           <ul style="list-style-type: none"> <li>➤ empowers to issue notification, orders, rules or bye-laws,</li> <li>➤ then such power <i>includes a power to add, to amend, vary or rescind any notification, orders, rules or bye-laws so issued.</i></li> </ul> </li> <li>▪ Power under section 21 of the Act is not so limited as to be exercised only once power can be exercised from time to time having regard to exigency of time.</li> </ul>
<p><b>Making of Rules and Issuing Orders between passing and commencement of Enactment [Sec 22]</b></p>	<ul style="list-style-type: none"> <li>▪ If any <i>Central Act or Regulations has been passed but not came in effect immediately</i>, then power given under Act with respect to:           <ol style="list-style-type: none"> <li>a) Establishment of any Court; or</li> <li>b) Establishment of any Office; or</li> <li>c) Appointment of Judge; or</li> <li>d) Appointment of any officer,</li> </ol> <p><i>may be exercised at any time after passing of Act and Regulations, but Rules, bye laws or orders so issued shall not take effect till commencement of Act/Regulation.</i></p> </li> <li>▪ It is an enabling provision, its content and purpose being to facilitate the making of rules, bye laws and orders before the commencement of the enactment in anticipation of its coming into force.</li> <li>▪ In other words, it validates rules, bye laws and orders made before the coming into force of the enactment, provided they are made after its passing and as preparatory to the enactment coming into force.</li> </ul>
<p><b>Provisions applicable to making Rules after previous publication [Sec 23]</b></p>	<ul style="list-style-type: none"> <li>▪ In case the power to make rules or bye-laws etc., is given in any Central Act or Regulation subject to the <i>condition that the rules or bye laws shall be made after previous publication</i>, then following provisions shall apply:           <ol style="list-style-type: none"> <li>a) The authority having power to make rules or bye-laws, before making them, publish a draft of the proposed rules or bye laws for information of persons likely to be affected.</li> <li>b) Publication is made in manner as specified by Central Government.</li> <li>c) Draft shall specify date on or after which it will be taken into consideration.</li> <li>d) where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the</li> </ol> </li> </ul>

	<p>rules or bye-laws from any person with respect to the draft before the date so specified.</p> <p>e) Rules or bye-laws should thereafter be finalized and published in official gazette.</p> <ul style="list-style-type: none"> <li>▪ <b>Section 23(5) raises a conclusive presumption</b> that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed.</li> </ul> <p>Any irregularities in the publication of the draft cannot therefore be questioned.</p> <ul style="list-style-type: none"> <li>▪ It is also open to the authority publishing the draft and entitled to make the rules to make suitable changes in the draft before finally publishing them. It is not necessary for that authority to re-publish the rules in the amended form before their final issue so long as the changes made are ancillary to the earlier draft and cannot be regarded as foreign to the subject matter thereof.</li> </ul>
<p><b>Continuation of Orders etc. issued under Enactment Repealed and re-enacted [Sec 24]</b></p>	<ul style="list-style-type: none"> <li>▪ In case any Central Act or Regulation is repealed and re-enacted with or without modification, <ul style="list-style-type: none"> <li>➤ any appointment, notification, order, scheme, rule, form or bye-law</li> <li>➤ made or issued under Repealed Act</li> <li>➤ continue to be in force</li> <li>➤ provided it is not inconsistent with the provisions re-enacted and different intention is not expressly provided in the re-enacted Act.</li> </ul> </li> <li>▪ This section accords statutory recognition to the general principle that if a <ul style="list-style-type: none"> <li>➤ statute is repealed and re-enacted in the same or substantially the same terms,</li> <li>➤ the re- enactment neutralizes the previous repeal and the</li> <li>➤ provisions of the repealed Act which are re-enacted,</li> <li>➤ continue in force without interruption.</li> </ul> <p>If, however, the statute is repealed and re-enacted in somewhat different terms, the amendments and modifications operate as a repeal of the provisions of the repealed Act which are changed by and are repugnant to the repealing Act.</p> </li> <li>▪ <b>Example:</b> Investigation conducted by Inspectors of Police, under the authorization of notification issued under Prevention of Corruption Act, of 1947 will be proper and will not be quashed under new notification taking the above power, till the aforesaid notification is specifically superseded or withdrawn or modified under the new notification. [State of Punjab v. Harnek Singh, AIR 2002 SC 1074]</li> <li>▪ <b>Example:</b> The Mines Act of 1923 was repealed and replaced by the Mines Act of 1952. Rules made under the repealed Act must be deemed to continue in force by virtue of this section until superseded.</li> <li>▪ Where an Act is repealed and re-enacted, the fact that the repealed Act stated that rules made under that Act shall have effect as if enacted in the Act does not mean that the rules automatically disappear with the repeal of the Act under which they are made and that there is no room for the application of this section.</li> </ul>

## 7. MISCELLANEOUS PROVISIONS

<p><b>Recovery of fines [Sec. 25]</b></p>	<ul style="list-style-type: none"> <li>▪ Provision of sections 63 to 70 of Indian Penal Code and provisions of the Code of Criminal Procedure are applicable in the matter of issue and execution of warrants for levy of fines imposed under any Act, Regulations, Rule or bye-laws.</li> </ul>
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	<ul style="list-style-type: none"> <li>▪ However, above provisions are not applicable when Act, Regulations, Rule or bye laws contains express provisions to the contrary.</li> </ul>
<p><b>Offence punishable under two or more enactments [Sec 26]</b></p>	<ul style="list-style-type: none"> <li>▪ Where an act or omission constitutes an offence under two or more enactments, then the Offender is liable to be prosecuted and punished under either or any of the two enactments, but shall not be punished twice for the same offence.</li> <li>▪ Article 20(2) of the Constitution states that no person shall be prosecuted and punished for the same offence more than once.</li> <li>▪ In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence.</li> <li>▪ <b>Important:</b> When there are two alternative charges in the same trial, e.g., section 409 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act, the fact that the accused is acquitted of one of the charges will not bar his conviction on the other. [<i>State of M.P. v. V.R. Agnihotri, AIR 1957 SC 592</i>]</li> <li>▪ <b>Provisions of Section 26 and Article 20(2) of the Constitution apply</b> only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply</li> </ul>
<p><b>Meaning of Service by Post [Sec 27]</b></p>	<ul style="list-style-type: none"> <li>▪ Where any Central Act or Regulation provides for serving of any documents by post (post also includes expression like 'serve', 'give', 'send', or 'any other expression'), then it shall be served effectively if it is posted by <ul style="list-style-type: none"> <li>a) registered post</li> <li>b) with proper stamp and</li> <li>c) address.</li> </ul> </li> <li>▪ A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.</li> <li>▪ Above Rule is not applicable when any Act or Regulations expressly provides different methods for serving notice.</li> <li>▪ <b>Illustrations</b> <ul style="list-style-type: none"> <li>a) If a notice is required under the statutory rules to be sent by 'registered post acknowledgement due' and it is instead sent by 'registered post' only, it shall be considered that the notice has not been served effectively. [<i>In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 18</i>]</li> <li>b) Where a notice is sent by the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served. [<i>Jagdish Singh vs. Natthu Singh, AIR 1992 SC 1604</i>]</li> <li>c) Notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved. Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice. [<i>Smt. Vandana Gulati v. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69</i>]</li> </ul> </li> </ul>
<p><b>Citation of Enactments [Sec 28]</b></p>	<ul style="list-style-type: none"> <li>▪ In any Central Act or Regulation, and in any rule, bye law, instrument or document, made under, or with reference to any such Act or Regulation, <ul style="list-style-type: none"> <li>➤ any enactment may be cited</li> <li>➤ by reference to the title or short title (if any) conferred thereon or</li> <li>➤ by reference to the number and years thereof, and</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>➤ any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.</li> <li>▪ In this Act and in any Central Act or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.</li> </ul>
<b>Saving of previous Enactment [Sec 29]</b>	<ul style="list-style-type: none"> <li>▪ The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after commencement of this Act shall <ul style="list-style-type: none"> <li>➤ not affect the construction of any Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.</li> </ul> </li> </ul>
<b>“Application of Act to Ordinances” [Sec 30]</b>	<ul style="list-style-type: none"> <li>▪ In this Act, the expression Central Act shall be deemed to include Ordinance made and promulgated by Central Government and an Ordinance promulgated by the President under the Constitution.</li> </ul>

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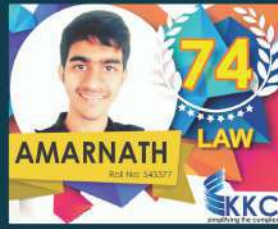
ARISE AWAKE AND STOP NOT  
TILL YOUR GOAL IS ACHIEVED

-Swami Vivekanand

### About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
- ★ He is a **throughout Rankholder** in CA examinations.
- ★ He himself scored **Exemption in EIS-SM** in his CA Inter Exam..
- ★ He has been **awarded by Nitish Kumar, Hon'ble Chief Minister** of Bihar for his excellence in the field of education.
- ★ Internationally renowned **University of South Wales** has also felicitated him for his aptitude and achievements during his academic life.
- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
- ★ His students have secured **marks as high as 85** and hundreds have scored exemptions.
- ★ He is committed to make meaningful contribution to the life of promising CA aspirants.

