

CONTRACT OF INDEMNITY

SECTION TO BE USED IN THIS ACT		
SECTION	TOPIC	PARA No
Section 124	MEANING OF INDEMNITY	20.1
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20.1 MEANING OF INDEMNITY [Section 124]

Meaning	According to section 124 of Indian contract Act, "a contract of indemnity is a, contract by which one party promises to save the other from loss caused to him either by the conduct of the promisor himself or by the conduct of any third party."
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20.2 PARTIES UNDER INDEMNITY CONTRACT

Indemnifier	A party who promise to indemnify the loss
Indemnity Holder	A party whose losses are made good by indemnifier

20.3 CHARACTERISTICS OF INDEMNITY

1. Valid Contract	A contract of indemnity is a contract, thus it must satisfy all essential conditions of a valid contract.
2. It also include implied promise	It not only includes express promise but also an implied promise for compensating losses.
3. Promise of Compensation	<p>A contract of indemnity is made primarily for compensating losses of another party which may be caused to him</p> <ul style="list-style-type: none"> ▪ either by the conduct of party or ▪ by any event or accident ▪ Action of any other person

Exercise 1

Question 1: Decide About the following Indemnity Contracts

Case -1 A Induces B to attend a particular lecture and if he could not understand it , he can get the entire fees refunded from A

Answer:.....

Exercise 1

Case-2 A lecturer himself induces the students to attend his lecture and if they could not understand he will re-imburse their entire fees

Answer:

Case-3 An insurance company agreed with A that incase of any loss to his property they will compensate him for all losses

Answer:

Case-4 An insurance company agreed with Ram that incase of his death, they will compensate his family

Answer:

Quest-2-	X asks Y to beat Z and promises to indemnify Y against the consequences. Y beats Z and is fined ₹ 1,000. Can Y claim ₹ 1,000 from X?
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Answer	
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20.4 RIGHTS OF INDEMNITY HOLDER [Section 125]

1.Right to recover damages	An indemnity holder is entitled to recover the amount of damage which he has been compelled to pay to another party in a suit to which contract of indemnity is applicable.
2.Right to recover costs	An indemnity holder is also entitled to claim all costs which he has incurred for defending himself in a suit to which the promise of indemnity is applicable.
3.Right to recover other payments	<p>In a contract of indemnity if the indemnity holder has made any payment to another party on the compromise of that suit to which contract of indemnity is applicable, he is entitled to recover such payment from the indemnifier provided:-</p> <ul style="list-style-type: none"> ▪ Indemnity holder has acted as a person of reasonable prudence and has comply with the order of indemnifier ▪ Such compromise has been allowed by the indemnifier.

20.5 WHEN DOES THE LIABILITY OF INDEMNIFIER ARISE?

When	As soon as the liability of indemnity holder arises and becomes ascertain, he may call upon the indemnifier to protect him from losses.
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20.6 CONTRACT OF GUARANTEE [Section 126]

Meaning	<p>Meaning of Guarantee Contract:-According to section 126 of this Act,</p> <ul style="list-style-type: none"> ▪ "A contract of guarantee is a contract ▪ to perform the promise or discharge the liability ▪ Of third person in case of his default".
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20.7 PARTIES UNDER THE CONTRACT OF GUARANTEE	
1.Principal Debtor	A person who is primarily liable to pay debt or discharge obligation
2.Surety	A person who takes responsibility of paying the obligation in case promisor fails to pay
3.Creditor	A person to whom the principal debtor is liable to pay and surety gives guarantee

20.8 ESSENTIAL CHARACTERISTICS OF A CONTRACT OF GUARANTEE		
1.Essentials of a valid contract	The contract of guarantee must possess all essentials of a valid contract.	
2.Exceptions	1	Principal debtor need not be competent to contract. In case the principal debtor is incompetent, the surety would be regarded as the principal debtor and would be personally liable to pay.
	2	Consideration received by the principal debtor is a sufficient consideration to the surety for giving the guarantee
3.Concurrence of the party	In a contract of guarantee concurrence of all three parties to a contract of guarantee is essential e.g. in case, if some one becomes surety to the creditor without the consent of principal debtor, the contract is not enforceable.	
4.Primary liability of someone	In a contract of guarantee there is a primary liability on the principal debtor to repay or to discharge obligation.	
5.Form of a contract	May be made in writing or by the words of mouth.	
6.No involvement of misrepresentation [Section 142 & 143]	Guarantee obtained by creditor by means of misrepresentation is not valid.	

