

Contract of Sale

1 Agreement → Complimentary to each other
Buyer → a person who buys or agrees to buy
Seller → a person who sells or agrees to sell

2 Goods
 Means every kind of mov. Property other than actionable claims, Money in Circulation
 Also include Stock & Shares, Growing Crop, Grass, Things attached to a forming part of land which agreed to be severed

3 Delivery
 Voluntary transfer of Possession from one Person to another
Actual D. Cr. are physically D. to the buyer/ Person auth. by the latter buyer
Constructive D. D. is comp. without change in possess. of goods → Cert of Bail → Sale/Retain App.
Symbolic D. Means of obtaining the possession of Cr. is delivered (NSP) (hold)

4 Doc. of title to Cr. V. Doc. Showing title of Cr.
 • Ownership is f/f by mere delivery of through a doc. of ownership
 • Share warrant (Share doc)
 • Share certificate
 • Ownership is not f/f by mere delivery of the doc. (name of owner written)
 • Share certificate

*** Cont. of Bailment**
 Bailor → Holder
 Bailor → Owner

5 Mercantile Agent
 An agent who has the auth. to sell Cr. / Commission for the purpose of sale in ordinary course of business

Ex. Cr.
 → Specific Cr. - mean Cr. identified & agreed upon at the time of C.O.S. is made.
 → Ascertained Cr. - mean Cr. identified in accordance with agree. after C.O.S.
 → Un Ascertained Cr. - not identified at the time of C.O.S. is made

Future Cr. (A.T.S.)
 To be acquired/ Produced/ manufactured by the seller.
 Guaranteed by the Seller to sell

Contingent Cr.
 acquisition of which by the seller depends upon an uncertain event (cont.) [Mansisa]
 Not Cr. as intended

6 Property
 • Ownership / General Property in Cr.
 → C.O.S → property in Cr. must be f/f to buyer
 A → B → C
 A → B → C → D
 A → B → C → D → E
 A → B → C → D → E → F
 A → B → C → D → E → F → G
 A → B → C → D → E → F → G → H
 A → B → C → D → E → F → G → H → I
 A → B → C → D → E → F → G → H → I → J
 A → B → C → D → E → F → G → H → I → J → K
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 A → B → C → D → E → F → G → H → I → J → K → L → M → N → O → P → Q → R → S → T → U → V → W → X
 A → B → C → D → E → F → G → H → I → J → K → L → M → N → O → P → Q → R → S → T → U → V → W → X → Y
 A → B → C → D → E → F → G → H → I → J → K → L → M → N → O → P → Q → R → S → T → U → V → W → X → Y → Z

7 Insolvent
 A person not able to pay debts in ordinary course of business / Cont pay debts which are due.

8 Price
 Money consideration for sale of Cr.
 Monetary term

add color / or defined only by description / sample

offer to buy / sell + Acceptance of offer → C.O.S. (oral/writing / both)

Sell & Agreement to sell

C.O.S → 1 Property in Cr. + f/f to buyer immediately = sell
 2 Property in Cr. + f/f to buyer at a future date or after fulfilment of cond. are to be fulfilled = A.T.S
 Time elapses or cond. are fulfilled → A.T.S → Sell

Subject Matter of C.O.S
 → Existing & Future Cr. with out the knowledge of B.S.
 → Cr. Perished before making of Contract → void
 → Cr. Perished before sale but after A.T.S. → Void

- 3-11 Sale v/s A.T.S
- 3-12 Sale v/s Time Purchase
- 3-13 Sale v/s Bailment
- On boots of Cr.

Stipulation as to Time (Sec 11)

When Cond. is to be treated as warranty

Stipulation
 Anything which is reqd. to complete C.O.S

Time for payment of price → Not essential to C.O.S unless a different intention appears from the terms of C.O.S

Contractual
 → Voluntary waives of the performance of cond. by buyer. **Low Quality Rice**
 → Buyer elects to treat breach of Cond. as breach of warranty claim d. - instead of repudiating
 → Cond. is not severable and buyer partly & fully accepted the Cr. App.
 → Fulfillment of Cond. excused by law by person imp. - as otherwise. **Ban on import**

Cond.
 Essential to main purpose of C.O.S
 Breach → Repudiation
 Can be treated as breach of warr.

Warranty
 Collateral to main purpose of C.O.S
 Breach → Claim damages
 Can't be treated as breach of Cond.

Expressed Cond., which are agreed upon b/w the parties at the time of Contract & Express provided in the Contract.
Implied Cond., which are presumed by law to be present in the contract

Cond. as to title
 Sell must have the right to sell, In A.T.S seller should have the right at the time of passing property

Sale by Description
 Cr. shall correspond with description
 Buyer not bound to accept & pay

Sale by Sample
 Bulk shall correspond with sample in quality
 Opportunity to buyer to compare the bulk with sample.
 Cr. shall be free from any latent defect / hidden defect

Sale by Sample as well as desc.
 Bulk - Can Repudiate

Cond. as to Quality / fitness
 No such implied Cond.

Seller deals in those Cr. (Caveat Emptor)

Notes
 → Earlier Part of ICA 1930
 → 1 July 1930

Cond. as to Merchantability
 Cr. bought by des. + seller deals in such Cr. → Goods should be of merchantable qua.

Purpose of purchase (known to seller by buyer)

Buyer depends upon seller's skill & judgment.

Cond. as to wholesomeness
 Applicable in case of eatables

If Cr. are examined no such implied Cond.

Not Applicable under patent / trademark

Caveat Emptor → Fitness as to Quality → Priest V Last (Hot water bottle)
 Bombay Burma Trading Corp Ltd. vs Aga Muhammad Chamber, railways sleeper

Appropriation: - G in deliverable state

B/A/C → Buyer / Agent / Carrier

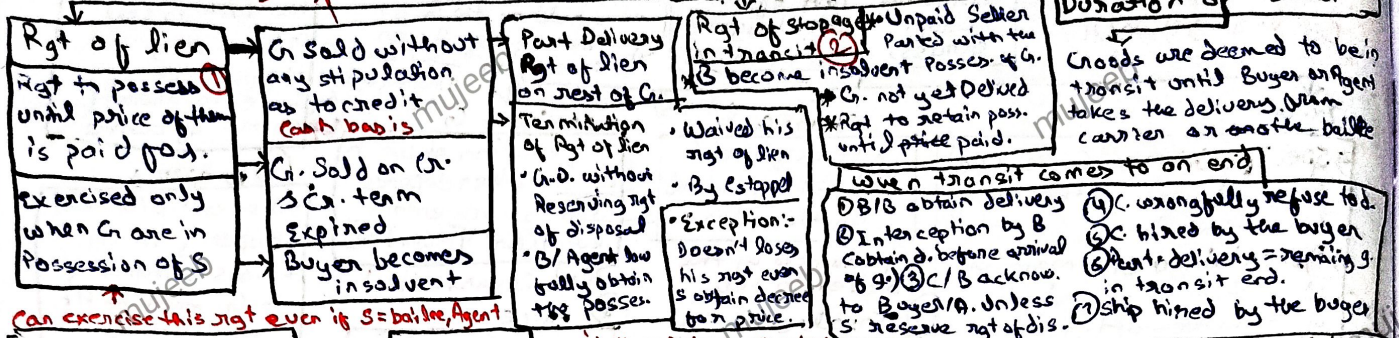
Prima facie → Based on first impression
 Called to pay whole price or B/A/C/contn payment

Concurrent → Simeo

Decees → official Court order
 Rgt of lien → End → Rgt of stoppage in transit → Start

Sub sale → Sale of G by buyer (P.O.V) of first seller

Right of (Unpaid seller)



Can exercise this Rgt even if S: buyer, Agent

Effect of sub-sale / Pledge by buyer
 Buyer sells/pledges the G → Rgt of Lien/stoppage in transit not affected
 Based on the principle that 2nd buyer can't stand in better position than G faith & form consid.

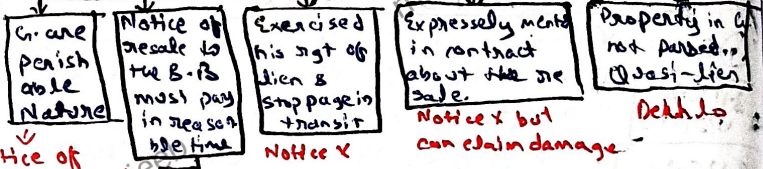
Exception

When the S has assented to the sale, pledge or other disposition of G made by the buyer

If B +/f doc to title to another person, G faith, form consid. credit as

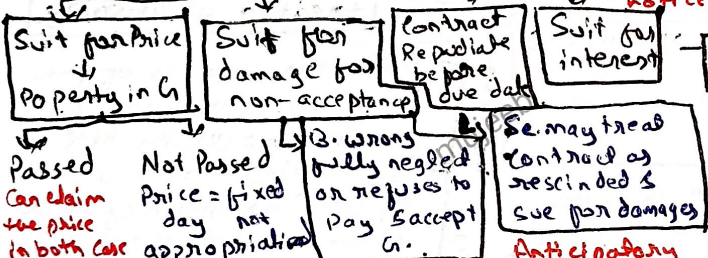
if this Rgt are exercised then the contract doesn't end
 Buyer can demand G in exchange of price.
 Stoppage in transit is effected
 1) By taking possession of Goods by seller
 2) By giving notice to carrier to not deliver the Goods