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# CHAPTER 4

## INTERPRETATION OF STATUTES,

### DEEDS AND DOCUMENTS

*Plan to work and work your plan  
because failing to plan is planning to  
fail.*

#### 1. MEANINGS OF IMPORTANT TERMS

As a Chartered Accountant in practice or in service, you will be required to read various laws and statutes. Often these enactments may be capable of more than one interpretation. It is in this context that awareness of interpretation as a skill becomes relevant. This chapter will enable you to understand certain rules of interpretation as well as the various internal and external aids to interpretation. We shall also discuss the art of interpreting deeds and documents.

<b>Meaning of 'Statute'</b>	<ul style="list-style-type: none"> <li>▪ A statute has been defined as 'the written will of the legislature'.</li> <li>▪ A statute is a law established by the act of legislative power.</li> <li>▪ The Constitution of India does not use the term 'Statute' but it uses the term 'Law'</li> <li>▪ 'Law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law [Article 13(3)(a) of the Constitution].</li> </ul>
<b>Meaning of 'Interpretation'</b>	<ul style="list-style-type: none"> <li>▪ Interpretation is the process of ascertaining the true meaning of the words used in a statute.</li> <li>▪ It is the process of determining intention of legislature in enacting an Act.</li> <li>▪ When the language of a statute is clear, there is no need for the Rules of Interpretation.</li> <li>▪ But in certain cases, more than one meaning may be derived from the same word or sentence. It is therefore necessary to interpret the statute to find out the real meaning of the statute.</li> </ul>
<b>Meaning of 'Documents'</b>	<ul style="list-style-type: none"> <li>▪ Section 3 of Indian Evidence Act, 1872 states that Document means any matter expressed or described by means of letters, figures or as affording evidence of it.</li> <li>▪ In simple terms, it is a formal legal document which is enforceable in court of law.</li> <li>▪ <b>Example:</b> A writing is a document, any words printed, photographed are documents.</li> <li>▪ Section 3(18) of the General Clauses Act, 1897 states that the term 'document' shall include any matter written, expressed or described upon any substance by means of</li> </ul>

	<p>letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording this matter.</p> <ul style="list-style-type: none"> <li>▪ Generally, documents comprise of following four elements:           <ol style="list-style-type: none"> <li>a) <b>Matter</b> - This is the first element. Its usage with the word “any” shows that the definition of document is comprehensive.</li> <li>b) <b>Record</b> - This second element must be certain mutual or mechanical device employed on the substance. It must be by writing, expression or description.</li> <li>c) <b>Substance</b> - This is the third element on which a mental or intellectual element comes to find a permanent form.</li> <li>d) <b>Means</b> - This represents forth element by which such permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.</li> </ol> </li> </ul>
<b>Instrument</b>	<ul style="list-style-type: none"> <li>▪ ‘Instrument’ means a formal legal document which creates or confirms a right or records a fact.</li> <li>▪ It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it.</li> <li>▪ Section 2(14) of the Indian Stamp Act, 1899 states that ‘instrument’ includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.</li> </ul>
<b>Meaning of ‘Deeds’</b>	<ul style="list-style-type: none"> <li>▪ Deed is an instrument in writing purporting to effect some legal nature.</li> <li>▪ It is an instrument but made for a service purpose (e.g. Partnership deed etc)</li> <li>▪ Simply stated deeds are instruments though all instruments may not be deeds. However, in India no distinction seems to be made between instruments and deeds.</li> </ul>

## 2. NEED FOR INTERPRETATION

<p>Statutory interpretation is the process by which the Courts seek to ascertain the meaning of the legislature. It is the process by which the real meaning of an Act (or a document) and the intention of the legislature in enacting it is ascertained.</p> <p>We need interpretation due to following reasons:</p>	
<b>a) Ambiguity in Words</b>	<ul style="list-style-type: none"> <li>▪ Some amount of interpretation is always necessary when a case involves a statute.</li> <li>▪ Sometimes the words of a statute have a plain and straight- forward meaning. But in many cases, there is some ambiguity in the words of the statute that must be resolved by the judge.</li> </ul>
<b>b) Words &amp; legal expert not perfect</b>	<ul style="list-style-type: none"> <li>▪ Statute is drafted by legal expert. It contains Rules and Provisions by use of words.</li> <li>▪ But legal expert and words are not perfect. Words convey different meaning when used in different circumstances and references.</li> <li>▪ Intent of legal expert (legislature) has to be gathered not only from words but also from surrounding circumstances and various references.</li> <li>▪ To find the meanings of statutes, judges use various methods of statutory interpretation, including traditional methods of statutory interpretation, legislative history, and purpose.</li> </ul>
<b>c) Uncertainty in legislation</b>	<ul style="list-style-type: none"> <li>▪ Legislation may contain uncertainties for a variety of reasons:           <ol style="list-style-type: none"> <li>a) Unforeseen situations are inevitable, and new technologies and cultures make application of existing laws difficult.</li> </ol> </li> </ul>

	b) Uncertainties may be added to the statute in the course of enactment, such as the need for compromise or catering to special interest groups.
<ul style="list-style-type: none"> <li>▪ Therefore, the court must try to determine how a statute should be enforced. This requires statutory construction.</li> <li>▪ If any provision is open to two interpretations, the court has to choose that interpretation which represents the intention of the legislature.</li> <li>▪ But one should keep in mind that the legislature is supreme when creating law and that the court is merely an interpreter of the law.</li> <li>▪ By interpretation, court cannot make sweeping changes in the operation of the law.</li> </ul>	

### 3. CLASSIFICATION OF INTERPRETATION

- As per Jolowicz, Interpretation is usually said to be either 'legal' or 'doctrinal'.
- It is 'legal' when there is an actual rule of law which binds the Judge to place a certain interpretation of the statute.
- It is 'doctrinal' when its purpose is to discover 'real' and 'true' meaning of the statute.
- 'Legal' interpretation is sub- divided into 'authentic' and 'usual'. It is 'authentic' when rule of interpretation is derived from the legislator himself; it is 'usual' when it comes from some other source such as custom or case law.
- 'Doctrinal' interpretation may again be divided into two categories: 'grammatical' & 'logical'. It is 'grammatical' when the court applies only the ordinary rules of speech for finding out the meaning of the words used in the statute. On the other hand, when the court goes beyond the words and tries to discover the intention of the statute in some other way, then it is said resort to what is called a 'logical' interpretation.
- According to Fitzgerald, interpretation is of two kinds – 'literal' and 'functional'.
- The literal interpretation is that which regards conclusively the verbal expression of the law. It does not look beyond the 'literalis'. The duty of the Court is to ascertain the intention of the legislature and seek for that intent in every legitimate way, but first of all in the words and the language employed.
- 'Functional' interpretation, on the other hand, is that which departs from the letter of the law and seeks elsewhere for some other and more satisfactory evidence of the true intention of the legislature. In other words, it is necessary to determine the relative claims of the letters and the spirit of the enacted law.
- In all ordinary cases, the Courts must be content to accept the letter of the law as the exclusive and conclusive evidence of the spirit of the law.

#### Interpretation and Construction:

- It would also be worthwhile to note, at this stage itself, the difference between the terms 'Interpretation' and Construction. While more often than not the two terms are used interchangeably to denote a process adopted by the courts to ascertain the meaning of the legislative form in which it is expressed, these two terms have different connotations.
- The cardinal rule of construction of a statute is to read it literally, which means by giving to the words used by the legislature their ordinary, natural and grammatical meaning.
- If such reading leads to absurdity and the words are susceptible of another meaning, the court may adopt the same. If no such alternative construction is possible, the court must adopt the ordinary rules of literal interpretation.
- Whereas cardinal law of interpretation is that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. [CWT v. Smt. Muthu Zulaika (2000)]

- For the purpose of construction of a statute the same has to be read as a whole.

**Difference between Interpretation and Construction:**

- Interpretation differs from construction. Interpretation is of finding out the true sense of any form and the construction is the drawing of conclusion respecting subjects that lie beyond the direct expression of the text. [*Bhagwati Prasad Kedia v. C.I.T, (2001)*]
- It is the duty of the courts to give effect to the meaning of an Act when the meaning can be equitably gathered from the words used. Words of legal import occurring in a statute which have acquired a definite and precise sense, must be understood in that sense. (*State of Madras v. Gannon Dunkerly Co. AIR 1958*)
- When the legislature uses certain words which have acquired a definite meaning over a period of time, it must be assumed that those words have been used in the same sense.
- Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be ‘interpretation’ of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court.
- Here the court would be resorting to what is called ‘construction’, however, the two terms – ‘interpretation’ and ‘construction’ – overlap each other and it is rather difficult to state where ‘interpretation’ leaves off and ‘construction’ begins.

**Example:**

**Interpretation:** Income Tax Act states which particular income is taxable or exempt. Further, if amount is invested in XYZ sources (e.g. PPF), then you get a deduction (understanding the tax law).

**Construction:** Ok, if Income Tax Act is giving deduction on this investment, then I should frame my transaction in such manner. (understanding/ Doing tax planning).