Exercise 2
<p>Question 1-HARI sells material to <i>NAMIT</i>. <i>Decide whether</i> the agreement of guarantee valid in following cases:</p> <p><i>Case (a):</i> If AJAY agrees to pay for the goods in default of <i>NAMIT</i>.</p> <p><i>Answer</i>.....</p> <p><i>Case (b):</i> If AJAY requests HARI to allow a credit period of 1 year to <i>NAMIT</i> and in lieu promises that, he will pay for the goods if <i>NAMIT</i> defaults. HARI agrees.</p> <p><i>Answer</i>.....</p>
<p>Question 2- HARI agrees to sell goods to <i>NAMIT</i> on the guarantee of AJAY for payment of price in event of default by <i>NAMIT</i>. <i>Decide whether</i> the agreement of guarantee valid in following cases:</p> <p><i>Case (a):</i> If HARI is a minor</p> <p><i>Solution:-</i></p> <p><i>Case (b):</i> If AJAY is a minor</p> <p><i>Solution:-</i></p> <p><i>Case (c):</i> If <i>NAMIT</i> is a minor</p> <p><i>Solution:-</i></p>

20.9 DIFFERENCE BETWEEN CONTRACT OF INDEMNITY AND CONTRACT OF GUARANTEE

<u>Basis of Difference</u>	<u>Contract of Indemnity</u>	<u>Contract of Guarantee</u>
1. Meaning	It is a contract made for Compensating losses of another party caused to him either by the conduct of the parties or from an event or accident.	It is a contract, to perform the promise or discharge liability of third party in case of his default.
2. Number of Parties	There are two parties in a contract namely indemnity holder and indemnifier.	In a contract of guarantee, there are three parties, the principal debtor, creditor and the surety
3. Number of Contract	In indemnity there is only one contract that is between indemnity holder and indemnifier	There are three contracts in guarantee. One between principal debtor and creditor, another between surety and creditor and third one between principal debtor and surety.
4. Nature of liability	Under contract of indemnity, the liability of indemnifier who makes promise to compensate the loss, is primary in nature	In a contract of guarantee, the liability of the surety is secondary in nature

20.10 CONTINUING GUARANTEE - Meaning and its Revocation

Meaning of Continuing Guarantee [Section 129]	A guarantee which extend to series of transactions is called as continuing guarantee.
<u>Circumstances where it can be revoked:</u>	
By notice of Revocation [Section 130]	Continuing guarantee may at any time be revoked by the surety for all future transactions by giving notice of revocation to the creditor. In such case, the surety will be liable for all those transactions which have taken place till that notice.
By death of surety [Section 131]	A continuing guarantee may also be revoked in case of death of the surety. However for the series completed prior to the death of surety, the estate of surety will be liable even without giving a notice of death to the creditor.
Special Case	<p>(i) <i>A guarantees payment to a grocer to the amount of ₹ 2,000 for any grocery that is being purchased time to time by his wife. Grocer supplies more than the value of ₹ 2000 which is paid by the A. Afterwards grocer again supplies the grocery to the value of ₹ 8,000. State the liability of A.</i></p> <p>(ii) <i>X guarantees payment to Y of the price of the four laptops sets to be sold by Y to X and to be paid for in a month. Y delivers the sets to X. X pays for them. Later on Y delivers three more sets to X. State the liability of X.</i></p>

20.10 CONTINUING GUARANTEE - Meaning and its Revocation

Hint	<p>(i) According to Section 129 of the Indian Contract Act, 1872 a guarantee which extends to a series of transactions is called a 'continuing guarantee'. The liability of the surety in such a guarantee continues until the performance or discharge of all the transactions entered into or the guarantee is withdrawn.</p> <p>In the given case guarantee given by A was a continuing guarantee and thus he is accordingly liable to grocer to the extent of Rs, 2000.</p> <p>(ii) In this case, the guarantee given by X is not a continuing but infact it is a specific guarantee. Therefore in the given case X is not liable for the price of the three sets which are supplied later to Y.</p>
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20.11 NATURE AND EXTENT OF SURETY'S LIABILITY [Section 128]

1. Liability of surety is 'co-extensive'	Liability of the surety is co-extensive with that of the principal debtor. He is liable for those sums that the principal debtor is liable for. His liability cannot be more than that of principal debtor.
2. Liability of the surety is secondary	In a contract of guarantee, the principal debtor is primarily liable to pay or discharge liability. It is only at his default, the liability of the surety arises
3. Liability is continuous in nature	In case of continuing guarantee, the liability of the surety extends to a series of transaction over a period of time.
4. Liability of the surety is immediate in nature	Once the principal debtor commits default, immediately the creditor may proceed against the surety. In is not necessary that he should first sue the principal debtor or give notice to the principal debtors.
5. Surety may limit his liability	Surety has a right to limit his liability. He can do it by declaring it expressly at the time of making a contract of guarantee. In such a case, irrespective of all other factors, the liability of the surety will not go beyond that limit as declared by him
6. Liability of the surety is conditional	Liability of the surety is conditional in nature. It will arise only when the principal debtor commits default.

20.12 RIGHTS OF SURETY

A. Rights against principal debtor

1.Right of subrogation: [Section 140]	If the principal debtor commits default, and the surety pays the debt to the creditor, the surety steps in to the shoes of creditor. The surety will avails all the rights which the creditor has against the principal debtor.
2.Right of indemnity: [Section 145]	In a contract of guarantee, there is an implied promise by the principal debtor that any loss caused to surety will be indemnified by the principal debtor. Therefore surety is entitled to recover entire sum which he has rightfully paid under the contract of guarantee.