Rights of Resale



Notice of Resale is not needed only when notice is given
 Profit on resale: - Retain by seller
 Loss on resale: - Boin damages from B

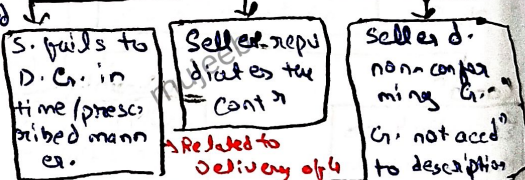
Rights of Unpaid seller



Passed Can claim the price in both case
 Not Passed Price = fixed day not appropriated
 B. wrong fully neglected on refuses to pay
 S. may treat contract as rescinded & sue for damages
Anticipatory Breach of Contn. [I.C.A]

Rights of Buyer agst seller
 Damages for non-delivery
 Suit for specific performance
 Contract specific & ascertained G or Unique/special Nature
 Damages not adequate for B
 Suit for Breach of Warranty
 Repudiation of contn before due date
 Suit for Damages Int. (same)

Breach of Contn by Seller



Rules of Auction sale

- Goods sold in lots: Each lot sale can't
- Completion of contn of sale when the hammer falls
- Rgt to Bid may be reserved: can allow anyone to bid or decline to bid
- Sale not notified by seller: Permission to action is reqd from seller (book)
- Reserved Price: Base Price
- Pretended to bid: Knowly raised the bid: Buyer can recover the Price unless agreed otherwise

Buyer not bound to return rejected Goods

Buyer not bound to return G. but must inform the seller about such rejection
 kudi se aake de jao

Liability of Buyer for neglecting/refusing Delivery of Goods

Buyer does not take Delivery

Buyer is liable for any loss incurred by S for charges for care, custody of G

Right of seller will not be affected if the contn is repudiated due to buyer not taking delivery

Seller request to take delivery and buyer ignores/not responded within reasonable time

Unless agreed otherwise

ways sleep
Court order
of stoppage
right → start.

Sale of G by
a.v. of first seller

of Transit

deemed to be in
the Buyer's hands
delivered when
an order is placed
at end

fully refuse to d.
by the buyer
remains at
sit end.

it is effect
is Good by seller
wants to not

> NE

Property in G
not passed
Quasi-lien

Age

elig.

or prom b.

Seller

Seller d.
non-compar
ming G.

G. not accord
to description

Ation sale

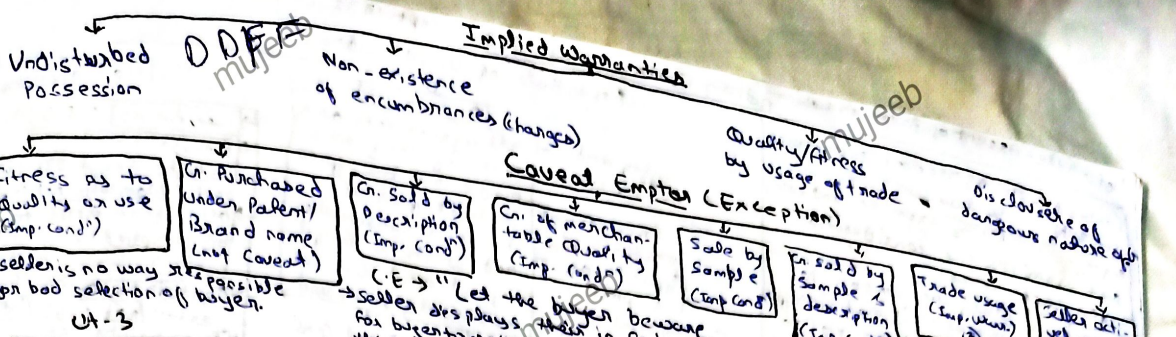
lots: each lot
spoke cont
only of sale
in falls
be reserved:
ne to bid

ed by seller
action is
rem (book)

Base Price

to bid:
only raised
bid: Buyer
cover the price

Unless
agreed
otherwise



Passing of Property

Identification (ascertained) = cont. of specific & ascertained = thereby

Intention of Parties

Intention can be ascertained

To the term of contract
To the conduct of parties
To the circumstances of the case

Unascertained G.

Property not t/f until ascertained

Rules for passing - Unas - G.

Sale of Unas. G. by description

Appropriation

Unas / Future G.

G. quality and conform description

Deliverable state

Uncond. Appropriated to the

App. must be made by

Seller with consent of B.

Buyer with consent of S.

It can be before of After App.

Delivery of Goods to the

Carrier: - Delivers to the

B/A/C and doesn't reserve

Rgt of disposal, he is deemed

to uncond. App. the g. to the

Cont. (Buyer will be liable)

Sale by a person, not the owner

Buyer will not acquire any

title to goods unless

Precluded from denying

Stages of G. while passing

of Property (specific)

Sp. G. in a deliverable state

Property passes when

Contract is made. (Pen)

Sp. G. to be put in d.

(Timber) Buyer is informed

thereof.

Sp. G. in a deliv. state

and seller has to do

anything to ascertain

the price Parties when

Price is ascertain and

informed to buyer.

G. sent on approval

Sale on return basis

Signifies his appl. to

the S

Unless agreed upon

fixed/Reasonable

Time period expi.

Risk Prima fade passes

with property

Exceptions, not the owner

Sale by a merchantile

possession / title (consent of G, Ord. or, do. f. Buyer

Sale by one of joint owners

possession by permission (1) B.O.P. Buyer

Before cont. can be rescinded (Fraud, coercion,

undue influence, misrepresentation)

Sale by one who has sold the G, but cont. in

possession thereof Sell, pledge and dispose to

party

Sale by buyer obtaining possession before

the property in G. has vested in him. (G. Sale)

Not in hire purchase

Effect of Estoppel owner is estopped by the

conduct from denying seller's authority to

(Horse) sell.

Sale by an unpaid seller

Sale under the provisions of other Act

Official Receiver / Liquidator of Co.

Finder of G. (C.P.A 1872)

Sale by pawnee (mortgage)

B does something

which is equal

to accepting G.

3rd sell, pledge

cond. App. Reservation of Rgt of Disposal

Sale for cash only

on Return basis

Performance of Contract of Sale

Duties of B/S

Accept & Deliver

the Goods

accord to term of cont.

Payment & Delivery are

Concurrent Cond.

Expressed or Implied in cont.

Time for D.

G. in possession of a 3rd Party: - Not D.

Withacknowledges to B that he hold the G on his behalf.

Rules Regarding the D. of G.

Delivery: Agreed or stated D. spot G. in pass.

B / any authorized person

Effect of Part D.: - Assumed full D.

for the purpose of passing of property

Buyer to apply for D.: S not bound to D. until B applies for delivery.

Place of D.:

Mentioned in contract

Not Mentioned in contract

D. all such Ex G. Future G. Cont. G. where G. are at the time of cont. produced at the time of AT.S. Manufact. AT.S. in cond. cont.

Wrong Qty of G. D.

Less than ordered

Accept + Damage

Reject all

More than ordered

Accept extra G. all

Reject all

Not Accord to description

Exp. borne by S

Installation deliveries: - B. not bound, unless mentioned in

Delivery to carrier: - Rgt of Disposal se dekhlo (same)

Deterioration during transit: - B. will bear loss even if seller agree to deliver at his own risk

B. rgt to examine the goods: - S must provide reasonable opportunity to examine the good whenever G. conform to the contract

Rules related to Acceptance of D. of G.

Buyer deemed to have accepted the good

Inform the S

G. D. → B does something which effect the ownership of seller (Sells to C)

Retain the G. without informing S after expiry of reasonable time period

Essentials of Valid Contract

Contract:- An agreement enforceable by law
 Sec 2(b) by law
Agreement:- Every promise and every set of promises the consideration for each other.
 Promise:- When the person to whom the proposal is made signifies (gives) his assent thereto (to that), the proposal is said to be accepted. Proposal when accepted becomes a promise (Acceptance)
 Agreement vs Contract

Given in IO
 Offer and acceptance
 Free consent
 Capacity of the parties
 Consideration (quid pro quo)
 Lawful consideration and with a lawful object and are not expressly to be void
 Lawful consideration and object
 Not expressly declared to void (come with out prob. by law)

Not given by IO
 Two parties S & B (Parties)
 Must intend to create legal obligation
 Social/Domestic not enforceable
 Other formalities to be complied with in certain cases (insurance)
 Certainty of meaning
 Possibility of performance of an Agreement (Assibility)

TYPES OF CONTRACT

Validity or enforceability
 Valid Contract: Binding, enforce. All ess. of valid
 Void Contract: A contract which means ceases to be enforce by law become void when it ceases to be enforce
 Voidable Contract: An agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of others is a voidable contract.
 Not free consent (C/M/A/I (Inful/void))
 Failure to perform (at the option of B)
 Rescissible time
 Illegal contract: Law forbids (void)
 All illegal = void (Mundan)
 Unenforceable Contract: Becz of technical defects or barred by limitation

Annation
 Express Cont.
 Written
 Implied Cont.

Reasonable
 Depends on the facts & circumstances of the case

Revocation

A proposal can be revoked at any time before comm. of it acc. is compl. as against the proposer. An acceptance may be revoked at any time before the comm. of accept. as against the acceptor.

Acceptance

When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise.