**4. RULES OF INTERPRETATION/CONSTRUCTION**

<b>Rules of interpretation are not binding</b>	<ul style="list-style-type: none"> <li>The Rules of Interpretation are not binding in strict sense. The Court must look at all the relevant circumstances and decide as a matter of judgement what weight to attach to each Rule.</li> </ul>	
<b>Classification of Rules of Interpretation</b>	<b>Primary Rules</b>	<ol style="list-style-type: none"> <li>Rule of literal construction</li> <li>Rule of reasonable construction</li> <li>Rule of harmonious construction</li> <li>Rule of beneficial construction</li> <li>Rule of exceptional construction</li> <li>Rule of ejusdem generis</li> </ol>
	<b>Secondary Rules</b>	<ol style="list-style-type: none"> <li>Noscitur a Sociis</li> <li>Effect of usage</li> </ol>

**5. RULE OF LITERAL CONSTRUCTION/GRAMMATICAL CONSTRUCTION**

<b>Applicability</b>	<ol style="list-style-type: none"> <li>This is the first rule of interpretation.</li> <li>It requires that a Statute must be interpreted in accordance with the clear words used.</li> <li>This rule is used if –                     <ul style="list-style-type: none"> <li>Words used in a statute are clear;</li> <li>Language used in statute is plain;</li> <li>Literal meaning is clear and unambiguous; and</li> </ul> </li> </ol>
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	<ul style="list-style-type: none"> <li>• There is nothing to imply that the words or the languages has been used in a special sense different from their ordinary grammatical sense.</li> </ul>
<b>Essence/Meaning of Rule</b>	<ul style="list-style-type: none"> <li>▪ The rule of literal interpretation is based on the premise that when the legislature has enacted a law, there has to be a clear object and definite purpose behind it which is reflected in the precise words and plain language used in the law.</li> <li>▪ Accordingly, there is no need for the Courts to go beyond the words expressly used. In other words, whatever the words used in the statute reveal, must be taken as the legislative intent.</li> <li>▪ Thus, the Courts should adopt literal interpretation unless the language is ambiguous or literal sense would give rise to an anomaly or unintelligible and absurd outcome or defeat the purpose of the Act.</li> </ul>
This Rule of literal interpretation can be read and understood under the following headings:	
<b>1) Natural and Grammatical meaning</b>	<ul style="list-style-type: none"> <li>▪ Statute are to be first understood in their natural, ordinary, or popular sense and must be construed according to their plain, literal and grammatical meaning.</li> <li>▪ Where a word is of everyday use, it must be construed as is understood in common language. Giving such word the dictionary meaning or botanical meaning or technical meaning would not be proper.</li> <li>▪ If there is an inconsistency with any express intention or declared purpose of the statute, or it involves any absurdity, repugnancy, inconsistency, the grammatical sense must then be modified or extended only to avoid such an inconvenience, but no further. [(State of HP v. Pawan Kumar (2005)]</li> <li>▪ <b>Example</b> In a question before the court whether the sale of betel leaves was subject to sales tax. In this matter, SC held that betel leaves could not be given the dictionary, technical or botanical meaning when the ordinary and natural meaning is clear and unambiguous. Being the word of everyday use, it must be understood in its popular sense by which people are conversant with it.</li> <li>▪ Hence, word vegetables should be interpreted to mean such vegetables which are grown in a kitchen garden or on a farm and are used for eating at the table. Accordingly, betel leaves are not vegetables and therefore, the sale of betel leaves was liable to sale tax. (Ramavtar V. Assistant Sales Tax Officer, AIR 1961 SC 1325).</li> </ul>
<b>2) Exact meaning preferred to loose meaning</b>	<ul style="list-style-type: none"> <li>▪ Exact meaning is preferred to loose meaning in an Act of Parliament. As every word has a secondary meaning too. Therefore, in applying this rule one should be careful not to mix up the secondary meaning with the loose meaning.</li> <li>▪ Wherever the secondary meaning points to that meaning which statute meant, preference should be given to that secondary meaning.</li> <li>▪ <b>Example</b> Word 'obtain' in its general sense means some request or effort to acquire or get something but its secondary meaning is to acquire or get without any qualification and if in a statute the secondary meaning is preferred, it cannot be said that preference has been given to loose meaning.</li> </ul>
<b>3) Technical words in technical sense</b>	<ul style="list-style-type: none"> <li>▪ This point of literal construction is that technical words are understood in the technical sense only.</li> <li>▪ <b>Example</b> In construing of word 'practice' in Supreme Court Advocates Act, 1951, it was observed that practice of law generally involves the exercise of both the functions of acting and</li> </ul>



	<p>pleading on behalf of a litigant party.</p> <p>When legislature confers upon an advocate the right to practice in a court, it is legitimate to understand that expression as authorizing him to appear and plead as well as to act on behalf of suitors in that court. (<i>Ashwini Kumar Ghose V. Arabinda Bose AIR 1952 SC 369</i>)</p>
<b>Implications of the Rule</b>	<p><b>a) Every word to be given a meaning</b></p> <ul style="list-style-type: none"> <li>Legislation is not expected to waste its words. Every word contained in a statute is inserted for some purpose. Every part of the statute should be given, as far as possible, full meaning.</li> </ul>
	<p><b>b) Omissions are not to be inferred</b></p> <ul style="list-style-type: none"> <li>Nothing can be added or taken away from a statute unless there is some justifiable ground to make the inference in statute.</li> <li>Thus, the Court cannot add words to a statute or add words into a statute which are not there.</li> </ul>
	<p><b>c) Courts cannot legislate</b></p> <ul style="list-style-type: none"> <li>If a matter has not been provided for in a statute, it cannot be supplied by Courts even if the Court finds that it should have been so provided. Supplying a meaning by the Court would amount to creating a legislation and not interpretation.</li> </ul>
	<p><b>d) No reference to legal decision</b></p> <ul style="list-style-type: none"> <li>Literal construction involves arriving at the meaning of the words without reference to legal decisions.</li> </ul>
<b>Limitations of Rule</b>	<p><b>a) A word means different to different people</b></p> <ul style="list-style-type: none"> <li>The plain meaning rule suffers from the inherent weakness that it is not always easy to say whether a word is plain or not. Instances have been found when different Tribunals have used plain meaning and came to different conclusions.</li> </ul>
	<p><b>b) Different ordinary meaning</b></p> <ul style="list-style-type: none"> <li>Ordinary meanings are derived from the dictionaries. However, dictionaries normally provide alternate meanings, some of which have very wide meaning, and some have restricted meanings.</li> </ul>
	<p><b>c) Inconsistency between two or more provision</b></p> <ul style="list-style-type: none"> <li>Where two or more provisions are inconsistent with each other, applying literal interpretation would defeat one or more of such provisions.</li> <li>In such a case, there is a need to harmonise such inconsistent provisions, which is not possible through literal interpretation.</li> </ul>
	<p><b>d) Assumption of perfect draftmanship</b></p> <ul style="list-style-type: none"> <li>Legislature is assumed to be perfect in enacting a law and making amendments in it.</li> <li>However, at times the Courts have struck down the provisions of a statute using other rules of interpretation. This reflects that the premise on which the literal rule is based is not very strong.</li> </ul>
<b>Non – applicability</b>	<p>a) If the language is ambiguous.</p> <p>b) If literal sense gives unintelligible, absurd or unreasonable result.</p> <p>c) If literal sense would defeat the purpose of the Act.</p>

## 6. RULE OF REASONABLE CONSTRUCTION/LOGICAL INTERPRETATION

<b>Applicability</b>	<ul style="list-style-type: none"> <li>▪ Ordinary meaning of the words/language of statute is absurd resulting in ambiguity, inconsistency or incompleteness,</li> <li>▪ Narrow interpretation of the words/language of statute fails to achieve the object of the statute.</li> </ul>
<b>Meaning</b>	<ul style="list-style-type: none"> <li>▪ The words of a statute must be construed '<i>ut res magis valeat quam pereat</i>' meaning thereby that words of statute must be construed so as to lead to a sensible meaning.</li> <li>▪ <b>Giving effect to intention of the legislature which is Supreme</b></li> <li>▪ Generally, the words or phrases of a statute are to be given their ordinary meaning. A statute must be construed in such a manner so as to make it effective and operative on the principle of <i>ut res magis valeat quam pereat</i>.</li> <li>▪ So, while interpreting a law, two meanings are possible, one making the statute absolutely vague and meaningless and other leading to certainty and a meaningful interpretation, in such case the later interpretation should be followed. (<i>Pratap Singh v State of Jharkhand (2005)3 SCC 551</i>)</li> <li>▪ Thus, if the Court finds that giving a plain meaning to the words will not be a fair or reasonable construction, it becomes the duty of the court to depart from the dictionary meaning and adopt the construction which will advance the remedy and suppress the mischief provided the Court does not have to resort to conjecture or surmise.</li> <li>▪ A reasonable construction will be adopted in accordance with the policy and object of the statute.</li> </ul>
<b>Non-applicability</b>	<ol style="list-style-type: none"> <li>a) If ordinary meaning is clear.</li> <li>b) If reasonable construction results in absurdity, injustice or inconsistency.</li> <li>c) If intention of the law cannot be gathered precisely.</li> </ol>