B. Rights of surety against the creditor:

1.Right to claim securities: [Section 141]	<p>Where the principal debtor has given securities in addition of guarantee, of the debt. In case he fails to repay and the surety becomes liable to pay. The surety is entitled to those securities which are held by the creditor.</p> <ul style="list-style-type: none"> ▪ Even if surety has no knowledge of such security, still above entitlement would exist.
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20.12 RIGHTS OF SURETY	
	<ul style="list-style-type: none"> ▪ If the creditor loses or without the consent of surety, parts with, any security, the surety is discharged from his liability to that extent.
2.Right of set off	If the principal debtor has got any cross claim against the creditor, the surety becomes entitled to set off that claim against the creditor.
3. Right to share reduction	If there has been some reduction in the amount of debt being guarantee by the surety. The surety is entitled to such reduction.
<u>c. Rights against co-sureties</u>	
1. Right of contribution - [Section 146 & 147]	Where two or more persons stand sureties for the same debt either jointly or severally, the co-sureties are liable to pay equal share of the whole debt.
2. Co-sureties giving guarantee for different amount	Co-security may fix up the limit on their respective liability. Even then they will be liable in equal ratio subject to the maximum of the amount of guarantee given by them.
3. Right to share security benefit	Where any co-security has received any benefit, all other co-securities are entitled to share benefit out of that.

20.13 DISCHARGE OF SURETY [Section 130 to 144]	
1. By Notice of revocation: [Section 130]	In a contract of continuing guarantee the surety by giving notice to the creditor may revoke the contract for future transactions.
2. By death of surety: [Section 131]	A contract of continuing guarantee is also revoked at the death of the surety for the future transaction.
3. By Novations	By mutual consent of all parties, original contract of guarantee may be replaced by new contract. In such case the surety will be discharged from his liability in the original contract.
4. By variation in the terms of contract: [Section 133]	Any variation of a contract of guarantee by the creditor and principal debtor without consent of the surety will discharge him from his liability as to transaction subsequent to such change.
5. By release or discharge of principal debtor: [Section 134]	The liability of the surety is secondary in nature. Thus, if the principal debtor is released or discharged from his liability, the liability of the surety will also come to an end.
6. By composition with principal debtor: [Section 135]	In case of any composition between the creditor and principal debtor whereby the creditor extends time of payment or makes promise not to sue the principal debtor in case of his default. The surety will be discharged from his liability in that contract of guarantee.
7. By loss of security: [Section 141]	In case the creditor loses security or even a part with it without consent of the surety, the surety will be discharged from his liability to that extent.

Exercise 3

Case No-1:- A, B and C are sureties to D for a sum of ₹ 3,000 lend to E. E makes default in payment.

Answer:-Liability of A Shall be

Answer:-Liability of B Shall be

Answer:-Liability of C Shall be

Case No-2:-A, B and C as sureties for D, enter into three separate bonds, of different amounts-A for ₹ 20,000, B for ₹ 40,000 and C for ₹ 10,000. Discuss the liability of A, B, C if D makes default to the extent of (a) ₹ 30,000 (b) ₹ 90,000

Answer:-

Liability	If Default is ₹ 30,000	If Default is ₹ 90,000
A		
B		
C		

Case-3-Ravi stand as Surety for Ajay in some loan transaction with Bank. Discuss the right of Surety in following cases

1- At the time of Loan Ajay Mortgaged the property worth of ₹ 10.0 Lacs and availed a loan of ₹ 50.0 Lacs. However without informing Ravi, Bank released the security of Ajay

Answer:-.....

2-Ajay helped the bank in recovery of some loan from one of its defaulter and consequent to which, he was entitled to receive ₹ 1,00,000 as commission.

Answer:-.....

3 Ajay committed a default in Repayment of Loan and his o/s was ₹ 11.40 Lacs, Bank waive his right to Recover ₹ 2.0 Lacs

Answer:-.....

CONTRACT OF BAILMENT

SECTION TO BE USED IN THIS ACT		
SECTION	TOPIC	PARA No
Section 148	DEFINITION:-BAILMENT	19.1
Section 151 & 152	DUTIES OF BAILEE - To Take Care of the Goods Bailed	19.5
Section 153 & 154	DUTIES OF BAILEE - Not to Make Unauthorized Use of Goods	19.5
Section 159	RIGHT OF BAILOR -To Terminate the Bailment	19.6
Section 160 &161	DUTIES OF BAILEE - To Return the Goods Bailed	19.5
Section 163	DUTIES OF BAILEE - To Return Any Accretion to The Goods Bailed	19.5
Section 158	DUTIES OF BAILOR - To Bear Expenses	19.4
Section 164	DUTIES OF BAILOR - To indemnify the bailee for defective title :-	19.4
Section 166	RIGHT OF BAILEE - To Get Compensation	19.7
Section 168	FINDER OF GOODS - Right to Reward	19.8
Section 169	FINDER OF GOODS - Right of Sale	19.8
Section 170	LIEN-Particular Lien	19.7
Section 171	LIEN-General Lien	19.7
Section 172	DEFINITION OF PLEDGE	19.10
Section 173	RIGHT OF PAWNEE - Lien	19.10
Section 175	RIGHT OF PAWNEE - To Receive Extraordinary Expenses	19.10

19.1 DEFINITION:-BAILMENT [Section 148]		
1. Meaning	<ul style="list-style-type: none"> ▪ Delivery of goods by one person to another ▪ For some purpose ▪ Upon the condition that ▪ They shall be returned or disposed of ▪ According to the directions of person delivering them 	
	2. Parties to the Bailment Contract	
	Bailor	Person delivering the goods is called the 'Bailor'
	Bailee	Person to whom goods are delivered is called the 'Bailee'