Rules regarding a valid

- Made (Present/absent) (Written/Oral) (Specified/Prescribed time) (Reasonable time)
- Acceptance can be given only by the person to whom offer is made. Specific offer
- Must be absolute and unqualified. Not counter offer.
- The acceptance must be communi.
- Mere silence is not acceptance (Missing box)
- Acceptance by conduct/Implied Acceptance (Sale on Return basis)

Proposal/Offer

When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtain the assent of other such act or abstention, he is said to make a proposal.
 Essentials: 1) Promise/Offeror → offer → promisee/acceptor
 2) Willingness 'to do' or 'not to do' → valid offer 3) with the view to obtain assent 4) offer → (+) or (-)

Classification of offer

Gen. offer: Made to public at large, can be accepted by anyone at any time - cont. offer
Special/Specific: Made to specific or ascertained
Counter offer: Modification in terms of orig. offer
Cross offer: A offer call B offer to buy call
Standing/Cont./open: Remain open over a period of time
Essential/Rules:
 1) It must be capable of creating legal relations. Social activities not legal.
 2) It must be certain, definite and not vague - oil
 3) It must be communicated to the offeree - Missing box
 4) It must be made with a view to obtaining the assent of other party
 5) It may be cond. - online payment
 6) Offer should not contain a term the non-observance of which would amt. to acceptance. No reply in 3 days
 7) Express or implied
 8) Offer is diff. from statement of intention/Announcement Answer to a question statement to a price
 9) An invitation to make an offer

Communication of offer & Acceptance

Offer:- Completed when it comes into the knowledge of person to whom it is made. He must read or receive the message contained in the letter.
Acceptance:- As against the proposer, when it is put in the course of transmission to him so as to be out of the power of acceptor to withdraw the same. As against the acceptor, when it comes to the knowledge of the proposer. Non-delivery or lost in transit will not affect validity of communication of special cont. 2-29 Off it doesn't give reasonable notice on its face that it contains special cont. - cont. not valid. Comm. of performance - If an offer is made in the form of a promise in return for an act, the performance of that act, even without any communication though treated as acceptance of offer (Influence)

Consideration (Something in return) **Consideration** (void. Pro. void)

* when at the desire of promisee & promisee abstains from doing or doing such an act as does or abstains from doing any other person & has done or done only (Bade Dunga prasad vs Bai) promisee or any other person (old judges) **consideration = promise/performance that parties want with each other.**

Legal Rules Regarding Consideration

- 1) Consideration must move at the desire of promisee
- 2) Consideration may move from promisee or any other person.
- 3) Executed or executory consideration already provided: Executed consideration to provide in fut: executory
- 4) Consideration may be past, present or future: As soon as promisee promises to pay for act done by the promisee in past (for promisee), the act so performed by promisee for promisee shall become the consideration for the amount promised & such past act will be termed as past consideration (Morden) Cash sale (present) credit sale (future)
- 5) Consideration need not be adequate. Consideration must be present, it is immaterial whether consideration is adequate or not. Return need not = given
- 6) Person of what one is legally bound to perform - Agn. bro. his detent & larger to cover & above the fee, in the event of success of case would be void [witness]
- 7) Consideration must be real not illusory: Not physically or legally impossible. (Being life to a dead body)
- 8) Consideration must not be unlawful, immoral or opposed to public policy: 9000 for govt job.

Validity of an Agree. without consideration

- 1) Natural love and affection (Natural love & affection btw the parties)
 - (a) Parties near relationship
 - (b) Must be in writing
 - (c) Also next - under the law
- 2) Compensation for past services wholly or partly voluntarily performed by promisee in existence intended to compensate
- 3) Promise to pay time barred - 30 year Nazim - 30 years - writing signed by promisee
- 4) Agency: no consideration is necessary to create an agency (Chinagan)
- 5) Completed gift: Consideration not required
- 6) Bailment: No consideration is required to affect the contract of bailment - known as gratuitous bailment. Bailment & Agency is taken on the ICA
- 7) Charity: If a promisee undertakes a liability on the other promisee of promisee to contract to the charity, then contract shall be valid.

But by a third party to a contract (1928) - change to a contract (1930) - Exceptions - Random - If stranger is benefiting under such contract then he can sue. In the case of certain marriage (2-5) - Book

Capacity to contract

- Competence of the parties to make a contract
- (A) Age of majority 18th age
 - (B) Person of sound mind: A person is said to be of sound mind for the purposes of making a contract if at the time when he makes it is capable of understanding it and of forming a rational judgement as to its effect upon his interest. (Lion, Lunatic, drunk) **No sound = No contract**
- (Contract) by disqualified person: Alien enemy, Ambassador, Convicts, Corporation Existing - not enforceable now = Not contract

Position of Minor Agreement

(i) Void ab initio: Void from the beginning. Minor can't promise which creates a legal obligation.	(ii) Can be beneficiary: Nothing prevents the minor from making the other party bound to him. Promissory note in favour of minor.	(iii) Minor can always plead minority: Rule of estoppel can't be applied against a minor. Allowed to plea even falsely represent himself as major.	(iv) No ratification after attaining majority: Void ab initio. Void agreement can never be ratified. New contract necessary for the past amount.	(v) Liability for necessaries: Necessaries supplied to a minor upto any other person for whom such minor is legally bound to support. Enforceable. Minor not liable for his property.
(vi) No insolvency: Partnership can be admitted to the benefit of the partnership but can't separate.	(vii) Minor can't bind parent or guardian: Joint contract by minor and adult - adult only liable.	(viii) Surety (Convention) for a minor: Surety held liable.	(ix) Minor as shareholder: Can't, but may his law full guardian.	(x) No specific: Only. Bec 2 void no question of ratification of such agreement.

Free Consent

Consent: - 2 or more persons are said to consent when they agree upon the same thing in the same sense.

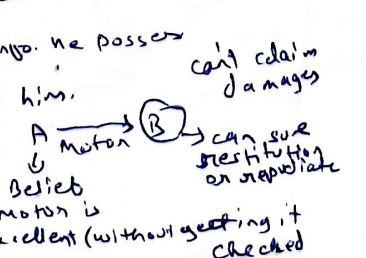
Free consent: Not caused by coercion, undue influence, fraud, misrepresentation, mistake.

- 1) **Coercion**: - is the committing or threatening to commit, any act forbidden by the Bharatiya Nyaya Sanhita or unlawful detaining or threatening to detain any property to the prejudice of any person whatever, with the intention of causing any person to do anything which he is not bound to do.
- 2) **Undue influence**: - where the relations subsisting btw the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other.
 - (i) Relations - near
 - (ii) Real & apparent authority: Master, servant, doctor-patient, fiduciary relation - relation of trust & confidence, guru-father-sun.
 - (iii) Mental distress: - Mental capacity affected temp. / perma.
 - (iv) Unconscionable bargains: - unfair - money lender & gifts.
 - (v) The object must be to take undue advantage.

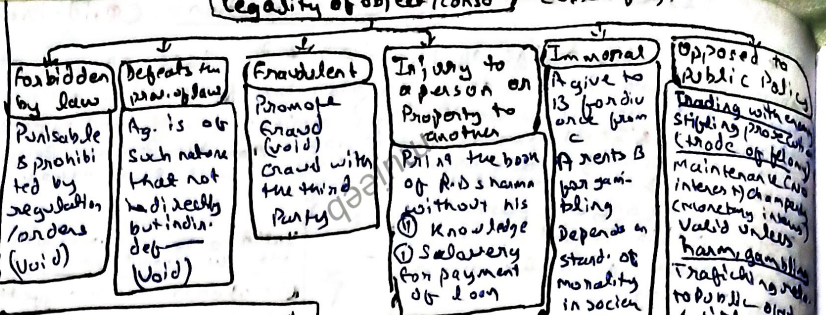
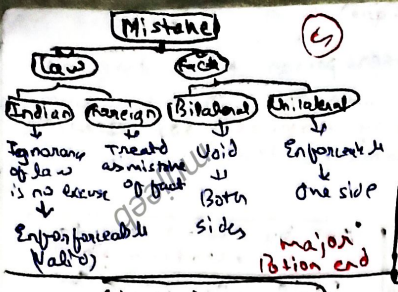
Burden of proof: - To prove void the contract the party has proof by other party - dominant - will other party - used position - consent. Transaction is unfair and unconscionable.

- 1) **Voidable**: - set aside if party needs benefit = return / repair
- 2) **Fraud**: - (i) the suggestion, as a fact, of that is true, by one who does not believe it to be true. (ii) active concealment of a fact by one having knowledge or belief of the fact. (iii) promise made without any intention of performing it. (iv) any other act fitted to deceive. (v) any such act or omission which declares to be fraudulent.

Misrepresentation: - A person suggests, as a fact, some thing which is not true, but believes it to be true, but it is not justified by the info. he possesses. Innocent. without the intention to deceive. which brings advantage to him. However, the person so misled can avoid the contract.



Validity of a contract: - Voidable at the option of defrauded party. Rescinded = Reasonable time. Sue for damages. Insist on getting on contract he should be in the position in which he would have been had the representation were true. In all cases.



- Void Agreement**
- Agreement in restraint of marriage is void
 - Agreement in restraint of trade, profession or business is void. **Exception**:
 - Sell of A/W, outgoing partner agree not to start similar, partner can't carry competing business while in partnership
 - Agreement in restraint of legal proceedings stopping someone from exercising his right through a court (time barred) **Exception**:
 - Parties agree to dispute referred to arbitration
 - Agreement - meaning uncertain - but meaning is capable of being made certain. 100 ton oil -> void, seller only deals in almond oil -> valid.