## 7. RULE OF HARMONIOUS CONSTRUCTION

<b>Applicability</b>	<ul style="list-style-type: none"> <li>▪ Harmonious construction is applied if there is a conflict between two or more provisions. The conflict may be <ol style="list-style-type: none"> <li>a) Within a section; or</li> <li>b) Between two or more section of a statute; or</li> <li>c) Between two or more section of different statutes.</li> </ol> </li> <li>▪ The conflict must be real and not apparent.</li> </ul>		
<b>Meaning of the Rule</b>	<ul style="list-style-type: none"> <li>▪ As per harmonious interpretation, one section shall not be allowed to defeat the other provisions of the Act.</li> <li>▪ An interpretation which reduces one of the provisions to a dead letter is not harmonious interpretation. Conflicting provisions should be reconciled, and effect must be given to both of them. Any inconsistency, either within a section or between two different sections of a statute must be avoided.</li> </ul>		
<b>Logic behind harmonious construction</b>	<ul style="list-style-type: none"> <li>▪ A statute is passed as a whole. It has one general purpose and intent. Therefore – <ol style="list-style-type: none"> <li>a) Read the statute as a whole.</li> <li>b) Discover the true meaning of each section, clause and word.</li> <li>c) Determine how the section, clauses and words fit into the scheme of the Act.</li> <li>d) Adopt the interpretation consistent with all the provisions of the Act.</li> </ol> </li> </ul>		
<b>Harmonious construction methodology</b>	<table border="1" style="width: 100%;"> <tr> <td style="width: 30%;"><b>Harmonise the provisions</b></td> <td>The supreme Court discussed the application of the rule of harmonious interpretation in <i>Sultana Begum Vs Prem Chand Jain AIR 1997 Sc. 1006</i>. The Court summed up the Rule as under:</td> </tr> </table>	<b>Harmonise the provisions</b>	The supreme Court discussed the application of the rule of harmonious interpretation in <i>Sultana Begum Vs Prem Chand Jain AIR 1997 Sc. 1006</i> . The Court summed up the Rule as under:
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		<p>a) If two provisions appear to be conflicting with each other, harmonious interpretation should be adopted. Any head-on clash between them should be avoided.</p> <p>b) If it is not possible to harmonise the two conflicting provisions, they should be so interpreted that effect is given to all of them.</p> <p>c) One section shall not be allowed to defeat the other provisions of the Act unless it is impossible to harmonise them or to give effect to all the provisions.</p>												
	<p><b>Course of action if it is impossible to harmonise</b></p>	<p>If it becomes impossible to give effect to all the conflicting provisions, then one provision shall prevail over another provision, explained as follows:</p> <p>a) If one provision over rides another provision, it shall prevail over the latter provision.</p> <p>b) If a provision is made subject to another provision, the latter provisions shall prevail.</p> <p>c) If no provision is made subject to another provision, and no provision has an overriding effect, then</p> <p>i) The provision enacted or amended later in point of time shall prevail;</p> <p>ii) The provision appearing later in the Act shall prevail, if all the provision were enacted or amended at same point of time.</p>												
<p><b>Use of words ‘notwithstanding anything to the contrary’</b></p>	<ul style="list-style-type: none"> <li>▪ A provision which overrides any other provision is called as non-obstante clause.</li> <li>▪ A provision may have overriding effect over                         <ul style="list-style-type: none"> <li>a) One or more provision of the same Act; or</li> <li>b) The entire Act; or</li> <li>c) Any law for the time being in force.</li> </ul> </li> <li>▪ If one provision over rides another provision, it shall prevail over the later provision.</li> </ul> <p>A notwithstanding clause can operate at four levels:</p>	<table border="1" data-bbox="437 1458 1482 1805"> <thead> <tr> <th></th> <th>Clause</th> <th>Effect</th> <th>Example</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Notwithstanding anything contained in another section or sub-section of that statute.</td> <td>The clause will override such other section(s) / sub-section(s)</td> <td>Notwithstanding anything contained in sub-sections (1) &amp; (2) (Section 297(3)) of the earlier Companies Act, 1956.</td> </tr> <tr> <td>2.</td> <td>Notwithstanding anything contained in a statute.</td> <td>The clause will override the entire enactment.</td> <td>Notwithstanding anything contained in this Act, the Central Government may.... (Section 408 (1) of earlier Companies Act, 1956.</td> </tr> </tbody> </table>		Clause	Effect	Example	1.	Notwithstanding anything contained in another section or sub-section of that statute.	The clause will override such other section(s) / sub-section(s)	Notwithstanding anything contained in sub-sections (1) & (2) (Section 297(3)) of the earlier Companies Act, 1956.	2.	Notwithstanding anything contained in a statute.	The clause will override the entire enactment.	Notwithstanding anything contained in this Act, the Central Government may.... (Section 408 (1) of earlier Companies Act, 1956.
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	3.	Notwithstanding anything contained in specific section(s) or sub-section(s) or all the provisions contained in another statute.	The clause will prevail over the other enactment.	...and on such publication, the rules as approved by the Central Government shall be deemed to have been validly made notwithstanding anything contained in the Companies Act, 1956. (Section 7A of the Securities Contracts (Regulation) Act, 1956
	4.	Notwithstanding anything contained in any other law for the time being in force.	The clause will override all other laws.	... the rules so made are amended shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force, have effect (Section 8 of the Securities Contracts (Regulation) Act, 1956
<p><b>Use of words ‘subject to’</b></p>	<ul style="list-style-type: none"> <li>▪ A provision may be made subject to the provision of                             <ul style="list-style-type: none"> <li>a) One or more provision of the same Act; or</li> <li>b) The entire Act; or</li> <li>c) Any law for the time being in force.</li> </ul> </li> <li>▪ A provision which is made subject to another provision shall not apply if it is inconsistent with the later provision i.e. an overriding effect is given to the later provisions. In other words, a provision containing the words “<i>subject to</i>” implies that such provision shall ‘yield place to another provision to which it is made subject to’.</li> <li>▪ Thus, the effect of a provision containing the word ‘<i>notwithstanding</i>’ is opposite to a provision containing the words ‘<i>subject to</i>’.</li> </ul>			
<p><b>Use of words ‘without prejudice’</b></p>	<ul style="list-style-type: none"> <li>▪ The words ‘<i>without prejudice</i>’ means ‘without affecting’.</li> <li>▪ The use of words ‘<i>without prejudice</i>’ is illustrated as follows:                             <ul style="list-style-type: none"> <li>a) The words ‘<i>without prejudice to the powers of CLB, any order of CLB may provide for .....</i>’ used u/s 402 means that the powers of CLB are not limited to the powers specified in such provisions. In other words, CLB is empowered to make such orders as it thinks fit, and the order of CLB need not be limited to the nature of orders specified u/s 402.</li> <li>b) The words ‘<i>without prejudice to the provisions of section .....</i>’ means that the provision specified therein shall also apply along with such provision.</li> </ul> </li> </ul>			
<p><b>Non-applicability of the rule</b></p>	<ul style="list-style-type: none"> <li>▪ Where one provision of the Act has an over-riding effect over the other (generally called as “Non-obstante Clause”), the rule has no application. The provisions having over riding effect shall prevail over the other provisions and can even reduce the other provision to a nullity.</li> <li>▪ Similarly, where one provision is made subject to another provision, there is no conflict and so no room for harmonious construction.</li> </ul>			
<p><b>Example 1</b></p>	<p>There is a conflict between section 33(2) and 123(8) of the Representation of People Act, 1951. Section 33(2) stated that a government servant may nominate or second a candidate seeking election, whereas section 123(8) provided that a government servant is not entitled to assist a candidate in an election in any manner except by casting his vote.</p>			

SC observed that both these provisions should be harmoniously interpreted and held that a government servant was entitled to nominate or second a candidate seeking election to the state legislature assembly.

This harmony could be achieved only if section 123(8) of the Act is interpreted as conferring power on a government servant of voting as well as of proposing and seconding a candidature and forbidding him from assisting a candidate in any other manner.

## 8. RULE OF BENEFICIAL CONSTRUCTION/ PURPOSIVE CONSTRUCTION/ HEYDON'S RULE/ MISCHIEF RULE

### Applicability

### Ambiguous words

Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case.

The rule which is also known as 'purposive construction' or Mischief rule, enables consideration of four matters in construing an Act:

- (1) what was the law before the making of the Act;
- (2) what was the mischief or defect for which the law did not provide;
- (3) what is the remedy that the Act has provided; and
- (4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy.'

And then the courts shall make such construction as will suppress the mischief and advance the remedy and suppress the subtle inventions and evasions for the continuance of the mischief."

Thus, applying Heydon's case courts will be bound to look at the state of the law at the time of the passing of the enactment and not only as it then stood, but under previous statutes too.

In India, in *Kanai Lal Paramnidhi*, 1957 S.C.A 1033, the Hon'ble Supreme Court held that the observations made by the Chief Baron and Barons of the Exchequer in Heydon's Case 1584 3 Co Rep. 79, have been so frequently cited with approval by the courts administering provisions of welfare enactments that they have now attained the status of a classic on the subject and their validity cannot be challenged.

But the mischief rule can be applied only if there is any ambiguity in the present law. (*CIT Vs. Sodra Devi*, 1957 SC 823 at 832 – 835).

### Example

Application of this mischief rule is also well-found in the construction of section 2(d) of the Prize Competition Act, 1955. This section defines 'prize competition' as "any competition in which prizes are offered for the solution of any puzzle based upon the building up arrangement, combination or permutation of letters, words or figures".

The issue is whether Act applies to competitions which involve substantial skill and are not in the nature of gambling. Supreme Court, after referring to the previous state of law, to the mischief that continued under that law and to the resolutions of various states under Article 252(1) authorizing Parliament to pass the Act.