19.2 ESSENTIAL OF VALID BAILMENT CONTRACT [Section 148]	
1. Contract	May be either express or implied.
2 Delivery of Goods	<ul style="list-style-type: none"> ▪ The essence of bailment is delivery of goods by one person to another for some temporary purpose. ▪ Such Delivery can either be actual, symbolic or constructive.
3. Purpose	<ul style="list-style-type: none"> ▪ Goods are delivered for some purpose. ▪ Purpose for which the goods are delivered is usually in the contemplation of both the bailor and the bailee the same can either be express or implied
4. Return of the goods	Goods which form the subject matter of the bailment should be returned to the bailor or disposed of according to the directions of bailor, after the accomplishment of purpose or after the expiry of period of bailment.

19.3 CLASSIFICATION OF BAILMENT	
1. Gratuitous Bailment	It is a contract of bailment where no consideration passes between the bailor and bailee
2. Non-Gratuitous Bailment	It is a contract of bailment where some consideration passes between the bailor and bailee

19.4 DUTIES OF BAILOR	
1. Duty to disclose faults in the goods	<p>The bailor is bound to disclose to the bailee faults in the goods</p> <ul style="list-style-type: none"> ▪ of which the bailor is aware and ▪ Which materially interfere with the use of them or expose the bailee to extraordinary risks <p>In case of non compliance of such duty, he is responsible for damage arising to the bailee directly from such faults.</p>
2. Duty to bear expenses [Section 158]	<p><u>In case of gratuitous bailment:-</u> The bailor must repay to the bailee all necessary expenses incurred by bailee for the purpose of the bailment.</p> <p><u>In case of non-gratuitous bailment:-</u>The bailor is liable for only extra-ordinary expenses.</p>
3. Duty to indemnify the bailee for defective title: [Section 164]	It is the duty of the bailor to indemnify the bailee, for any loss suffered by bailee due to the fact that bailor's title was defective.
4. Duty to bear risks	Bailor is liable to bear the risk of loss, deterioration and destruction, of the things bailed, provided the bailee has taken reasonable care to protect the goods
5. Duty to receive back the goods	<ul style="list-style-type: none"> ▪ It is the duty of the bailor that when the bailee, returns the goods to him, the bailor should receive them. ▪ If the bailor, without any reasonable reason, refuses to take the goods back, he is liable to pay the bailee all necessary and incidental expenses, which the bailee might have incurred in keeping the goods safely.
6. To compensate	In case bailment was gratuitous, bailor must compensate the bailee for the loss or

bailee for loss for pre mature termination	damage suffered to him consequent to pre mature termination of bailment.
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19.5 DUTIES OF BAILEE

1. To take care of the goods bailed [Section 151 & 152]	<ul style="list-style-type: none"> ▪ To take care of the goods bailed to him as a man of ordinary prudence would take of his own. ▪ Bailee shall not be responsible, for the loss, destruction or deterioration of the thing bailed in case due care was exercised by him
2. Not to make unauthorized use of goods [Section 153 & 154]	In case of unauthorized use of goods, bailee is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.
3. Not to mix bailer's goods with his own goods.	(a) If the bailee, with the consent of the bailor , mixes the goods of the bailor with his own goods, the bailor and the bailee shall proportionate interest. [Section 155]
	(b) <ul style="list-style-type: none"> ▪ If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; ▪ But the bailee is required to bear the expenses- of separation or division and he is also liable to bear any damages arising from the mixture. [Section 156]
	(c) If the bailee, without the consent of the bailor , mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods [Section 157]
4. To return the goods bailed:- [Section 160 & 161]	<ul style="list-style-type: none"> ▪ It is the duty of the bailee to return the goods bailed, without demand by bailor ▪ As soon as the time for which they were bailed has expired, Purpose, for which they were bailed, has been accomplished. <p><u>If the bailee fails to do so:-</u></p> <ul style="list-style-type: none"> ▪ He shall be responsible for any loss, destruction or deterioration of the goods ▪ Goods shall be at the risk of bailee.
5. To return any accretion to the goods bailed:- [Section 163]	Bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed.
6. Duty not to set up adverse title	Bailee should not set up his own title or the title of a third party on the goods bailed to him.

19.6 RIGHT OF BAILOR

1. Terminate the bailment [Section 153]	The bailor has a right to terminate the contract of bailment if the bailee does any act which is inconsistent with the conditions of the bailment.
2. To demand return of goods [Section 159]	In case of gratuitous bailment of goods, the bailor can demand back the goods at any time even though the goods were bailed for a specified time or purpose.

3. To claim increase or profit from goods bailed	Bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed.
4. To claim compensation [Section 180]	If any damage is caused to the goods bailed because of the unauthorized use of the goods, the bailor has a right to claim compensation from the bailee.

