



# INDIAN CONTRACT ACT, 1872

Applicable to the whole of India. Effect - 1 Sep 1872

## Unit - 1 Nature of contract.

### \* Offer - [Section 2 (a)]

- When one person Expresses to another
- His willingness
- to do, or (Positive act)
- to abstain from doing anything [Negative Act]
- with a view (intention)
- To obtain assent of other party
- for such act or abstinence he is set to make a Proposal.
- willingness + with intention to obtain assent = offer.

अभिव्यक्ति

### \* Essential of offer/Proposal

- ① Offeror ↔ offeree  
Promisor ↔ Promisee  
Proposer ↔ Acceptor.
- ② Party must express his willingness to do or not to do something
- ③ Offer
  - Positive - doing
  - Negative - not doing
- ④ offer must be made with intention to obtain assent of the offeree

### \* kinds of offers :- 1.14

- ① General offer → offer made to public at large.  
Anyone can accept the offer.

Case law :- Carlill vs carbolic smokeball co.

→ Anyone performing the condition of offer can be said to have accepted the offer until offer is withdraw.

② Specific offer :-

→ When offer is made to specific person or ascertained person  
→ It can be accepted only by person to whom offer is made

③ Cross offer :-

→ When two parties exchange  
→ Identical offers (exactly same - no difference even in amount)  
→ In ignorance of time of each other  
→ No contract come into picture

④ counter offer

→ When a person to whom offer is made accepts the offer by modifying terms and condition of offers.  
→ Also known as conditional acceptance

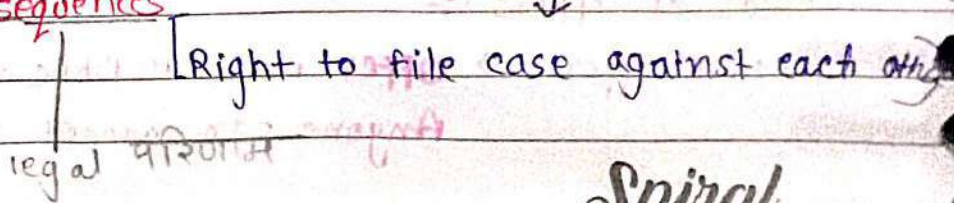
⑤ standing or continuing or open offer

→ which remained open  
→ over a period of time

\* Essentials of valid offer - 1.14

① It must be capable of creating legal relations :-

→ offer does not intend.  
→ to give rise to legal consequences



→ and creating legal relations  
→ It is not considered as a valid offer in the eyes of law.

(2) It must be certain, definite and not vague;  
→ Terms of an offer must clear  
→ complete and not confusing  
→ If it is vague then it cannot create legal relationship.

(3) It must be communicated to the offeree :-  
→ An offer, to be complete  
→ must be communicated  
→ to the person to whom it is made.

case law :- Lalman Shukla vs Gauridutt.

Acceptance of offer in ignorance of offer is no acceptance.

(4) It must be made with a view to obtaining the assent of the other party :-

(5) It may be conditional :-  
- Offer can be made.  
- subject to any term and conditions by the offeror.

(6) offer should not contain a term the non compliance - condition of which would amount to acceptance. This is not valid.

(7) The offer may be either specific or general.  
- It made to either public at large.  
- or to the any specific person

⑧ The offer may be express or implied.

- may be made by words
- or by conduct

⑨ offer is different from - mere statement of intention, prospectus and advertisement, invitation to offer

\* Examples of invitation to offer - 1.17

- ① Display of goods for sale in window shop
- ② Advertisement Auction sales.
- ③ Quotation of Price sent in reply to a question

\* Acceptance [ section 2(b) ] 1.18

- "when the person to whom the proposal is made
- signifies his assent there to
- Proposal is said to be accepted
- The Proposal
- when accepted
- become a promise "

\* Relationship between offer and acceptance - 1.18

According to "sir William Anson".