- Wagering - not void**
- Sale, purchase of share & securities with the intention of taking delivery
 - Games of skills
 - Athletic Comp
 - Prize money not exceed ₹1000
 - Chit fund: - Some invest - period - end of month - luck winner.
 - Cont of insurance: Contingent cont is valid.
- Wagering - not void**
- Valid tender / attempted performance
 - Uncond. to pay to only principal
 - Proper time & place - reasonable opportunity to examine
 - Whole obligation to pay his obligation on offer
 - 100 -> best -> only not void to attempt
 - Actual part

- Wagering - not void**
- Lotteries - Illegal
 - Cont, who is not
 - Competitions
 - Crossword puzzles
 - type of lottery based solution is predetermined
 - Horse Race: - less than 500 than
 - Wagering
 - (Gambling)

Performance of Contract

Unless a diff. contrary intention appears from the contract, the parties perform, or offer to perform, their respective promises unless such perf. is dispensed with or excused under ICh/Agn.

By whom

- 1) Promisor himself - first skill & diligence involved
- 2) Agent - pr. & consid. X, pr. is of may employ a com.
- 3) Legal representative liability is Ltd. to the state they inherit from
- 4) 3rd person Promisee acc. now can't sue promisor on pr.
- 5) Joint promisee - must jointly fulfill the performance legal rep.

Liability of Joint Promisor/Promisee

- 1) Voluntary party discharge by pr.
- 2) Any one of joint promisors may be compelled to perform whole cont. If one of joint promisee = whole cont. = call for cont. from other pr.
- 3) Default of 1 on more - Bear by other promisee equal shares
- 4) Effect of release of one joint promisor - Doesn't discharge the other of other's promise towards the promisee. And doesn't discharge the liability of other's released pr. towards other's.
- 5) Rts of promisee - If one or all die, those who can perform jointly.

Time & Place for Performance

No Application No time within reasonable time

Time: x Appis be made: certain day - any time - usual business hrs.

Application: Perms. Apply for performance in that order.

Application for duty to apply at a place & within usual business hours of promisee.

x Place, x Appis: Promisee apply then read place then perf. Chp.

Performance in manner as at time prescribed or sanctioned by promisee. made accordingly.

Parties of Reciprocal Promise

- 1) Promisor not bound to perform unless reciprocated. Promisee ready & willing to perform. Simult.
- 2) Order of party of reciprocal promise: Order expressly fixed in cont. in that order. Not order expressed -> performed in that order which nature of transaction requires (Mulla).
- 3) Liability: If party preventing event on which the cont. is to take effect. One party prevents other party from perf. -> voidable (compensated) (Can't sue for damages).

Appropriation of Payments

Debts owned several debts to the same creditor.

App of payment where debt to be discharged is indicated: Ex on implied - Applied according to that.

Not indicated: Lawful debts & payable (even time barred) not disputed debts.

Neither party appropriate: Discharge of debt in order of time (Sum of cont. as 1) Debts on same date - proportionately discharge.

Restoration of benefit under a voidable cont. if it ceases to exist: Restoration of benefit in comp. (Benefit prior to cont.)

Contract, which not need be performed

with consent of both parties

- 1) Effort of a novation new cont. substituted for old cont. (Parties may change)
- 2) Rescission: Cont. discharge (Mutual agreement)
- 3) Abandonment: After term of cont. (Substitute old with new) (But parties doesn't change)
- 4) Promisee may waive or remit part of promisee wholly or part.

Discharge of Contract

- 1) By performance
- 2) Actual perf. or attempted perf.
- 3) By mutual agreement
- 4) By impossibility of perf. (i) Unfeasible (ii) Destruction of sub - matter essential (iii) Non-capacity (iv) Declaration of opinion
- 5) By lapse of time: Examinated by limitation. No action - No remedy
- 6) By breach of contract: Breach of contract by one party (to their person)
- 7) Promisee may waive / remit part of promisee. whole or part.
- 8) Merger of rights

Succession: - both benefit & burden transfer to legal heir. Debt owned by dead person exceeds his asset in his life time then legal heir is bound to excess debts.

Assignment: Liability can't be assigned to someone else only asset can.

notice to promisee claim comp. in assent. No com.

Effect of default as to

that promisee which should be first party in cont. consisting of reciprocal promises -> liable for compensation.

Time is essential -> Voidable

Time not essential -> Void (or)

Accept void damages

Agree to do impossible (Void) Act

Initial known -> void

Subsequent known -> discharge

Initial unknown -> void

Subsequent unknown -> discharge

Promisee only -> voidable

Reciprocal promise to do certain things that are legal and also some other things that are illegal -> illegal part of promise is void.

Alternative promise, one branch being illegal, the other legal -> only legal branch alone can be enforced.

Rescission: -> in the same manner as a proposal is rescinded.

Rescission: -> in the same manner as a proposal is rescinded.

Breach of Contract

Anticipatory Breach
 - refuses altogether to perform his promise, signifies his willingness to do so.

Expressly
 Word spoken / written

Impliedly
 Conduct of one of parties

Contingent Contract
 Contract depends on event uncertain. Contract to do or not to do something in some event, collateral to such event. Date doesn't happen. **Wagers, Paise Ramch**

Rules relating to Enforcement

Time fixed

Happening: Impossible - Void

Non-Happening: Happen - void vice versa

Time fixed

Happening: Impossible or time expired - Void

Non-Happening: Happen - void

Event depends on conduct of person does anything which renders it impossible -> Impossible

Impossible event -> void (supervening)

Co-venturer: This promise to repay the debt owned by the third, in case the debtor fails to pay off the debt.

Tripartite Agreement

P.D -> Creditor (Primary)

Debtor -> Surety (Secondary)

Surety -> P.D (Implied)

Features

1) Purpose: Existence of recoverable debt is necessary, secure the payment of debt. X & X contract

2) Consideration: Guarantee without consideration is void, no need for direct consideration between creditor and secondary party consideration. A creditor to amount repayment B.P.D -> Amount need. Consideration need. by B. (Not direct)

3) Existence of liability: Legally must be legally enforceable and not time barred

4) No misrepresentation or concealment by creditor with his knowledge

5) Waiving not necessary

6) Joining of the other co-sureties not valid if not joined

Rights of a Surety

Against P.D

1) Right of Subrogation: On payment of debt on performance of guarantee duty. Surety steps in the shoes of creditor.

2) Implied promise to indemnify surety: Surety -> Recover -> Rightfully paid under the contract of Co. -> (G.O.M.P.D)

Actual Breach

1) At the time when the part of the contract is due

2) During the performance of the contract

3) Damaged due to honor of customer cheque, free cause loss of credit -> 8 reputation to him

4) Quantum Merit: As much as the party doing the service has deserved. At the time of breach part of the contract is done.

5) Only available in case of actual breach. Not available by party in default.

Remedies available

Vindictive / Exemplary Damages

1) Breach of Marriage - Hurt feeling

2) Nominal Damages: Breach but no real loss. Awarded just to establish the right to demand.

Ordinary Damages

1) Same as Special Damages

2) Restitution of contract: Broken by one party after another. All his obligations to contract are discharged.

Special Damages

1) Particular loss suffered by the party.

2) No agreement to pay damages. Can deduct on bad work.

Specific Damages

1) Particular loss suffered by the party.

2) No agreement to pay damages. Can deduct on bad work.

Quasi (relations resembling)

Law implies a promise imposing obligation on one party and can enforce right in favour of other. No offer, acceptance, promise, consent.

Contract of indemnity and guarantee

Indemnity: Security against loss from the good the loss.

A contract by which one party promises to save the other from loss caused by the promisor himself, or by the conduct of any other person. (Indemnified)

An act of god/natural event is not covered.

Types of Guarantee

1) Specific Guarantee: Single debt / specific transaction. End promise. Rep / Debt discharged.

2) Continuing Guarantee: Series of transactions. End -> revocation.

Modes of Discharge

1) By Revocation: Notice to Co. -> Debt of Co. -> novation -> Same another parties -> Mutual discharge of old contract.

2) Conduct of Co.: Variance in terms of contract without Co's consent. Release on discharge P.D. Fresh contract. Act/Omission -> Legally discharge.

3) Composition: Settlement. Promise to give time. Right of surety. P.D pay off on time. Duty to Co. -> Surety -> Not give time to P.D. Without Surety consent.

4) Promise not to sue: This right is voided best by Co. Act/Omission impeding remedy. Co. fulfilled all conditions. Claim from P.D then.

5) Invalidity of contract of Co.: Co. obtained by misrepresentation by Co. / with his assent/knowledge. Part of transaction. Concealment. Silence by Co. -> Co-surety. Act before X.

Joint and several damages

1) For description caused by delay.

2) Both physical & non-physical loss of special opportunity for sale from career.

Kinds of Damages

1) Specific Damages: Particular loss suffered by the party.

2) General Damages: Particular loss suffered by the party.

Compensation

1) Particular loss suffered by the party.

2) General Damages: Particular loss suffered by the party.

Pre-liquidated Damages

1) Particular loss suffered by the party.

2) General Damages: Particular loss suffered by the party.

Payment by an interested party

1) Particular loss suffered by the party.

2) General Damages: Particular loss suffered by the party.

Person - Pay

1) Particular loss suffered by the party.