19.7 RIGHT OF BAILEE	
1. Deliver goods to anyone of the joint bailors	If the goods are owned and bailed by more than one person, the bailee has a right, to delivery back the goods to anyone of the joint owners.
2. Compensation [Section 166]	If the title of bailor is defective and the bailee and consequent to this bailee has suffered some losses, he has a right to get indemnity for such loss from bailor
3. Right to Recover Loss in Case of Bailor's Refusal to take the Goods Back	The bailee has a right to be indemnified in case he suffers any loss because of bailor's refusal to take the goods back.
4. Rights against any injury to goods	<p><u>In case any third person</u></p> <ul style="list-style-type: none"> ▪ wrongfully deprives the bailee of the use or ▪ deprive him from possession of the goods bailed, or ▪ causes any injury to the goods bailed, <p>The bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made.</p>
5. Right of Lien: - [Section 170]	The bailee has a right to claim his lawful charges and in case bailor refuses to pay it, bailee is entitled to retain the goods until the charges due in respect of those goods are paid.
Types of Lien	
(a) Particular Lien [Section 170]	A particular lien is a right to retain only those goods in respect of which some charges are due.
(b) General Lien [Section 171]	<ul style="list-style-type: none"> ▪ General lien is a right to retain all the goods as a security for the general balance of account until the full satisfaction of the claims due whether in respect of those goods or other goods. ▪ The general lien is available to other persons only when there is an express contract to that effect. ▪ Generally, general lien is available only to bankers, factors, wharfinger, attorneys of a High Court (only for non-payment of their professional fees) and policy brokers.

Particular lien	General lien
It is available against those goods in respect of which some charges are due.	It is available against all goods whether in respect of which claims are due or not.
It is available to every bailee	It is available only to specific bailee like bankers, factors, Wharfinger's, attorneys of High Court and

	policy brokers.
It is available only when some service involving the exercise of labour or skill has been rendered.	It is available even when no such service has been rendered.

19.8 FINDER OF GOODS

Rights of a Finder

1. Right of lien : [Section 168]	A finder of goods has the right to keep the goods in his possession till he is paid his expenses.
2. Right to recover reward: [Section 168]	Where the true owner of goods has declared some reward for the return of lost goods, the finder can sue the owner for such reward.
3. Right of sale [Section 169]	<p>He can sell the goods under the following circumstances:</p> <ul style="list-style-type: none"> (i) Even after the reasonable efforts owner cannot be found and if found, refuses to pay the lawful charges to the finder; or (ii) the thing is in danger of perishing or of losing the greater part of its value; or (iii) When the lawful charges of the finder for preservation and finding out the owner, amount to two-third or more of the value of the market value of thing.

19.9 TERMINATION OF BAILMENT

1. Expiry of Fixed Period	On the expiry of the fixed period
2. Fulfillment of Purpose	On the accomplishment of the specified purpose.
3. Unauthorized Usage	Unauthorized use of goods by bailee

19.9 TERMINATION OF BAILMENT	
4. Termination of Gratuitous Bailment	A gratuitous bailment may be terminated any time
5. By Death	A gratuitous bailment terminates by the death of either the bailor or the bailee

19.10 DEFINITION OF PLEDGE [Section 172]	
Rights of a Pawnee	
1. Right of lien: [section 173]	<p>This right can be exercise until:—</p> <ul style="list-style-type: none"> ▪ Performance of the promise is fulfilled or debt has been satisfied ▪ Interest due on the debt has been re paid ▪ All necessary expenses incurred by him with respect to the possession has been repaid
2. Right to receive extraordinary expenses incurred: [section 175]	The Pawnee can recover from the pawnor extraordinary expenses for the preservation of the goods pledged.
3. Rights where pawnor default	<p>In case of default by the pawnor, Pawnee can exercise any of the following rights:</p> <p>(i) He can sue the pawnor upon the default in redemption of the debt or performance of promise; or</p> <p>(ii) Pawnee can sell the things pledged on giving the pawnor reasonable notice of sale.</p> <p>In case, sale does not fully meet the amount of the debt, Pawnee can proceed for the balance. If, on the other hand, there is any surplus that has to be accounted for to the pawnor.</p> <p><i>A reasonable notice must be given to pawnor prior to any such sales so that:</i></p> <p>(a) The pawnor may meet his obligation as a last chance;</p> <p>(b) He can supervise the sale to see that it fetches the right price.</p>

19.11 RIGHT OF PAWNOR [Section 175]	
1. Right to redeem goods pledged	The pawnor has a right to take back the goods pledged on repayment of the debt with interest and other charges
2. Right to notice in case of sale by Pawnee	The pawnor has a right to receive a reasonable notice in case the Pawnee intends to sell. Any non compliance thereof by Pawnee would entitle the pawnor to claim damages from Pawnee.
3. Right to surplus	In case of sale, the pawnor is entitled to receive from the Pawnee any surplus that may remain after satisfaction of debt.
4. Right to accretion	
5. Right to compensation	If any loss is caused to the goods because of mishandling or negligence on the part of the Pawnee, the pawnor can recover the same.