It was stated that having regard to the history of the legislation, the declared object thereof and the wording of the statute, we are of opinion that the competitions which are sought

	to be controlled and regulated by the Act are only those competitions in which success does not depend on any substantial degree of skill. ( <i>RMD Chamarbaugwalla V. Union of India</i> , AIR 1957 SC 628).	
<b>Application of Heydon's Rule</b>	<b>Interpretation of definitions</b>	<ul style="list-style-type: none"> <li>Definitions in the statute are to be interpreted in the light of context and scheme of the Act as well as object for which the Act was created.</li> </ul>
	<b>If action is required, inaction means default</b>	<ul style="list-style-type: none"> <li>Where a statute requires something to be done, it is to be construed as including that an omission of the act would mean default.</li> <li>Similarly, commission of a wrongful act shall also be covered even through the act does not specifically prohibit it.</li> </ul>
	<b>Personal Performance not required</b>	<ul style="list-style-type: none"> <li>Where a statute requires something to be done by a person, it would generally be sufficient compliance with it if the thing is done by another person on his behalf and by his authority.</li> <li>It would be presumed that the statute does not intend to prevent the application of the general principle of law: 'qui facit per alium facit per se' (he who acts through another is deemed to act in person).</li> <li>This would be so unless there is something in either the language or the object of the statute which shows that personal act alone was intended.</li> </ul>
<b>Non-applicability</b>	<b>Clear words</b>	<ul style="list-style-type: none"> <li>The rule applies only if the words in a statute are ambiguous and capable of more than one meaning. If the words are clear and afford only one meaning, the Courts would adopt the literal interpretation.</li> </ul>
	<b>Fiscal statutes</b>	<ul style="list-style-type: none"> <li>The rule does not normally apply to a fiscal statute (e.g. Income tax Act, 1961). While construing a fiscal statute, the words of the statute are given their plain meanings.</li> <li>If a taxpayer satisfies the terms of an exemption, he cannot be denied benefit by calling an aid of any supposed intention of the parliament.</li> </ul>

## 9. RULE OF EXCEPTIONAL CONSTRUCTION

### Purpose of Rule of Exceptional Construction

The rule of exceptional construction stands for the elimination of statutes and words in a statute which defeat the real objective of the statute or make no sense.

Thus, notwithstanding the general rule that full effect must be given to every word, yet if no sensible meaning can be given to a word or phrase, or if it would defeat the real object of the enactment, it may, or rather it should, be eliminated.

It also stands for construction of words 'and', 'or', 'may', 'shall' & 'must'.

**This rule has several aspects, viz.:**

<b>a) Common Sense Rule</b>	<b>General Rule</b>	Full effect must be given to every word contained in statute. They ought to be construed 'utres magis valeat quam pereat' meaning thereby that it is better for a thing to have effect than to be made void.
	<b>Exception</b>	<ul style="list-style-type: none"> <li>Words in a statute may be eliminated if no sensible meaning can be drawn. As such, where certain words are capable of only one interpretation, but that interpretation would defeat the real object of an enactment, such words may be eliminated.</li> </ul>

<b>b) Construction of words 'and' and 'or'</b>	<b>General Rule</b>	<ul style="list-style-type: none"> <li>▪ Word 'And' is conjunctive i.e. the word 'and' is generally given a cumulative sense, requiring the fulfilment of all the conditions that it joins together. In other words, if two provisions are joined by the conjunction 'and', requirement of both the provisions should be satisfied.</li> <li>▪ Word 'Or' is disjunctive. If two clauses are separated by the word 'or', satisfying the requirement of any of the two clauses would be sufficient.</li> </ul>
	<b>Exceptions</b>	<ul style="list-style-type: none"> <li>▪ Usually the words 'and' and 'or' are given their ordinary meaning. However, at times these words may be read as vice-versa to give effect to the intention of the legislature, i.e. where the literal reading of these words results in absurd result.</li> <li>▪ Hence, to give effect to the intention of legislature: <ul style="list-style-type: none"> <li>✓ Read 'and' as 'or'; and</li> <li>✓ Read 'or' as 'and'.</li> </ul> </li> </ul>
	<b>Examples</b>	<ul style="list-style-type: none"> <li>▪ In the Official Secrets Act, 1920, as per section 7 any person who attempts to commit any offence under the principal Act or this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of an offence'. Here, the word 'and' in bold is to be read as 'or'. Reading 'and' as 'and' will result in unintelligible and absurd sense and against the clear intention of the Legislature.</li> </ul>
<b>c) Construction of the word 'May'</b>	<b>General Rule</b>	<ul style="list-style-type: none"> <li>▪ 'May' has a directory force. It confers a discretionary power.</li> </ul>
	<b>Exceptions</b>	<ul style="list-style-type: none"> <li>▪ Word 'may' has a mandatory force if <ol style="list-style-type: none"> <li>a) There is a discretion coupled with the duty i.e. when a power is given, there is duty to discharge the obligation.</li> <li>b) Remedy will be advanced and mischief will be suppressed. <p><b>Example:</b> when an order of the Government or a statute confers a power on an authority in the discharge of a public duty, and though such power appears to be merely permissive, it is imperative that the authority should exercise that power in the discharge of its duties: there the word 'may' assumes mandatory force.</p> </li> <li>c) Directory force will <ol style="list-style-type: none"> <li>i. Defeat the object of the Act; or</li> <li>ii. Cause material danger to public; or</li> <li>iii. Result in denial of benefit to the public.</li> </ol> </li> </ol> </li> </ul>
<b>d) Construction of the word 'Shall' or 'Must'</b>	<b>General Rule</b>	<ul style="list-style-type: none"> <li>▪ 'Shall' or 'Must' is ordinarily construed to have a mandatory force. It imposes an obligation.</li> </ul>
	<b>Word 'shall' used in a penalty provision</b>	<ol style="list-style-type: none"> <li>a) If the word 'shall' is used in a penalty provisions, the Court must give a mandatory force to such provision.</li> <li>b) If a provision is drafted negatively or imposes a prohibition, it is a mandatory provision.</li> </ol>
	<b>Exceptions</b>	The word 'shall' does not always mean that the enactment is obligatory or mandatory; it depends upon the context in which the word 'shall' occurs and the other circumstances.

		‘Shall’ has a directory force if a) Used against the government; or b) The intention of the legislature so demands; or c) Mandatory interpretation results in absurd results.	
<b>Meaning of ‘mandatory provisions’ and ‘directory provision’</b>		<b>Nature of Compliance Required</b>	<b>Consequences of non-compliance</b>
	<b>Mandatory provision</b>	Strict compliance.	The lapse of a mandatory provision cannot be condoned, i.e., the act done is rendered invalid.
	<b>Directory provision</b>	Substantial compliance is sufficient unless it results in loss or prejudice to the other party.	The lapse in compliance of the procedure is not viewed seriously, i.e. the act done is not rendered invalid.

### 10. RULE OF ‘EJUSDEM GENERIS’

<b>Introduction</b>	<ul style="list-style-type: none"> <li>▪ The term ‘Ejusdem Generis’ means ‘of the same class or species’ i.e. of same kind.</li> <li>▪ The rule states that general words following specific words are to be construed with reference to the words preceding them.</li> <li>▪ Applying the rule of ejusdem generis, the general word(s) cannot be assigned any meaning other than that of the same class or category.</li> </ul>
<b>Examples</b>	<ol style="list-style-type: none"> <li>1) In the expression ‘in consequence of war, disturbance or any other cause’, the words ‘any other cause’ would take colour from the earlier words ‘war, disturbance’ and therefore, would be limited to causes of the same kind as the two named instances.</li> <li>2) Where an Act permits keeping of dogs, cats, cows, buffaloes and other animals, the expression ‘other animals’ would not include wild animals like lions and tigers, but would mean only domesticated animals like horses, etc.</li> <li>3) Where there was prohibition on importation of ‘arms, ammunition, or gunpower or any other goods’ the words ‘any other goods’ were construed as referring to goods similar to ‘arms, ammunition or gun powder’ (AG vs. Brown (1920), 1 KB 773).</li> </ol>
<b>Applicability</b>	<ul style="list-style-type: none"> <li>▪ The Court held that Rule of Ejusdem Generis may be applied if all of the following conditions are satisfied: <ol style="list-style-type: none"> <li>a) There must be an enumeration of certain specific words.</li> <li>b) The specific words must constitute a class or category.</li> <li>c) The specific words must not exhaust the whole category.</li> <li>d) The general words follow the specific words.</li> <li>e) There is nothing to show that a wider sense was intended.</li> </ol> </li> </ul> <p>The rule of ejusdem generis is not an absolute rule of law but only a part of a wider principle of construction and therefore this rule has no application where the intention of the legislature is clear.</p>
<b>Non-applicability of the Rule</b>	<ol style="list-style-type: none"> <li>1) The rule does not apply unless all the 5 conditions enumerated above are satisfied. Thus, where specific words exhaust the whole category, the rule of ejusdem generis shall not apply and so the general words are to be constructed as covering a larger category.</li> <li>2) Similarly, when specific words are of different categories, then the meaning of the general words following those specific words remains unaffected-those general words then would not take colour from the earlier specific words.</li> <li>3) The rule is not applicable if specific words follow the general words.</li> </ol>