2) General Damages: Particular loss suffered by the party.

Money paid by mistake or under coercion - repay

1) Particular loss suffered by the party.

2) General Damages: Particular loss suffered by the party.

Express & Implied

1) Particular loss suffered by the party.

2) General Damages: Particular loss suffered by the party.

Essentials same as free valid contract

1) Particular loss suffered by the party.

2) General Damages: Particular loss suffered by the party.

Enforce -> Existence of loss

1) Particular loss suffered by the party.

2) General Damages: Particular loss suffered by the party.

Life insurance -> indemnity

1) Particular loss suffered by the party.

2) General Damages: Particular loss suffered by the party.

Not discharged

1) Surety not discharged when agreement made with 3rd person person to give time to P.D.

2) Creditor's forbearance (P.D) to sue does not discharge surety.

Invalidation of contract of Co.

1) Co. obtained by misrepresentation by Co. / with his assent/knowledge. Part of transaction. Concealment. Silence by Co. -> Co-surety. Act before X.

Against P.D

1) Right of Subrogation: On payment of debt on performance of guarantee duty. Surety steps in the shoes of creditor.

Against Creditor

1) Surety right to benefit of Co's securities. Security loss -> Co. -> Loss to that extent.

2) Right to sell off Co. Co.

3) Right to share deduction. Right to claim proportionate deduction in his liability if P.D insol.

Against Co-Sureties

1) Co-sureties are liable to Co. Equally unless otherwise agreed.

2) Liability of Co-sureties bound in different sums. Equal contract, subject to the max. limit fixed by a surety to his liability.

Handing over/change in possession Bailment & Pledge

Bailor - Pawner - Pledgee
Bailee - Pawnee - Pledgee

Meaning
Bailment is the d. of G. by one person to another for some purpose, up on a cont. that the G. shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the party D. there.

Types

Benefit
1. Exclusive B. of Bailor
2. - of Bailee
3. Mutual B. can

Reward
1. Gratuitous bailment
2. Non-Gratuit. B. both party

Duty to pay for Damages

Gratuitous Bailment
Actual cost only to bailee shall be reimbursed and any extraordinary expenses incurred

Non-Grat. Bailment
All Exp. including extra-ordinary expenses

Duty to indemnify the Bailee for premature term.

C.B
Loss & Benefit to Bailor → Indemnify → Bailee

N.G.B
Whole loss along with benefit & need

Duties of a Bailee

- Take reasonable care of G. bailed take care as a man of ordinary prudence would take care of his own goods. Exception: Proper care taken but still loss/damage.
- Not to make 'inconsistent use' of G.: Unauthorized use, which not accord to TSC of cont. (void ab initio at the option of bailor)
- Not to mix the G. (i) Mix with consent → Proportionate interest to their respective share (ii) Mix w/ trust → Divisible → Bailee will bear the cost of separation → Not divisible → Bailee liable for compensation to Bailor.
- Return the goods: Return accord to Bailor direction, with time fix, as purpose fulfilled. Bailee bears it.
- Return an accretion (A) from the G.: Same as 4
- Not to set up Adverse Title: He can't deny the title of bailor, he must hold G. on bailor's behalf.

Essentials
Contract: Express or implied. No consent is necessary. B. of G.: Movable Money & Actual D. Constructive D.
Response: E or I
Possession: Only not title
Return of goods: Obligated to return in some form or may be altered according to the direction of Bailor

Notice of a Bailor

Disclose known fact
materially interfere with the use of B. bailee to extra-ordinary in any risk.
Bailor Bailor
Disclose Not Disclose
B. by Bailee B. by Bailor
Bailor knows or he knows → Bailor will pay for (hire) the damage

Bailor's responsibility to Bailee - Indemnity
for any loss: Bailee suffered due to defective title in G. (C. or K. goods) Duty to Rec. back goods - time exp. on purpose achieved → Bailor agrees to take delivery → Bailee can expenses incurred for the safe custody

Right of Bailor & Bailee
against any wrong done 3rd party → despite the bailee of use/pass. - / does them any injury. → Bailee to use remedy → the owner might have can be suit by both.

Termination of Bailment

- Time Expired
- Purpose fulfilled
- By Notice: Inconsistent use by bailee Any time in case of C.B
- By death: In case of B
- Destruction of subject matter: makes it impossible to use it for the purpose of bailment

Finder of Lost Goods

- Duty to return & return to true owner
- Sue for speed (vicarious) if found
- Sue for expenses incurred
- Retain G. Owner can't be found or doesn't pay law but changes (Perishing G.)
- Lawful change of value of G.

Meaning
Bailment of G. as a security for payment of a debt / part of a promise is

Rights of Pawnee

Same as Bailor

Duties of Pawnee

1. Duty not to do any act which is inconsistent with the term of cont.
2. Except - same as Bailee

Duties of Pawner

- Oblige to pay debt / perform the promise in case
- Pay → Extra → Preserve → P.G
- Disclose all the faults.
- Loss → Pawnee's title → Pawnee must indemnify
- Sell, pay deficit

Pledge by the Non-owner.

(a) Pledge by mercantile agent - M.G. → possession, with consent of owner, while acting in the ordinary course - Pawnee → good faith → Valid cont.

(b) By person in possession under voidable cont.: Buyer obtained C, M, F, or not restricted at time of cont. → Valid

Right of Lien

Right to retain the G. until his claim is satisfied or some debt due to him is repaid.

Particular Lien

Right to retain only particular in respect of which claim is due

Involving labor or skills → resulting in increase in the value of goods.

General Lien

not only for demands arising out of G. retained but also for general bal. of A.C. in favour of certain person

Bankers, factors, wharfingers, policy broker & lawyer

Compensation for trouble, exp. in handling & preserving

Rights of Bailee

- Right to terminate Bailment: Voidable → Inconsistent Use
- Right to demand back G.
- Right to sue Bailee: for expanding his liabilities & duties
- Right to claim compensation for loss of G. to anyone of the joint owners → D.
- Right to claim compensation for loss of G. Same as Duties of Bailor
- Right to apply to court to decide the title to the G.
- Right to claim necessary exp. in case of G.B. along with extraordinary
- Right of Particular Lien for payment of services

Meaning
Bailment of G. as a security for payment of a debt / part of a promise is

Rights of a Pawnee

(a) To retain the pledge payment of debt, interest and expenses incurred in respect of possession & preservation of G. for

(b) To retention of above quest debts: only when provided for in a contract to this effect

(c) Extraordinary exp. incurred: for preservation → not retained → only sue.

(d) Where pawnee makes default: (i) bring suit & retain (May) (ii) May sell → by giving notice of sale

- Sale loan → return the surplus
- Loan sale → pawnee liable for re-

Right to redeem

Default → can redeem any time → before the actual sale → bear expenses which have arisen from his default

(c) Pawnee has only a limited int. Pawnee not absolute owner → Valid → to the extent of that int. (M.G.)

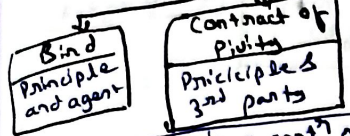
(d) Pledge by a co-owner in possession → Valid

(e) Pledge by a buyer / seller - Pawnee acts in good faith → Valid

Agency Special Contract

Agent: a person employed to do any act for another act to represent another in dealing with 3rd parties
Principal: a person for whom such act is done or who is represented

Test of Agency Rule of Agency on the maxim "Qui fact per alium, fact per se" he who acts through an agent is himself acting

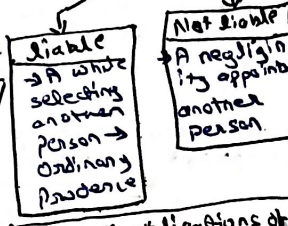


Sub-Agents
 The appointment of sub agent is not lawful, becz the agent is a delegatee and a delegatee can't further delegate
Delegatus Non Potest Delegare

Exception
 1) Mentioned in original contract
 2) Customs of trade
 3) Unforeseen emergency
 Sub-A properly appoint.
 P → 3rd party → Act of Sub-A
 A → responsible → Sub
 Sub → not → P (Fraud Exception)
 A responsible, not properly appointed.
 P → responsible → P & 3rd party
 P → responsible → Sub
 Sub → not responsible to P at all

Rights of Agents
 (i) Right of retain out of sum need on principal's account - Any expenses Remuneration Advance Expenses incurred by A on behalf of P - can be retained - any sum need on A/c of the P
 (ii) Right to remuneration: Contⁿ Customary Guilty of Misconduct (Usual Remu) No. Remu. for trust part of most indemnifying the P for loss
 (iii) A's Lien on P's property - A is entitled to lien of P if amount due to him been paid. Contⁿ of Lien lawfully entitled to receive money Not by unlawful means Right lost Possessor waives the Right lost

Substituted Agent
 Appointed by the Agent to act for the Principal. Person appointed is not a sub-A, but A of P for part of business for which he appointed
P for Agent Act



Duties & obligations of Agents

(i) Duty to follow instruction / customs - If A fails to follow instruction loss sustained by P - If A fails to profit accrues he must A/c for it.
 (ii) Duty of reasonable care and skill - Skill must possessed by A
 Specified (As per P's want) - Neglect of A → A's comp. - Not in indirect neglect
 Not specified - Should have as much skills as a person engaged by person engaged
 (iii) D. not to make secret profit - Beccz fiduciary relation b/w → secrecy, good faith in the conduct of agency.