19.12 PLEDGES BY NON-OWNER

1. Pledge by a mercantile agent:	Any pledge made by him shall be valid, provided following conditions are satisfied:—	
	A	He must be in possession either of the goods or the documents of title to goods,
	B	Such possession must be with the consent of the owner.
	C	The pawnor must act in good faith; and
	D	The Pawnee should have no notice of the pawnor's defect of title, if any.
2. Pledge by person in possession under a Voidable contract	Where a person obtains possession of goods under a Voidable contract the pledge created by him is valid provided: (a) The contract has not been rescinded before the contract of pledge, and (b) the Pawnee acts in good faith	
3. Pledge by co-owner in possession.	Pawnee will get a valid title provided he acted in good faith	

20.9 DIFFERENCE BETWEEN CONTRACT OF BAILMENT AND PLEDGE

<u>Basis of Difference</u>	<u>Contract of Bailment</u>	<u>Contract of Pledge</u>
1. Purpose	Bailment might be for any purpose	Pledge means a bailment for some specific purpose i.e. as security for payment of debt
2. Usage of goods	Bailee is entitled to use the goods as per the terms of Bailment	Pawnee can not use the goods pledged
<u>Basis of Difference</u>	<u>Contract of Bailment</u>	<u>Contract of Pledge</u>
3. Right to sell	Bailee can either retain the goods or he can sue the bailor for his dues	After providing a due notice pawnee has a right to sell them

CONTRACT OF AGENCY

SECTION TO BE USED IN THIS ACT		
SECTION	TOPIC	PARA No
Section 182	INTRODUCTION - CONTRACT OF AGENCY	18.1
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Section 187	AGENCY BY EXPRESS AGREEMENT	18.3
Section 191	SUB-AGENT	18.6
Section 237	IMPLIED AGENCY	18.3

18.1 INTRODUCTION - CONTRACT OF AGENCY [section 182]	
1. Agent	A person appointed to work for another person on his behalf is known as agent.
2. Principal	A person who is represented from the acts of an agent is called the 'principal'.
3. Agency Contract	A contract between an agent and his principal is known as contract of agency.

18.2 ESSENTIAL OF A CONTRACT OF AGENCY	
1. Agreement	<ul style="list-style-type: none"> There must be an agreement between principal and agent. Such agreement may be express or implied.
2. Contractual capacity	<p><u>According to section 183.</u></p> <p>"Any person who is of age of majority according to law to which he is subject, and who is of a sound mind may employ an agent."</p>
3. Consideration	<u>According to section 185</u> of this Act no consideration is required to create an agency.
4. Privity of contract between principal and third party	An agent acts on behalf of his principal. Any act done by him within the scope of his authority will be binding on the principal.
5. Agent is personally liable to principal	<p>An agent is personally liable to principal.</p> <p><u>Exception:</u> - Where agent is minor or person of unsound mind.</p>

18.3 HOW THE AGENCY IS CREATED	
1. Agency by Express Agreement-	A person, who has a contractual capacity can appoint another as his agent either by the words of mouth or by making written agreement.

The Indian Contract Act Notes

Contract of Agency

[section 187]					
2. Agency by Implied Agreement- [section 237]	<p>Agency relationship can also be created by conduct of parties, and circumstances of case, the same is known as implied agency.</p> <p><u>Agency by implied agreement may take any of following form:-</u></p> <table border="1" data-bbox="456 310 1450 653"> <tr> <td data-bbox="456 310 727 573">(a) <u>Agency by estoppels</u></td><td data-bbox="727 310 1450 573"> <ul style="list-style-type: none"> ▪ If some person, either by the words of mouth or in writing or by his conduct induces another person to believe that someone is working as his agent, in reality he is not his agent. ▪ Such transaction will be binding on the person so representing and he will be liable as principal. Such agency is known as agency by estoppel. </td></tr> <tr> <td data-bbox="456 573 727 653"><u>Agency by holding out</u></td><td data-bbox="727 573 1450 653"> <p><i>This agency comes into existence when principal himself holds out that someone is his agent.</i></p> </td></tr> </table>	(a) <u>Agency by estoppels</u>	<ul style="list-style-type: none"> ▪ If some person, either by the words of mouth or in writing or by his conduct induces another person to believe that someone is working as his agent, in reality he is not his agent. ▪ Such transaction will be binding on the person so representing and he will be liable as principal. Such agency is known as agency by estoppel. 	<u>Agency by holding out</u>	<p><i>This agency comes into existence when principal himself holds out that someone is his agent.</i></p>
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<u>Agency by holding out</u>	<p><i>This agency comes into existence when principal himself holds out that someone is his agent.</i></p>				
3. Agency by Necessity	<p><i>There are certain situations, where it becomes necessary for the person to act as an agent of another person without his authority. Such agency is known as 'Agency by necessity'.</i></p>				
<u>When Such Agency comes into existence</u>	<ol style="list-style-type: none"> 1. Act was done in good faith. 2. Communication with principal was not possible. 3. The act was done with the objective of saving the interest of principal 4. In conducting the act due care has been exercised by agent 				
4. Agency by ratification	<ul style="list-style-type: none"> ▪ Where a person has done some act for another person without his prior authority or consent. Later on the person for whom such acts was done can either reject them or may accept them. ▪ A situation where he accepts those act, he would becomes bound by the acts as these have been done by his authority or consent. ▪ The relationship of agency arising out of situation is known as agency by ratification. 				
<u>When Such Agency comes into existence</u>	<ol style="list-style-type: none"> (a) <i>Acts was done on behalf of principal</i> (b) Existence of the principal (c) Contractual capacity: The person on whose behalf the act is being done, at that time he must have contractual capacity. (d) Full knowledge of principal: Principal prior to ratifying such act must have full knowledge about that act. (e) Only lawful act can be ratified. (f) Entire transaction need to be ratified, where a principal ratify only a part of transaction, it would be treated as ratification of entire transaction. (g) Ratification can be done by principal only. (h) Ratification needs to be done within a reasonable time. (i) Only those acts which principal has the authority to perform can be ratified. 				