Acceptance is a lighted ~~match~~ match to a train of gun powder (offer)

Significance

offer in itself cannot create any legal relationship

conclusion

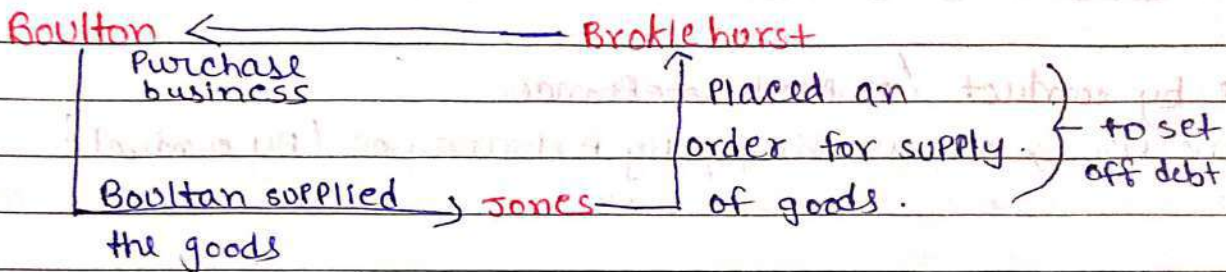
- once offer is accepted it becomes promise and cannot be withdrawn or revoked
- offer becomes contract when accepted

\* Legal rules regarding valid Acceptance 1.19

① Acceptance can be given only by the person to whom offer is made:

- In case of a specific offer,
- it can be accepted only by the person
- to whom it is made.

Case laws :- Boulton vs Jones.



Decisions :- offer was not made to Boulton No contract between Boulton and Jones.

② Acceptance must be absolute and unqualified → unconditional

- As per section 7 of the act. in this context
- Acceptance is valid only
- when it is absolute and unqualified.

③ Acceptance must be communicated:

- When the proposal is accepted,
- the offeree must have knowledge of the offer made to him.

Case law:- [A] Brogden vs Metropolitan Railway company.

[B] Neale vs Merret

(4) Acceptance must be in prescribed mode :

- If mode of acceptance is prescribed in the offer
- It must be accepted in that manner.

(5) Time.

- must be given in prescribed time OR
- within the reasonable time.

(6) mere silence is not acceptance.

Case laws : Felthouse vs Bindley

(7) Acceptance by conduct / Implied acceptance.

- word or mouth , In writing , By Performance (By conduct)

Unit - 2 consideration {something in return}

\* Definition of consideration [sec. 2(d)] 1.35

- WHEN AT THE DESIRE OF PROMISOR
- THE PROMISEE OR ANY OTHER PERSON
- HAS DONE OR ABSTAINED FROM DOING OR - Past consideration
- DOES OR ABSTAIN FROM DOING - Present consideration
- PROMISES TO DO ABSTAIN FROM DOING SOMETHING - future
- SUCH AN ACT OR ABSTINENCE OR PROMISE IS CALLED CONSIDERATION.

- ① consideration is an act.
- ② consideration is abstinence
- ③ consideration must move at the desire of promisor
- ④ consideration may move from promisee or any other person
- ⑤ consideration may be past, present, or future.

\* Legal rules regarding consideration 1.35

- ① consideration must move at the desire of the promisor.
- The act must be done at the desire or request of the promisor.

case law :- [Durga Prasad v/s Baldeo]

Act done at the desire of a third party is not a consideration

- ② consideration may move from promisee or any other person.

- The act may be done by the promisee himself or any other person.

Case law :-

[Chinnaya vs Rammyya]

Three Party

- ① old lady
- ② daughter
- ③ maternal uncle.

Promisor  
↓

daughter

Promisee  
↓

maternal uncle

Other person :- old lady.

• Decision :- There was sufficient consideration for uncle by old lady to recover money from daughter.

③ Executed and executory consideration :

(i) Executed. → consist in performance

(ii) Executory → consist in promise.

Performance is done in advance is called executed consideration / pending promise is executory consideration.

④ consideration may be past, present and future.

→ for consideration to be treated as past, it must move by previous request

⑤ consideration need not be adequate :- sufficient.

→ i.e. It can be inadequate.

Promise 1  $\neq$  Promise 2.

⑥ Performance of what one is legally bound to perform :  
consideration must not be performance of existing duty.

⑦ consideration must be real and not illusory. - can not impossible.

⑧ must not be unlawful, immoral, or opposed to public policy.



Unit - 1

\* Definition of contract [sec 2(h) - 1.2]

- ① An agreement
  - ② Enforceable by law
- } contract

\* Promise [sec 2(b)]

- ① One person makes offer / Proposal
- ② other can accept it
- ③ Proposal → Accepted → Promise.

\* ① Agreement [sect 2(e)]

→ Every promise and Every set of promise } forming consideration for each other.

consideration ⇒ something in return?

money / money's worth      kind

② Enforceability by law

- (i) All conditions of section [10]
  - (ii) legal obligation [Balfour v/s Balfour]
- one of the most element.

case law :- Balfour v/s Balfour.