(iv) Right to compensation for injury caused by Principal's neglect - P's duty of and not to expose A to unreasonable risks
 (v) Right to indemnity - (a) For lawful acts P → indemnity for consequences of law legal acts done in exercise of his authority
 (b) Act done in good faith but claim damage from P. But damages can't be claimed when violated and penal law
 Non-liability of employer of A to indemnify for act - **Can indemnify**

Who may employ an agent?
 • Major - Sound Mind
Who may be an agent?
 Anyone, Principal will be liable for misconduct or negligence by MA and shall not be able to proceed against him.
 * No condⁿ is reqd. to create contⁿ of Agency

Extent of A. Authority

(a) A. A in normal circumstances: Authority to do an act → Authority to every legal thing for the purpose.
 (b) A. A in an emergency: Authority to do all those acts in person of and in any prudence in his own case condⁿ:
 (i) Not → opportunity to communicate
 (ii) Actual definite commercial necessity
 (iii) Acted benefited for the benefit of P
 (iv) Most reasonable & practicable act
 (v) Pass. → A

D. to tender money etc on demand, A/c supported voucher not mere A/c.

(vi) D. to communicate: In case of difficulty use all reasonable diligence in communicating with P to seek his instruction

(vii) D. not to deal on his own A/c: Avoid conflict of int. with P consent, then P can repudiate and claim benefit from A, which may have resulted to him from the trans.

(viii) D. not to delegate

(ix) D. to pay sums need for a principal commission/interest
 (x) D. not to use confidential info need in the course of A against the principal.

P's liability to 3rd party

(i) For the Acts of A - within Authority - P liable. It will be treated as if P had entered with 3rd party.

(ii) When A exceeds Authority - Part which is beyond A's authority (like) - Separable - Authorized Part → P Beyond that → A bears
 Unseparable - Agent is on Agent
 Exception → P by his words/conduct induces the 3rd to believe that act done were within the A's authority.

Creation of Agency

Express & implied Authority: 1) Written or spoken 2) Conduct, things already spoken or written ordinary course of dealing → may be accounted from the circumstances of the case.

Implied Agency

(a) A by Estoppel: P willfully induces other person → certain Person → Agent → later estopped from denying the fact of agency
 (b) A by Necessity: special Authority of Agent in case of emergency → P will be liable **Perishable**

(c) A by operation of law: Law treats - (Parent & A/c)

(d) Acts of person who acts done for him without his authority, effect of ratification: Approving a prev. act - **Essential Direct**

(e) Express or implied.

(f) Knowledge requisite for valid ratification: Not full → Not binding

(g) The whole trans. must be ratified: P ratified beneficial part & rejected rest → X

(h) Ratification can't injure 3rd party.

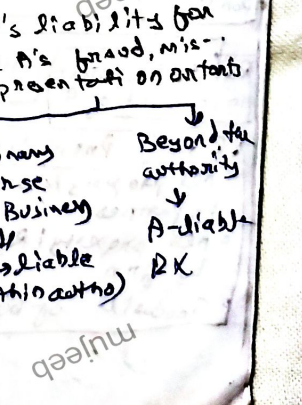
(i) Ratification within reasonable time

(j) Commⁿ of Ratification to other party.

(k) Act to be ratified must be valid → not void / illegal

Consequences of notice given to agent: Knowledge of A is treated as knowledge of P

(l) P's liability for the A's fraud, misrepresentation on contents



Bound liability of A to 3rd
 A can't personally expose, not be bound by, can't act on behalf of P
 Exceptions: - Merchant resident abroad / foreign P
 ① Undis closed P ② Non-existence / incompetent P
 ③ Pretended A ④ A exceed authority

Rights of 3rd
 (1) Rights of parties to a contract made by
 (2) Death or insanity - Act done by A - remains binding
 (3) P's insolvency
 (4) On expiry of time - not necessary to accomplish

Revocation of Authority
 (1) Revocation by P. may revoke the Authority before authority has been exercised → bind the P. premature → compensate. Reasonable notice not → comp.
 (2) Renunciation by A - (1) completion of business

Irrevocable
 A → personally liable in subject matter
 Effect of termination: A has authority till comm of removal same for 3rd & Sub agent

Indian Partnership Act 1932

Simple Partnership
 Is the relation btw persons who have agreed to share the profits of a business carried on by all or any of them acting for all

Elements of Partnership

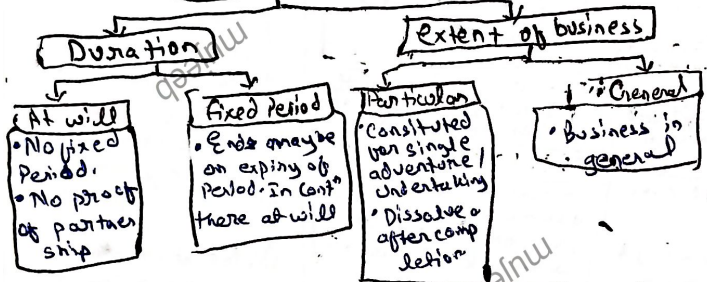
① Association of 2 or more persons: Only person necessary by law. Minor can't be. max → 10 → Companies Act
 ② Agreement - Result of an agreement entered into by all person conc. Express / Implied.
 Voluntary and contractual nature

③ Business: Every trade, occupation & profession
 Existence of business essential → motive → Acquisition of gains (Agents to share profits)
 Profit to all → essential, Max. loss to all → not essential
 ④ Business carried on by all or any of them acting for all. there should be a binding contract of mutual agency btw. the partner. Agent → he can bind other part. by his act, P → bound by other part. Profit / loss share, Mutual Agency → Partnership. Cardinal principle of Partnership Law

True Test of Partnership

① Agreement: from contract / not from status HUF and are not partners. Karta is not partner.
 ② Sharing of Profit: Sharing of profit accruing from joint holding / common int in the property not partnership
 ③ Agency: Most imp. Its elements of mutual agency relationship exist btw. the parties constituting a firm formed with a view to earn profit by running of business, partnership may be deemed to exist

Kind of Partnership



*** Types of Partners ***

→ Active / ostensible / Actual: Partner by agreement, actively → conduct, public notice before retirement, if not liable
 → Sleeping / Dormant: Partner by agreement, doesn't actively, no public notice not known to the public
 → Nominal Partner: lend his name, No real int, profit share, conduct, * liable to 3rd party
 → Partner in profit only
 → Incoming and Outgoing
 → Partner by holding out: a person represents himself or knowingly permits himself, ② To be represented partner in a firm (not really) ③ He is liable like a partner in the firm

Relations of Partner

① Relations of Partner to one another

① General Duties: It is the Gen. Duty of partners to perform greatest common advan. → ① Render true Acc'ts. → ② Utmost good faith
 ② Duty to indemnify for loss caused by fraud: Partner → Indemnity → firm, Remaining Partner divide among themselves
 Activity → Fraud, Loss arise
 ③ Determination of Rights & Duties of Partners by contract btw the Partners: ① Headings → Express / Implied Course of dealing → change → Consent of all.
 ② Section 27 of ICA
 Restrict → Restrains of Trade
 Current Partner → Outgoing Partner

② Mutual Rights and Liabilities

Unless otherwise Agreed
 • Remuneration not be give
 • Profit → Equally
 • If I.O.C → Only out of profit trade custom or statutory prov.
 • Partner advances → 6% change against Profit
 • Firm Indemnity Partner: P.O.C trans Partnership
 → Emergency → ordinary Prods.
 • Partner Indemnity → firm → willful neglect (careless) news

Right to take part in conduct of B.
Firm's Properties
 • All property / stock brought in by partners
 • All property / Rights acquired by firm
 • Goodwill of business

Matters
 Ordinary → Majority Consent
 Nature → All Partner
 Right to inspect book → Partner → Heir
Partner's Property
 A property belonging exclusively to partner doesn't become prop. of firm only becaz it is used for firm's Business

Partners Liability by Part
 Part \rightarrow Firm
 Secret Similar (competitive nature)

Rights & Duties of Part after change in consti
 Same

Mode of Doing Act to Bind firm
 within autho., related to the usual business of firm
 Usual way \rightarrow done in
 In the name of firm, expressing Int. or intention to bind the firm

Effect of Notice to Partner - Actual notice given to active partner \neq notice to firm, except guilty of fraud (partner liable only) related to firm business

Legal Consequences of part going out / coming in

Intro. of Partner
 Can be admitted to P. with consent of all.
 Can't be held liable for acts of firm done before admission. (Unless otherwise)

Retirement of a partner
 Consent of all As per Contract P. A.W. \rightarrow by giving notice to all
 Cont. to remain liable, until public notice
 Subject to cont., Partner retiring will not be liable for any act before retirement of 3rd party if 3rd party & new constituted firm agrees to it

Case: 3rd deals with firm without knowing that he was a partner \rightarrow Retire P. not liable (will be liable otherwise)

Expulsion of a partner
 Power existed in contract b/w partners
 Majority \rightarrow ~~same~~ good fruits

Int. of partship Notice Opportunity to be heard

Insolvency of Partner
 When a part. is declared, then he is ce ase to part.
 estate of partner for act of firm done after insolvency and vice versa.

Liability of estate of Deceased part.
 Estate of D.P. is not liable for act of firm done after death. No public notice is reqd.