Exercise 1

Question 1

State whether following ratification are valid or in valid:

	<p>(a) RAM sells goods which were purchased by RAM's agent without RAM's instruction.</p> <p>Answer.....</p> <p>.....</p>
	<p>(b) RAM ratifies the acquisition <i>of</i> goods by <i>JAI</i>, <i>i.e.</i> his agent who acquired those goods in his own name without RAM's authority.</p> <p>Answer.....</p> <p>.....</p>
	<p>(c) RAM a minor, on attaining majority ratifies the agreement made on his behalf during his minority.</p> <p>Answer.....</p> <p>.....</p>
	<p>(d) RAM ratifies 60% <i>of</i> the purchase <i>of</i> goods by <i>JAI</i>, his agent who acquired those goods on behalf of RAM without his authority.</p> <p>Answer.....</p> <p>.....</p>
	<p>(e) RAM ratifies the act of <i>JAI</i> who withdrew money after forging RAM's signature.</p> <p>Answer.....</p> <p>.....</p>
	<p>(f) A company ratifies the contracts entered into by the promoters.</p> <p>Answer.....</p> <p>.....</p>
	<p>(g) A company ratifies the act done by a director on behalf <i>of</i> a company which is <i>ultra-vires</i> the company.</p> <p>Answer.....</p> <p>.....</p>

18.4 DUTIES OF AGENT	
1. Reasonable care	An agent must carry his act with a reasonable care, and diligence. In case of any loss to principal due to negligence, agent would be personally liable to him.
2. Directions of Principal	An agent is required to perform his task according to directions of principal.
3. Use of Diligence	It's a duty of agent to use all reasonable diligence in communicating with his principal and in obtaining his instructions.
4. Not to act at his own	An agent must not act at his own, while dealing with third party.
5. Secret Profit	An agent is not expected to earn any secret profit in any transaction made by him with third party.
6. Account for Personal gain	The agent is bound to pay all sums received by him on behalf of his principal. Even though deduction of money in respect of advances made or expenses-incurred by him in performing his duty is permissible.
7. No Delegation	Agent cannot delegate his authority to a third person without the consent of the principal except in case where the nature of business requires such delegation.

18.4 DUTIES OF AGENT	
8. Establish his own title	The agent should not set up his own title or the title of the third party to the goods or property received by him from his principal in the capacity of an agent.
9. Protection where principal died or become insolvent	Where, an agency is terminated due to principal becoming insolvent or dying, the agent is bound to take all reasonable steps on behalf of the representative for the protection and preservation of the interest of deceased principal.
10. No disclosure of information to outsiders	Any information obtained by agent during the course of his employment should not be disclosed to an outsider.
12. Render proper A/c	An agent is duty bound to render proper accounts to his principal on demand

18.5 RIGHT OF AGENT	
1. Right of Remuneration	An agent has a right to receive remuneration as agreed under the term of agreement and in absence of an agreement reasonable remuneration shall be paid to him.
2. Right to Recover expenditure	An agent has a right to retain amount spent by him towards advanced or other expenditure incurred in the operation of business of agency.
3. Right of Lien	In the absence of any contract to the contrary, an agent is entitled to retain goods, paper and other property, whether movable or immovable of the principal received by him until the amount due to him as commission, disbursement and services in respect of the same has been paid or accounted for to him.
4. Right to Recover loss	An agent has a right to get compensation from principal for all losses suffered in discharging his duty as an agent.

18.6 TYPES OF AGENT	
1.Sub-Agent [section 191]	<ul style="list-style-type: none"> ▪ A person employed by and acting under the control of the original agent ▪ Sub-agent acts under the control of original agent ▪ There exists a relation of principal and agent between original agent and sub-agent.
<u>Situation-1</u>-Where the appointment of sub-agent is proper, his relationship with agent and principal would be as follows	
<ol style="list-style-type: none"> 1. In all transactions and agreements which are undertaken with third party by sub agent, the Principal will be represented. 2. The original agent will be liable to the principal for the acts of sub-agent. 3. The sub-agent will not directly be liable to the principal. He is appointed by and works under the control of original agent, thus will be liable to him only. 	
<u>Situation-2</u>-However where the appointment of sub agent is not proper	
<ol style="list-style-type: none"> 1. The principal will not be represented by the acts of subagent. 2. The original agent will be liable for the acts of sub agent both to the principal and to third person. 	
2.Substituted Agent:	<ul style="list-style-type: none"> ▪ A substituted agent is a person who is named by the agent and holds express or implied authority from the principal to act for the principal. ▪ There exists a Privity of a contract between the principal and substituted agent

	<p>for such part of business of agency which is entrusted to him.</p> <ul style="list-style-type: none"> ▪ Although a substituted agent is an agent of the principal but he is named by the original agent at the request of principal. [section 194] ▪ An agent is required to exercise same amount of discretion as a man of a ordinary prudence would exercise while naming substituted agent for the principal. Otherwise he is personally responsible to the principal for the acts or negligence of the substituted agent. [section 195]
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18.7 RELATIONSHIP OF AGENCY BETWEEN HUSBAND AND WIFE