	<p><b>Example</b></p> <p>In the expression ‘charges, rates, duties and taxes’, the term ‘charges’ was read ejusdem generis taking colour from the succeeding terms rates, duties, and taxes. Here the general category preceded the enumeration of specific categories and so rule of ejusdem generis was technically not applicable and the court in fact applied the more general rule- Noscitur a sociis and rightly limited the meaning of the term charges.</p> <p>4) Where the specific objects enumerated are essentially diverse in character.</p> <p>5) Where there is an express intention of legislature that the general term shall not be read ejusdem generis the specific terms.</p> <p><b>For example,</b></p> <p>Section 271(e) of the Companies Act 2013 gives the Tribunal a discretionary power to order winding up of a company on the five grounds mentioned under clause (a) to (e). The first four grounds cover certain specific issues. The fifth ground is ‘just and equitable ground’.</p> <p>The fifth ground contained in Section 271 (e) of the Companies Act, 2013 shall not be read ejusdem generis the earlier four although it is a general phrase following specific phrases. This is because the earlier grounds are essentially diverse in character.</p>
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**11. NOSCITUR A SOCIIS (CONSTRUCTION OF ASSOCIATED WORDS)**

<b>Interpretation of analogous words</b>	<ul style="list-style-type: none"> <li>▪ The meaning of word is derived from its associate words, i.e., the meaning of a word is to be judged by the company it keeps. The words in a statute are construed with reference to the words found in immediate connection with them.</li> <li>▪ If two or more words,                         <ul style="list-style-type: none"> <li>➢ which are capable of analogous (similar or parallel) meaning,</li> <li>➢ are grouped together,</li> <li>➢ they should be understood in cognate sense i.e. they take their color from each other and are given a similar or related meaning.</li> </ul> </li> </ul>
<b>Example</b>	<p><b>1) Fresh orange juice is not a fruit juice.</b></p> <p>While dealing with a Purchase Tax Act, which used the expression “manufactured beverages including fruit-juices and bottled waters and syrups,”</p> <p>It was held that the description ‘fruit juices’ as occurring therein should be construed in the context of the preceding words and that orange-juice unsweetened and freshly pressed was not within the description. (Commissioners. Vs. Savoy Hotel, (1966) 2 All. E.R. 299)</p> <p><b>2) Private Dispensary of a doctor is not a commercial establishment</b></p> <p>In dealing with the definition of commercial establishment in Section 2 (4) of the Bombay Shops and Establishments Act, 1948, which reads, “commercial establishment means an establishment which carries on any business, trade or profession”, the word ‘profession’ was construed with the associated words ‘business’ and ‘trade’ and it was held that a private dispensary of a doctor was not within the definition. (Dr. Devendra M. Surti Vs. State of Gujrat, A.I.R. 1969 SC 63)</p>
	<p><b>General Rule</b></p> <ul style="list-style-type: none"> <li>▪ A word or term used in a statute shall be given the same meaning throughout the statute.</li> </ul>

<b>One meaning throughout the Act</b>	<b>Exceptions</b>	<p>a) Where the words are used in different context, e.g., the word 'plant' shall be given a different meaning when construing the term 'plant and machinery' and the term 'plant and trees'.</p> <p>b) Where it would cause injustice or absurdity.</p> <p>c) Where a statute defines a term, which applies only to a particular section or part of a statute, such definition cannot extend to other sections or parts.</p>
<b>Example</b>	In construing the words 'cosmetics, perfumery and toilet goods', the word 'perfumery' can only refer to such articles of perfumery as are used as cosmetics and toilet goods. Thus, it cannot cover 'cooler perfumes', 'dhoop' or 'agarbatti'.	

## 12. EFFECT OF USAGE/ CONTEMPORANEA EXPOSITIO

Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

This principal of usage may also be applied in interpreting the statutes. The principal of usage is based on the following two maxims:

<b>Contemporanea expositio est optima et fortissima in lege</b>	<ul style="list-style-type: none"> <li>The maxim '<i>Contemporanea expositio est optima et fortissimo in lege</i>' or simply '<i>contemporanea expositio</i>' means interpreting a statute or any other document by reference to the exposition it has received from contemporary authority.</li> <li>Simply stated, old statutes and documents should be interpreted and interpreted in the sense in which it was understood when passed.</li> </ul>
<b>Optima legum interpres est consuetude</b>	<ul style="list-style-type: none"> <li>This maxim means that the custom is the best interpreter of law.</li> <li>Thus, the court was influenced in its construction of a statute of Anne by the fact that it was that which had been generally considered as the true one for one hundred and sixty years. (<i>Cox Vs. Leigh 43 LJQB 123</i>).</li> <li>But remember that this maxim is to be applied for construing ancient statutes, but not to acts that are comparatively modern.</li> </ul>

## 13. EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS (EXPRESS MENTION OF ONE THING IMPLIES THE EXCLUSION OF ANOTHER)

<b>Applicability</b>	If two or more things belonging to a particular class are mentioned, other members of that class are silently excluded.
<b>Non-applicability</b>	<p>a) Where the words have a clear meaning.</p> <p>b) Where exclusion is accidental.</p>

## 14. INTERNAL/ INTRINSIC AIDS IN INTERPRETATION OF STATUTE

<b>1) Title</b>	<b>Short Title</b>	<ul style="list-style-type: none"> <li>A short title may be regarded as a nickname of the statute.</li> <li>The purpose of short title is to identify the enactment and not to describe it. Short title is not used for interpreting the statute.</li> </ul>
	<b>Long title</b>	<ul style="list-style-type: none"> <li>The long title is a part of the Act. It describes the enactment. It may be legitimately used for ascertaining the object and scope of</li> </ul>

		<p>the Act and interpreting it. It may be used to resolve any ambiguity.</p> <p><b>Example:</b> Full title of the Supreme Court Advocates (Practice in High Courts) Act, 1951 specify that this is an Act to authorize Advocates of the Supreme Court to practice as of right in any High Court.</p> <ul style="list-style-type: none"> <li>Hence, long title may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment.</li> </ul>
<b>2) Preamble</b>	<b>Meaning and Use in Interpretation</b>	<ul style="list-style-type: none"> <li>Preamble is a statement given in the beginning of a statute. The preamble expresses the scope and object of the Act more comprehensively than the long title. It is a part of the Act.</li> <li>In short, the Preamble to an Act discloses the primary intention of the legislature.</li> <li><b>Useful if words are ambiguous.</b></li> <li><b>No use if words are clear.</b></li> <li><b>Conflict between preamble and a section.</b> The preamble would succumb, and the section shall prevail. Thus, the preamble cannot over-ride the clear meaning of the enactment.</li> <li><b>Enactment may go beyond the preamble:</b> Thus, the preamble cannot restrict the meaning of an enactment.</li> </ul>
	<b>Example</b>	<ul style="list-style-type: none"> <li>Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus...." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act.</li> <li>It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void.</li> <li>This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus' [<i>Gullipoli Sowria Raj V. Bandaru Pavani, (2009)1 SCC714</i>]</li> </ul>
<b>3) Heading and Title of a Chapter</b>	<b>Meaning of heading and title of a chapter</b>	<ul style="list-style-type: none"> <li>A number of sections covering a particular subject are grouped together in the form of a chapter. Each chapter is given a heading which represents the subject matter dealt within the chapter.</li> </ul>
	<b>Use of heading in interpretation</b>	<ul style="list-style-type: none"> <li>These Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts.</li> </ul>
	<b>Weightage given to headings or titles of chapter</b>	<ul style="list-style-type: none"> <li>There is a controversy regarding the weightage to be given to headings while interpreting a statute. The position is as under; <ul style="list-style-type: none"> <li>a) According to one view, a heading is a preamble to the provisions following it and therefore the heading is treated as a key to interpretation of the sections covered by it.</li> <li>b) The other view considers that headings may be referred to only when the enacting words are ambiguous. Thus, if the words used in a statute are clear and unambiguous, and</li> </ul> </li> </ul>

		<p>capable of bearing one meaning only, the heading cannot be used.</p> <p><b>Note:</b> We must, however, note that the heading to one group of sections cannot be used to interpret another group of sections.</p>
4) <b>Marginal notes</b>	<b>Meaning of marginal notes</b>	<ul style="list-style-type: none"> <li>▪ Generally marginal notes are printed at the left-hand margin of the sections in an enactment. But, Acts published by private publishers show the marginal notes at the top of the section.</li> <li>▪ Marginal notes are essentially a headline/title to the section and it summarises the effects of a section.</li> </ul>
	<b>Use of marginal notes and its weightage in interpretation</b>	<ul style="list-style-type: none"> <li>▪ In India, the Courts have given different views regarding the use of marginal notes in construction of a statute. generally held view is that the Marginal Notes appended to a Section cannot be used for construing the Section.</li> <li>▪ For example, section 22 of Sick Industrial Companies Act ('SICA') uses the term 'proceedings' whereas the marginal notes use the term 'legal proceedings'. It has been held that section 22 would apply to all proceedings and not only to legal proceedings as marginal notes cannot restrict the meaning of the word 'proceedings'.</li> <li>▪ However, marginal notes appended to Articles of the Constitution have been held to be part of the Constitution as passed by the Constituent Assembly and therefore have been made use of in construing the Articles.</li> </ul> <p><b>Example:</b> Article 286 of the constitution furnishing "prima facie", some clue as to the meaning and purpose of the Article [Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC]</p>
	<b>Marginal notes in constitution</b>	<ul style="list-style-type: none"> <li>▪ Marginal notes appended to the Articles contained in the Constitution have been held to be a part of the Constitution and so can be used for Interpretation.</li> </ul>
5) <b>Definitional sections or clauses</b>	<b>Key to interpretation</b>	<ul style="list-style-type: none"> <li>▪ Statutory definition can be used in interpretation, whether or not the words used in a statute are ambiguous.</li> </ul>
	<b>Effect of statutory definition</b>	<ul style="list-style-type: none"> <li>▪ A definition clause performs the following two functions             <ol style="list-style-type: none"> <li>a) It acts as a key to proper interpretation and thus avoids ambiguities.</li> <li>b) It shortens the language and avoids repetition.</li> </ol> </li> <li>▪ Where the meaning of a word or expression is defined in a statute, it is that meaning alone which must be given to it.</li> <li>▪ The Court cannot ignore the statutory definition and speculate as to what should be the true meaning of the expression.</li> <li>▪ A word defined in the Act bears the same meaning throughout the Act, unless by doing so any repugnancy is created.</li> <li>▪ <b>Example:</b> Inclusive definition of lease given under section 2(16)(c) of the Stamp Act, 1899 has been widely construed to cover transaction for the purpose of Stamp Act which may not amount to a lease under section 105 of the Transfer of property Act, 1882. [State of Uttarakhand v. Harpal Singh Rawat, (2011) 4 SCC 575]</li> </ul>