Relation of partner with third party
 Partner is A of firm \rightarrow Sec 4. Favour firm (Cony this applicable)
 Implied Authority as an A \rightarrow Part Authority of Partner to bind other Partner the firm \rightarrow Exception - B.A. me SEE? We \rightarrow Reqs Express auth
 B - Bank Open A \rightarrow Arbitration \rightarrow Acquire/hold \rightarrow suit withdwn
 C - Admit liability \rightarrow suit I \rightarrow Immovable \rightarrow Acquire/hold P \rightarrow Partnership
 Extension & Restriction of Part's Implied Authority:
 By Agreement \rightarrow Consent of All Partners reqd. (assum. partners with)
 Effective against a 3rd party \rightarrow Knows about rest. (not known partners)
 Part's Autho in an emergency do all such acts that a person of ordinary prou. would do, in his own, case, to protect the firm from any loss \rightarrow binds the firm \rightarrow such acts

Effect of Admission by a Partner
 Firm related trans \rightarrow binding admission
 But not in authority of part. & and other know \rightarrow not binding
 (Phone)
 To prevent firm from loss

Rgt of transferee of part's interest
 100% consent
 During (continuance of firm)
 After Dissol/ retirement
 Int. in the conduct
 Receive the Asset
 Inspect B. Book of P. A. C.

Minor admitted to the benefits of Partnership
 Rgt
 Share profit
 Access, inspect and copy books
 Six - partner \rightarrow Only when severing firm
 On attaining majority (within 6 months)
 Part V Part X

Rgt of outgoing P. to carry on competing Business
 An O.G. P. may carry competing to that of firm & also ad. ventise it. But he may not of firm name
 Represent himself as he is carry firm business. Solicit customer of firm

Right of outgoing partner to carry on competing Business \rightarrow Yes, unless agreed: Firm name X Represent himself as partner X Solicit firm customers \rightarrow Restrict of trade - valid - if reasonable

Right of outgoing Part. in cancellation cases to share subsequent profit \rightarrow Death/Retire, carry on firm without final settlement \rightarrow Rgt to share in profit @ share \rightarrow 6% p.a \rightarrow either 1 or 2

Revocation of continuing guarantee by change in firm unless agreed upon

Liability to 3rd parties
 Liability of P. for Acts of the firm:
 Partner \rightarrow liable \rightarrow All Act \rightarrow done in OC
 Jointly severally firm of business

Liability of firm for wrongful Act of a P.
 Wrongful Act \rightarrow OC of Business with the autho. of the P. Not Autho \rightarrow firm not liable

Liability of firm for misapplication by P.
 Autho. \rightarrow money/property reqd \rightarrow partner \rightarrow misapply
 Not Autho. \rightarrow firm liable
 Not Autho. \rightarrow firm \rightarrow custody of money/property \rightarrow misapply \rightarrow firm

Imp. Liabilities

Before Majority
 Liability \rightarrow upto share in
 Personal liab
 Insolvent
 After Majority
 Elects
 Not Elect
 Personal liab. for all acts since admitt
 Profit share \rightarrow Remain same
 Same Rts & Lia. upto Public notice
 his share not lia. after notice
 Rgt to sue

not elect \rightarrow deemed partner

Right of outgoing partner to carry on competing Business

Revocation of continuing guarantee by change in firm unless agreed upon

Contents

470 Sect. 7 Schedur
→ Divide in 23 chapr

Purpose

- (i) Improve corporate governance
- (ii) Simplify Regulations
- (iii) Strengthen the int. of minority shareholders
- (iv) Role of whistle blower
- (v) Class Action suit

Meaning

Company incorporated under this Act or under any prevs. comp. law

Features

- (i) Separate legal Entity
 - Legally separate from the members.
 - Doesn't even have insurable interest
 - **Maccormac v. Northman Assurance Co. United**
 - Separate & Distinct Personality.
- (ii) Perpetual Succession
 - Death, insolvency, change
 - infinitely → wound up only by law (Artificial)
- (iii) Ltd. Liability
 - Limited Ltd. Co. nominal value of share held by them (Extent of)
 - Co. Ltd by guarantee. goes liquidation only
 - Unlimited Co.
- (iv) Artificial leg. Person
 - legal → created by law
 - Can own property, have bank, raise loans, incur liabilities, enter into cont.
 - Can sue & can be sued
 - It can only act through some human agency → Directors
- (v) Common Seal
 - Official Sign. of Co., affixed by officers and employees of the Co.
 - No. CS → authorization
 - (i) Diner. or (ii) 2 Diner + 1 CS
 - **Com. (Amendment) 2017**

Classification of Capital

- (i) Nominal/Authorized Cap. - Autho. by MOA. Max amt of share capital of Co.
- (ii) Issued Cap. - Part of ↑ offered to public for subscription
- (iii) Subscribed Cap. - Part of share cap. subscribed
- (iv) Called-up Cap. - Such part of issued cap., called for pay
- (v) Paid-up Cap. - Amount paid = Cap. - amount

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(473 Registration & Dissolution)
Companies Act

Applicability of Act

- Comp. incorporated under this or any prevs. com. law
- Insurance comp.
- Banking comp.
- Comp. governed by Special Act
- Engaged in electricity genⁿ / supply.
- Body corporate incorporated by any act and C.G. specifies

Corporate Veil theory

- Legal concept where Co. is identified separately from its members.
- Shielded from lia. connected to Co. action
- **Corporate insulation**
- **Solomon v. Solomon & Co.**

Lifting Lifting / Piercing

- Looking behind the Co. as a legal person i.e. disregard the corporate entity & passing regard instead to the realties behind the legal facade (Cases)

(a) To determine character of the Co. - find out whether Co. engaged in business

Daimler Co. Ltd v. Baister
Central Bank v. Eastern

(b) To protect revenue/tax

corporate entity used to evade/circumvent tax, court disregard the corp. entity

Dishaw Machine Co. v. Pelt

(c) To avoid legal obligations

sole purpose - formation - Co. device to reduce the amt to be paid (Duty to Co.)

Workmen of Assci. Rubber Industry Ltd v. Assci. Rubber Industry Ltd.

(d) Formation of subsidiaries to act as agents - A. trustee of member on another Co. → deemed to have lost its individuality in favour of P. Prind. liable for the act.

merchandise transport Ltd v. British thoro. commis.

(e) Company formed for fraud / improper conduct as to defeat law

Shares

Smallest part of the Capital

- Movable, number

Equity s.c. Preference

↓

Voting rights Differential Voting right

Classes of Companies (Types)

On the basis of liability:

- (i) Company Ltd by share: liability → unpaid amt of share held by them → by its M.O.A.
- (ii) Company Ltd by guarantee: stipulated sum mentioned in the M.O.A. → being wound up → not raise its intial working fund from share
- (iii) Unlimited Co. - No limit on liability of member → lia. ceases on when he ceases to be member → wound only → Men lia = Com. lia + Deb, men can claim cont. from other member

On the basis of liability:

- Private Ltd → limited liability → member nominal
- Private Ltd → nominee person consent. Sec 25, 26, 27
- Min cap. X → nominee Indian on 120 day P.F. filed with A.O.C → member on Nominee X
- More than one OPC - member on Nominee X
- Sec. 2X & Non-Banking Financial X OPC

Private Company

- (i) Restrict to right to take shares (i) 2-200
- (ii) Joint holder → 1 member
- (iii) Employee + member = X no. member (not allow)
- (iv) Prohibits any invitation to the public to subscribe
- (v) Small Co. → Paid up share cap = not exceed 10 cr or higher amt as may be prescribed to cap. turnover not more than 20 cr. - 10 cr. provided as per Rules - Cap. 10 cr. turnover 40 cr.
- (vi) Sec B, holding, subsidiary - Small Co. X

Public Company

- (i) Not a priv. Co. (ii) has a min paid up share cap as may be prescribed. 7-10, No min Cap.

On the basis of Control

- (i) Holding & Subsidiary Co. - Cont. composition of both
- (ii) Holding Co. - more than half of voting power cont. as exercise (direct or indirect)
- (iii) Associate Co. - Significant influence, but not a subsidiary Co., more than 20% voting right
- (iv) CA + CB = CC (Associate of both jointly)

On the basis of access to Capital

- (i) Listed Company - Any of its securities listed on recognised stock exchange
- (ii) Unlisted Co. other than

Other Companies

- (i) Char. Co. - 5% of voting paid-up share cap. held by 5% of members
- (ii) Foreign Co. - incorporated outside India, but has a business place whether by its self or agent, physically or electronic, any business activities in any manner in India
- (iii) Dormant Co. - (Inactive Co.) for future benefit, held assets or intellectual property or not significant transaction accounty during last 2 fin. year. or not filed financial stat - 5 annual return during last 2 fin. year. then can apply Registration
- (iv) Significant trans. not is other than all

Pay fees to Registrar on application

Reg. - full req. of Act or another

allotment of share to public member req. of Act

Pay for office/mainten.

(e) Nidhi Co. or Mutual Benefit Society notified by CG in Gazette. obj cultivate the habit of thrift & saving among its member

(f) Public Financial Institutions

estd by or constituted by or under any act or SC Act

At least 51% paid up held up/controlled

Section 8 Company Very Imp

- Formation - To promote charitable objects
- Approval - To promote its object. No dividend
- Type of Co. - limited lia without Ltd (Pvt Ltd)
- Status Granted by - ROC can't by CG
- Revocation of licence. CG may if cond. in Sec 8 are contravened or affairs of the Co. are conducted fraudulently or prejudicial to public interest.
- Effect of revocation. Co. has to be wound up or its
- CG can. convert its status wind up, a madagamble with co. with similar object
- Partnership can be a Sec 8 company

Mode of Registration / Incorporation of Co.