Quest-6	K is the wife of A. She Purchased a saree on Credit from B. B Demanded the amount from A. A refused to make the payment. B filed a suit against A for the same amount. Decide in light of Indian Contract Act, whether B would succeed.
Hint	<p>According to Indian Contract Act, 1872, Where any husband and wife are living together, the wife is presumed to be an agent of her Husband. Thus, the husband is bound to pay the bills for household credit purchased by her wife provided the following conditions are satisfied:-</p> <ol style="list-style-type: none"> 1. Husband and wife must be living together 2. They are living in a Domestic establishment of their own and wife should be in charge of domestic establishment. 3. Wife must purchase the Article suited to the style in which they are living <p>Thus if all above conditions are satisfied wife shall be assumed as an agent and husband is liable</p> <p>In given case, K is the wife of A. She Purchased a saree on Credit from B. B Demanded the amount from A. A refused to make the payment. B filed a suit against A for the same amount.</p> <p>Conclusion-Based upon the assumption that all above conditions are satisfied we may conclude that A is liable to bear the cost of sarees as purchased by his wife K.</p>

18.8 TERMINATION OF AGENCY

A. Termination of Agency by Act of Parties

1. By agreement between principal and agent	The relationship of agency can be terminated by a mutual agreement.
2. Revocation by the principal	The principal can revoke authority of an agent at any time, before the authority has been exercised so as to bind the principal. Such revocation may be either express or implied by the conduct of the parties.
However, the principal is not empowered to revoke agent's authority under the following situation and such agency is known as 'Irrevocable Agency'.	
<u>Agency coupled with interest: [section 202]</u>	"Where the agent has himself an interest in the property which forms the subject matter of agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.
<u>Where agent has incurred personal liability</u>	No agency can be terminated, where the agent has incurred his personal liability
<u>Where the agent has partly exercised his authority</u>	it becomes irrevocable, as far as acts which has already done in the agency. [section 204]
<u>where agency was for</u>	In circumstances where agency was for a fixed period, principal must make

18.8 TERMINATION OF AGENCY

a fixed period, adequate compensation to agent, for pre mature revocation of agency relationship.

3. Termination by an agent through renouncing the business:

An agent after giving reasonable notice to the principal may also renounce the business of agency.

B. Termination of Agency by Operation of Law

1. Completion of business

Where the relationships of agency has been created for doing particular business. As soon as the business is completed, agency will be terminated automatically.

2. Expiry of time

Where the agent has been appointed for a particular period of time, at the expiry of that period, he ceases to be an agent.

3. Destruction of subject matter

An agency which has been created to deal with particular subject matter will be terminated on the destruction of that subject matter.

Exercise 2

Provide the amount of Interest in following agency which are coupled with interest

Case-1 Ravi lends 1,00,000 to Namit. At the time of Recovery, Namit refused to pay, however agreed to transfer his Car to Ravi and authorized him to sell it off to recover his dues.

Answer:-.....

Case-2 Suppose in above case, Ravi was a Car dealer and he also demanded a commission which he normally charged as Dealer in addition to his dues.

Answer:-.....

18.9 CIRCUMSTANCES WHERE AGENT CAN BE HELD RESPONSIBLE PERSONALLY

1. Where the principal is a Foreign Principal

2. In Case of Undisclosed Principal

3. In Case of Incompetent Principal

4. In Case of Principal not in Existence

5. In Case of Acts not Ratified

6. In Case of Acts in his Own Name

7. In Case of Express Agreement

8. In case of Custom or Usage of Trade

Exercise -2A

Discuss as to who would be liable(out of Principal and Agent) in following cases

1. Where Inspite of Instruction from Principal, Agent Still purchased the goods in his own name
Answer:-.....
2. Where it was expressly provided in agreement that Principal would have no liability
Answer:-.....
3. Where Agent has done some work which Principal Refused to Ratify
Answer:-.....
4. Where Agent is working on behalf of Principal who is Incompetent to Contract
Answer:-.....
5. Where it was agreed between Principal and agent that, Agent Would not disclose the name of Principal and Agent would deal with 3rd Party as a Principal
Answer:-.....

18.10 POSITION OF PRINCIPAL IN RELATION TO THIRD PARTY

(i) Liability of the principal for the acts with in an authority of agent:

The principal will be responsible further acts and contracts of agent with third party

(ii) Liability of the principal when agent exceeds authority

- Where an agent does acts, some of them fall within the scope of authority and others are beyond the scope.
- If the acts within and beyond the scope of authority can be separated, the principal will be bound by those acts which are within the scope of authority of the agent.
- if the acts cannot be separated, the principal will not be bound by such acts and he is entitled to repudiate all acts done within or beyond the scope of agent's authority

Exercise-3

Mannu, instructed Suraj to procure an insurance on the ship. Suraj procures insurance on the ship as well as cargo. State the legal position in each of the following alternative cases:

Case (a) If two separate insurance policies are issued viz one for ship and another for cargo.

Answer:-.....

Case (b) If one comprehensive insurance policy is issued for both ship and cargo.

Answer:-.....