		<ul style="list-style-type: none"> <li>▪ <b>Example:</b> Section 2(m) of the Consumer Protection Act, 1986 contains an inclusive definition of 'person'. It has been held to include a 'company' although it is not specifically named therein [<i>Karnataka Power Transmission Corporation v. Ashok Iron Works Pvt. Ltd.</i>, (2009)3 SCC 240]</li> </ul>
<b>Construction of definitions may be understood under the following headings:</b>		
	<p><b>a) Restrictive and extensive definitions</b></p>	<p>The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.</p> <p>When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive we must restrict the meaning of the word to that given in the definition section.</p> <p>But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.</p> <p>We may also find a word being defined as 'means and includes' such and such: here again the definition would be exhaustive.</p> <p>On the other hand, if the word is defined 'to apply to and include', the definition is understood as extensive.</p> <p><b>Example:</b> The usage of word 'any' in the definition connotes extension for 'any' is a word of every wide meaning and prima facie the use of it excludes limitation.</p> <p>A definition section may also be worded as 'is deemed to include' which again is an inclusive or extensive definition as such a word are used to bring in by a legal fiction something within the word defined which according to its ordinary meaning is not included within it.</p> <p><b>For example:</b> If A is deemed to be B, compliance with A is in law compliance with B and contravention of A is in law contravention of B</p>
	<p><b>b) Ambiguous definitions</b></p>	<p>Sometime we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined.</p> <p>Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.</p> <p><b>Example:</b> Termination of service of a seasonal worker after the work was over does not amount to retrenchment as per the Industrial Disputes Act, 1947. [<i>Anil Bapurao Karase v. Krishna Sahkari Sakhar Karkhana</i>, AIR 1997 SC 2698].</p> <p>But the termination of employment of a daily wager who is engaged in a project, on completion of the project will amount to retrenchment if the worker had not been told when employed that his employment will end on completion of the project. [S.M. Nilajkarv. Telecom District Manager Karnataka, (2003)4 SCC].</p>

	<b>c) Definitions subject to a contrary context:</b>	When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.
<b>6) Illustration</b>	<ul style="list-style-type: none"> <li>▪ Illustration are examples appended to a section. Illustration are inserted to clarify the scope and object of the section. Illustration furnish indications of the intention of the legislature.</li> <li>▪ Where the language of a section is likely to perplex an ordinary reader, the legislature adds illustration so as to explain the purpose of the section.</li> <li>▪ Illustration follow the text of the section and do not form part of the section. However, illustration form part of the statute.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Illustrations are considered in construing a statute.</li> <li>▪ Illustration can neither curtail nor expand the ambit of the section.</li> <li>▪ Illustration cannot modify the language of the section.</li> <li>▪ If there is a conflict between the section and an illustration, the section will prevail.</li> </ul> <p><b>Examples:</b> In holding that section 73 of the Indian Contract Act, 1872 does not permit the award of interest as damages for mere detention of debt, the privy Council rejected the argument that illustration given in the Act can be used for arriving at a contrary result. It was observed that nor can an illustration have the effect of modifying the language of the section which alone forms the enactment.</p>
<b>7) Proviso</b>	<b>Key to interpretation</b>	<ul style="list-style-type: none"> <li>▪ Proviso can be used in interpretation, whether or not the words used in a statute are ambiguous.</li> </ul>
	<b>Meaning and significance of Proviso</b>	<ul style="list-style-type: none"> <li>▪ The proviso to a section provides some special treatment to a part of the main section. A proviso is added to qualify or create an exception to what has already been stated in the main body of the section.</li> </ul>
	<b>Use of Proviso in interpretation</b>	<ul style="list-style-type: none"> <li>▪ A proviso is generally not interpreted as stating a general rule. Ordinarily, a proviso to particular provision of a statute embraces only the field which is covered by the main provision and no other provision. As such, the scope of a proviso is limited to the subject matter covered by the main section.</li> </ul>
	<b>Object of proviso</b>	<ul style="list-style-type: none"> <li>▪ <b>Make an exception.</b> The most common use of the proviso is to create an exception to what is stated in the main body of the section. i.e., a provision qualifies something stated in the main section.</li> <li>▪ <b>Give a clarification.</b> Where the main section is not clear, a proviso may give an indication as to its true meaning.</li> <li>▪ <b>Imposing conditions.</b> It may be provided to change the entire concept of the enactment by insisting on certain conditions.</li> <li>▪ <b>Make a substantive provision.</b> At times, proviso may be inserted to extend the meaning of the main provision. In such a case, the proviso makes a substantive provision.</li> </ul>
<b>Distinction between Proviso, exception and saving Clause</b>	<b>Exception</b>	<ul style="list-style-type: none"> <li>▪ 'Exception' is intended to restrain the enacting clause to particular cases.</li> </ul>
	<b>Proviso</b>	<ul style="list-style-type: none"> <li>▪ 'Proviso' is used to remove special cases from general enactment and provide for them specially.</li> </ul>

	<b>Saving clause</b>	<ul style="list-style-type: none"> <li>'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing.</li> </ul>
<b>8) Explanation</b>	<b>Meaning and significance of Explanation in interpretation</b>	<ul style="list-style-type: none"> <li>An explanation is generally a clarification of the legislative mind. It explains the meaning of the words contained in the section.</li> <li>An Explanation may be added to include something within the section or to exclude something from it.</li> <li>An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section.</li> <li>It should not be so construed as to widen the ambit of the section.</li> </ul>
	<b>Object of an Explanation</b>	<ul style="list-style-type: none"> <li>The purpose of explanation is to – <ul style="list-style-type: none"> <li>a) Explain the meaning and intendment of the Act itself.</li> <li>b) Include something within a section or to exclude something.</li> <li>c) Provide an additional support to the object of the Act to make it meaningful and purposeful.</li> <li>d) Fill up the gap which is relevant for the purpose of suppressing the mischief and advancing the object of the Act.</li> <li>e) Cannot take away a statutory right.</li> </ul> </li> </ul>
<b>9) Schedules</b>	<b>Meaning and significance of Schedule</b>	<ul style="list-style-type: none"> <li>Schedule are appended at the end of an Act. Schedule contains the details with respect to a particular subject matter.</li> <li>A schedule often contains the details, rules and forms for working out the policy underlying the section of the statute.</li> </ul>
	<b>Use of Schedule in interpretation</b>	<ul style="list-style-type: none"> <li>Schedule must be read together with the Act for all purposes of construction.</li> <li>However, the expressions in the Schedule cannot control or prevail over the expression in the enactment.</li> <li>If there appears to be any inconsistency between the schedule and the enactment, the enactment shall always prevail.</li> </ul>
<b>10) Punctuation</b>		<ul style="list-style-type: none"> <li>At the first instance, the Court ignores punctuation while interpretation.</li> <li>However, punctuation may be used to resolve any ambiguity.</li> <li>Punctuation cannot override the clear meaning of the enactment.</li> </ul>
<b>11) Read the statute as a whole</b>		<ul style="list-style-type: none"> <li>The words of any statutory provision must be first read in the context provided by the statute. Words take colour from the context in which they are used. The same word may mean one thing in one context and another in different context in the same section of a statute. That is why it is necessary to read the statute as a whole in its context.</li> <li>The statute must be read, first as a whole, and then section by section, clause by clause, phrase by phrase and word by word. One needs to take into consideration the scheme of the Act and for this purpose, the statute must be read in its entirety. Every word used in provision is to be construed with reference to the other words used in the Act.</li> <li>The conclusion that the language used by the legislature is plain or ambiguous can only be truly arrived at by studying the statute as a whole.</li> <li>Thus, to ascertain the meaning of the provision, the Court must look at the whole statute, at what precedes and at what succeeds the provision under consideration.</li> </ul>

- **For example**, if one section of an Act requires ‘notice’ should be given, then a verbal notice would generally be sufficient. But, if another section provides that ‘notice’ should be ‘served’ on the person or ‘left’ with him, or in a particular manner or place, then it would obviously indicate that a written notice was intended.