Promoters → who has been named as such in a prospectus / is identified by the Co. in the annual return.
 • Who has control over the affairs of Co. (Decision making power)
 • On whose advice B.O.D of Co. is constituted to act
 • Collection, instructions

- 1) Alling of the doc & info with the regis-
 • MOA & AOA signed by all subscribers of MOA
 • Declaration by person who is engaged in the formation of the Co. (C.A, advocate) and the person named in the articles (Direct manager) → that all requirements of this Act and rules made complied with
 • Declaration from subs - and first direc. → not convicted → promotion, permission on part of any Co.
 → Not guilty of fraud, misfeasance, breach of duty to any Co. during last 5 yrs. under this & previous Act
 → All doc. correct, filed with Regis.
 • Ad. of correspondence till its not off
 • Particulars of every subscribers
 • Particulars of person mentioned in MOA as the subscribers of MOA (DIN, add.)
 • Particulars of the int. of the person mentioned in the AOA (Consent)
 - 2) Issue of certificate of inc. on registration - by Registrar.
 - 3) Allotment of Corporate Id No. (CIN)
 - 4) Maintenance of all doc. & info. - at regt office till dissolution.
 - 5) Furnishing of false or incorrect or suppression of material fact or info. at the time of inc. → fraud 447
 - 6) Co. already inc. → Promoter, first direc., persons making declaration → liable for fraud - 447
- Order of the Tribunal: 1) Partials -
 1) Regulation of the mgt 2) Member-Unlimited
 3) Remove - Name - ROC 4) Wind up

Effect of Registration on - features of Co.
 Activate from the date of inc.

Meaning of New form of business entity with (td) Co,
 Alternative business vehicle, flexibility of org.
 int. structure, separate legal.

Designated Partner - At least 2 D.P & one of them stayed in India for a period not < 120 during yr.
 Body corp. → nominee D.P
 Min. 2 Partners till less and one could business → 6 mon. →
 Min. 2 Partners till less and one could business → 6 mon. →

Small LLP Contribution & 25% Turnover & 30%
 Prescribed Sec 5 & 40C. Both con on 1/1/11

FN. Memorandum of Association Co's charter

Object	Content	Doctrine of Ultra Vires
1. It contains obje. of Co., it shows Co.'s power beyond which it can't go	(a) Name clause 'Pvt' 'Ltd' (b) Regt office clause - proposed state of office (obje. clause) (c) Dia. clause (d) Cap. clause (e) Association Subs of MOA (f) Shareholder know what purpose there money	Beyond (that) Power → Act beyond → Done → Co. → wholly null & void, inoperative In law there not binding Can't sue Can't be sued Direct → Ratify ✓ AOA → Ratify ✓ MOA → Ratify X with unanimous consent X X Purpose of this has been defeated because now obje. clause can be altered just by passing S.R by the S-Holder

Articles of Association Magna Carta

Doc. contain	Doctrine of Constructive Notice
1) Rules, regul. as by e-laws of a company 2) Form in which business is to be carried on 3) Power of direct & officer of Co. 4) Regulates domestic mgt of Co. 5) Contain provision of entrenchment (to protect something) - specified prov. altered - cond. / Procedures (more strict) are followed → Notice to ROC	Sec-393 part of inspection of MOA & AOA to all. Any person dealing to have read MOA & AOA irrespective of whether he read it or not. Not only read but also have also understood their proper meaning → presumed

Turquand Rule
 Exception of T. does in on sense mean that outsiders are deemed to have notice of int. affairs of the Co. → Act authorized by MOA & AOA → outsider entitled to assume that all the detailed formalities for doing this act have been observed
 The Royal British Bank v's Turquand
 Exceptions (Co. will be protected)
 1) Actual or const. knowledge of irreg.
 2) Suspicion of irregularity negligently inquire - suspicion
 3) Forgery - can't apply to forgery

CLP

1.4 → Inc. After 30 Sept → end on following 31st Mar ch

Meaning of Negotiable Instrument
 • Written Document - Transferable
 Includes → Sec 5 Promissory Note
 Sec 5 B.O.E Sec 6 Cheque
 N.I is an Instrument (doc) which is freely transferable from one person to another by mere delivery or indorsement & delivery.

Promissory Note - 4
 • In writing a Promise to Pay • Unconditional Doc.
 • to pay a certain sum - to a certain person

Bills of Exchange - 5
 • In writing, unconditional order signed by drawer, directly or indirectly to certain person or sum of money to order of another person.
 Drawer, Drawee, Payee
 Not necessary to be 3 diff. Person

Dishonour of Cheque
 1) Insufficient Amount
 2) Exceeds the limit of payee
 3) 2 yrs limit / 2 months
 Present cheque valid till 3 months
 2m → Notice to drawer 30 days → Payment within receipt of 60 days
 In case of dishonour in favour of holder - 195 → First assumption is holder has valid debt
 Defence not allowed under 138-140 the drawer had no reason to believe when issued the cheque that the cheque was dishonoured on presentment if the drawer has no proof of no dishonour.

Instrument Payable

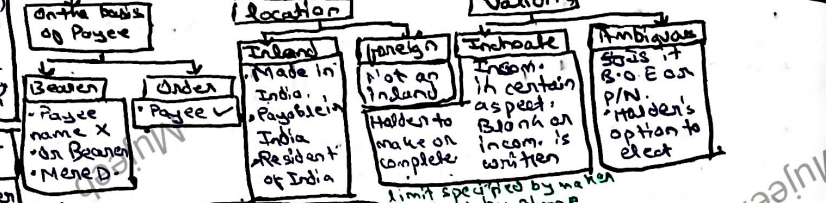
- Payable to order**
 - Expressed to be
 - Expressed to payable to specified person
- Payable to bearer**
 - Pay bearer
 - Cheque made payable to specified person, that cheque endorsed by sign on back

Characteristics
 • Signed & writing by maker
 • Express promise to pay
 • Promise to pay - definite sum or certain money
 • Certain sum - maker & payee → certain, definite, div.
 • Must stamping

Cheque - 6
 • B.O.E drawn on specified bank or payable on demand only. Includes elec. cheques in unced cheque & a cheque in elec. form
 Drawer - maker (debit)
 Drawee - Bank (liable)
 Payee - In whose favour directed to be paid

Characteristics
 • Writing • Signed • Transferable (freely)
 • any no. of times till satisfaction • holder title free from defect • Certainty of sum payable, time of payment and the payee & delivered • Unconditional

Classification of Negotiable Instrument



Negotiation (Transfer) of negotiable Instrument

• Negotiation means - transfer of ownership of N.I. from one person to another
 • Negotiation by Delivery → Payable to bearer
 • Negotiation by Indorsement & Delivery → Payable to order
 Delivery, valid Rat in N.I. not T/B unless delivery • Cond. N.I. can't be T/B

Rules as to Compens.

- 1) Amt of N.I.
- 2) Exp. incurred in presenting, noting & protesting
- 3) Int. 18% p.a. from due date of payment to date of realisation. Foreign currency → current rate of exchange

Presentment

Meaning: It refers to the act of making the N.I. available for the purpose of getting paid
 After sight on due date
 At sight → on demand
 61 In case of B.O.E if after sight → valid → drawer found → accept. → drawer → not found → dishonour
 62 In case of P.N. if payable after a period at sight
 Promissee → Promisor (reasonable time) present
 → if not sight is payment lost
 73 If cer. the cheque in time taking e (legal representative)
 Some other person
 15 Presentment can be made to Agent, LR of dead (drawer/maker, acceptor) if it is valid Presentment
 16 Where the presentment is delayed due to uncontrollable reason → no delay is excused. 17 - If Payment is not made due to dishonour, bank delay, inform, cause loss, bank lia

63 In case of B.O.E, the drawer shall allow drawee 48 hrs on business days for acceptance
 64 If the party fails to present the B.O.E / cheque / P.N. for payment cannot hold the prior parties liable
 65 Pres. to be made within business hrs in banking as the case may be
 66 B.O.E / P.N. shall be presented on maturity date for payment
 67 If P.N. payable in installment should be presented 3 days after due if not paid, it is dishonoured
 68 P.N. / B.O.E → specified place → presentment at that place
 69 P.N. / B.O.E → specified place → must present at such place
 70 No place → can be at place of business or at residence
 71 No business & residence → in person wherever he can be found
 72 A cheque shall be presented to the bank before the relation b/w the drawer and bank ends → Dishonour
 74 Presentment of ins. payable on demand (cession) - within reason

Indian Regulatory framework

Law: set of obligation & duties imposed by the govt for securing welfare and providing justice to soc.
 India's legal framework reflects the social, political, economic and cultural aspects of our vast & diversified country

- Sources of Law**
- 1) Constitution
 - 2) Made by Parliam. & state assembly
 - 3) Judicial Decision, or custom & Usage

History - 1935 - Parliament of UK
 → Govt. of India Act → authority to Federal → power → C.G. & S.G. → Federal Council → 12 yrs 181 came → Apex court replaced

Indian Constitution
 - How will country work
 - How PM/CM / President appointed
 - Power - C.G., S.G.
 - Citizen Total - 395 articles
 - Amendment / New law