## 15. EXTERNAL AIDS IN INTERPRETATION OF STATUTE

- ‘External aids’ mean consideration of the state of affairs behind enactment of an Act.
- External aids can be used for limited purpose of finding out the intention of the legislature, that too if the words used in the statute are not clear.
- Following external aids are generally used by the Courts while interpreting a statute:

<b>1) Historical setting</b>		<ul style="list-style-type: none"> <li>▪ Historical setting cannot be used as an aid if the words are plain and clear. If the wording of the statute is ambiguous, the historical setting may be considered in order to arrive at the proper construction. Historical setting would cover the following:</li> </ul>
	<b>Parliamentary history</b>	<ul style="list-style-type: none"> <li>▪ Parliamentary history means the process by which an Act is enacted. This includes conception of an idea, drafting of the bill, the debates made, the amendments proposed etc. Following points may be used in this regard:               <ol style="list-style-type: none"> <li>a) <b>Speech of mover of a bill</b> at the time of introduction is relevant as it explains the reasons for introduction of the bill and helps to ascertain the object and purpose of the Act.</li> <li>b) Amendments considered during the progress of the bill.</li> </ol> </li> </ul>
	<b>Historical facts</b>	<ul style="list-style-type: none"> <li>▪ The history of the external circumstances which led to the enactment of the statute is of much significance in understanding the subject matter and scope of the enactment.</li> </ul>
	<b>Report of expert committees</b>	<ul style="list-style-type: none"> <li>▪ Report of the committee which examined the bill and made recommendations to the parliament may be referred to decide the legislative intent.</li> </ul>
<b>2) Consolidated statutes and previous laws</b>		<ul style="list-style-type: none"> <li>▪ Where an Act is a consolidating one, the Courts may presume that it is not intended to alter the law. Thus, the interpretation that the old Act has received in the past, shall continue to apply to the new Act.</li> </ul>
<b>3) Usage</b>		<ul style="list-style-type: none"> <li>▪ Usage is also sometimes taken into consideration in construing an Act. The acts done under a statute provide quite often the key to the statute itself. It is well known that where the meaning of the language in a statute is doubtful, usage – how that language has been interpreted and acted upon over a long period – may determine its true meaning.</li> <li>▪ It has been emphasized that when a legislative measure of doubtful meaning has, for several years, received an interpretation which has generally been acted upon by the public, the Courts should be very unwilling to change that interpretation, unless they see cogent reasons for doing so.</li> </ul>
<b>4) Earlier and later acts and analogous acts (exposition of one act by language of another)</b>	<b>Earlier Act explained by later Act</b>	<ul style="list-style-type: none"> <li>▪ Where an old Act is replaced by a new Act, the latter Act may be used to interpret the earlier Act only if both the Acts are on the same lines and a part of the earlier Act is ambiguous.</li> </ul>
	<b>Construction of two Acts</b>	<ul style="list-style-type: none"> <li>▪ If two Acts are to be read together, then every part of each Act has to be construed as if contained in one composite Act. However, if there is some clear discrepancy, then the latter Act would modify the earlier Act.</li> </ul>



	<b>Incorporation of a part of an Act into another Act</b>	<ul style="list-style-type: none"> <li>Where a single section of one Act (say 'Act A') is incorporated into another Act (say 'Act B'), it must be read in the sense which it bore in the original Act (i.e. 'Act A') from which it is taken consequently, it would be legitimate to refer to all the rest of Act 'A' to ascertain what that Section means, though one Section alone is incorporated in the new Act (Act 'B').</li> <li>Suppose the earlier bye-law limited the appointment of the chairman of an organisation to a person possessed of certain qualifications and the later bye-law authorises the election of any person to be the chairman of the organisation. In such a case, the later bye-law would be so construed as to harmonise and not to conflict with the earlier bye-law: the expression 'any person' used in the later bye-law would be understood to mean only any eligible person who has the requisite qualifications as provided in the earlier bye-law.</li> </ul>
	<b>Reference to repealed Act</b>	<ul style="list-style-type: none"> <li>Where a part of an Act has been repealed, it loses its operative force. Nevertheless, such a repealed part may still be considered for construing the unrepealed part. This is so because it is part of the history of the new Act.</li> </ul>
<b>5) Dictionary definition</b>	<b>Statutory Definitions</b>	<ul style="list-style-type: none"> <li>Firstly, the words or expressions defined in a statute are referred to for the purpose of construing the meaning of word.</li> </ul>
	<b>Judicial Definitions</b>	<ul style="list-style-type: none"> <li>Judicial decisions defining the meaning of a word may be referred to if there is no statutory definition of that word or the definition given in the Act is ambiguous.</li> <li>Meaning given by judicial decisions carries a greater weight than the meaning furnished by dictionary.</li> </ul>
	<b>Dictionary Definition</b>	<ul style="list-style-type: none"> <li><b>Ordinary words.</b> Dictionaries may be referred to find out the general sense in which a word is commonly understood.</li> <li><b>Technical words.</b> Reference is made to technical dictionaries for construction of technical words.</li> </ul>
<b>6) Judicial pronouncements</b>	<b>Reference to the enactment</b>	<ul style="list-style-type: none"> <li>Prime importance is given to the language of the Indian statute. If the language of the statute is clear and capable of one meaning only, reference to any legal decision becomes unnecessary.</li> </ul>
	<b>Reference to Indian decisions</b>	<ul style="list-style-type: none"> <li>Firstly, reference shall be made to Indian decisions in priority over foreign decisions.</li> </ul>
	<b>Reference to foreign decisions</b>	<ul style="list-style-type: none"> <li>If no Indian decision is available, reference may be made to foreign decision.</li> <li>However, foreign decisions may be referred to only if             <ol style="list-style-type: none"> <li>Same system of jurisprudence is followed in such foreign country; and</li> <li>The foreign decision has been given on same laws as ours.</li> </ol> </li> <li>Where Indian Courts refer to the foreign decisions, an attempt is made to refer to the English decisions because most of the Indian Acts are based on English Acts, and India and England have similarities regarding common law and jurisprudence.</li> </ul>

## 17. RULE OF INTERPRETATION OF DEEDS AND DOCUMENTS

1) <b>Interpretation from point of view of a reasonable man</b>	<ul style="list-style-type: none"> <li>▪ First and foremost, Rule is to find out what a reasonable man, who has taken care to inform himself to the surrounding circumstances and of its scope would understand by the words used in a deed or document.</li> </ul>
2) <b>The Golden Rule</b>	<ul style="list-style-type: none"> <li>▪ The golden rule is to ascertain the intention of the parties after considering all the words in the document in their ordinary sense. Methodology in the application of golden rule is as follows:               <ol style="list-style-type: none"> <li>a) Read the document as whole.</li> <li>b) Consider the circumstances in which particular word have been used.</li> <li>c) Consider the status and training of the parties. A word may be used by an ordinary person in one sense and by trained person in a special sense.</li> </ol> </li> </ul>
3) <b>Uniformity of meaning</b>	<ul style="list-style-type: none"> <li>▪ Words bear same meaning throughout the document.</li> <li>▪ However, a word appearing at two or more places may be given different meaning if the context so requires.</li> </ul>
4) <b>Resolving conflict</b>	<ul style="list-style-type: none"> <li>▪ If there is a conflict between two or more clauses of the same document, effort must be made to resolve the conflict by interpreting the clauses in a manner that all clauses are given effect to.</li> <li>▪ However, if it not possible to resolve the conflict, the earlier clause will override the latter one.</li> </ul>
5) <b>Weightage to other documents</b>	<ul style="list-style-type: none"> <li>▪ It is inexpedient to construe the terms of one deed by reference to the terms of another unless the language of the two documents is identical.</li> </ul>
6) <b>Effect of one invalid clause</b>	<ul style="list-style-type: none"> <li>▪ One invalid clause does not make the whole document void.</li> <li>▪ However, if the invalid clause forms such an integral part of the transaction as to render it impossible to sever the good from the bad, the whole document is void.</li> </ul>
7) <b>Conduct of the parties not to later affect the interpretation</b>	<ul style="list-style-type: none"> <li>▪ The intention of the parties has to be gathered from the terms &amp; conditions, which are agreed upon by the parties. It is not permissible to explain or interpret a document by the antecedent communications, which led up to it [<i>Bomanji v Secretary of State, AIR 1929 PC</i>].</li> <li>▪ When the words in a document are clear, the subsequent conduct of the parties is an irrelevant consideration [<i>Baraboni Coal Concern V Gokulanand AIR 9134 PC</i>].</li> </ul>
8) <b>Interpretation once given remains effective in further proceedings</b>	<ul style="list-style-type: none"> <li>▪ When an agreement between the parties has once been interpreted in a certain way by the Court, in a subsequent litigation that interpretation would be binding on the parties and it will not be open to the parties to invite the Court to reconsider the document.</li> </ul>

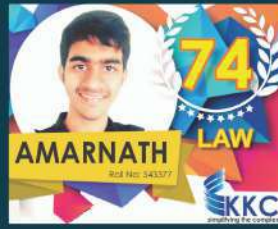
ARISE AWAKE AND STOP NOT  
TILL YOUR GOAL IS ACHIEVED

-Swami Vivekanand

### About CA Kishan Kumar

- ★ Kishan Kumar is an **Associate member** of The Institute of Chartered Accountants of India.
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- ★ Kishan has worked with **Ernst & Young and PwC (Big 4 Firms)** and uses his practical corporate experience to make the subject more interesting and engaging.
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