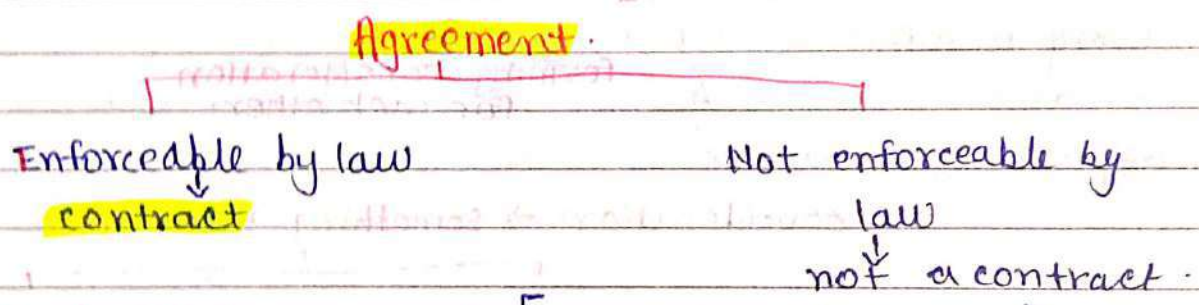
→ Husband and wife.  
↓ - England from legions.

→ wife got ill → admitted.  
decided that husband will sent 30 pounds a month as maintenance.  
husband failed and @wife sued

Decision :- It is the case of social agreement due to lack of legal obligation. → wife not case to husband in this case.

Agreement are wider term / contract are narrow term

- ① offer + acceptance ⇒ Promise
- ② Promise/set of promise of one party = consideration of Promise. set of Promise → other party
- ③ Agreement ⇒ Promise + consideration.
- ④ **contract** ⇒ **Agreement** + **Enforceability by law**.



Example of social agreement. [not enforceable by law].

- ① A and B Promise to pay for the studies of their maid's son.
- ② father promised to pay his son a sum of Rs 2 lakh. if his son pass an examination.

Example of illegal agreement. [I + I] Example - Page No. 15

- ① A agreed to sell 2 killo of heroine drugs to Mr. B for Rs 1 crore
- ② A agreed to kill Mr. C if B pays him 10 lakh.

- ① All agreement are contract. - Incorrect X
- ② All contract are agreement. correct ✓
- ③ Agreement enforceable by law are contract. correct ✓

\* Essentials of valid contract :- 1.5

① Two parties

→ One making offer and other party accepting it.

→ contract may be made by :-

- (a) Natural person (b) Other person

(having legal existence)

Note :- At the time of dissolution of Partnership Partners distributing Property is not a sale.

② Intention to create legal relations :-

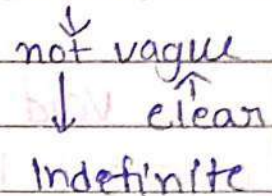
Social or domestic type of agreements are not enforceable

③ Other formalities to be complied with in certain cases :-

A contract may be written or spoken writing, Registered and stamped — In certain case

- Insurance contract
- Immovable Property.

④ certainty of meaning :- Agreement → certain  
(Clarity)



⑤ Possibility of Performance agreement

for impossible act is not enforceable.

\* TYPES OF CONTRACT (BASED ON ENFORCEABILITY)

① Valid contract :-

It has all essential element of contract.

→ Enforceable by law



② Void contract :- (void agreement → void ab initio)  
 → Does not have any legal effect / Impossibility to  
 → Not enforceable by law / complete the promise

Ex → [8 Nov] contract:  
 A — car → B sell car on 10 Nov.  
 ← RS.

But in 9 Nov. the car was destroyed in fire / It can automatically void.

③ Voidable contract :- Perforce by other Party.  
 (जबरदस्ती)  
 Enforceable at the option of aggrieved Party.

④ Illegal contract :- Example Page no. 15  
 → Forbidden by law. / Not enforceable.  
 (विधि विरुद्ध)

⑤ Unenforceable contract.  
 → good in substance (see to all elements covered).  
 → But suffer from technical defect.

Basis	Void	Voidable.
meaning	ceases to be enforceable by law	Enforceable at option of aggrieved party.
cause	Subsequent illegality or supervening impossibility.	It consent of party is not free.
Performance of contract	cannot be performed	can be avoided by aggrieved party within reasonable time otherwise performed.

Right	does not grant any right to any party.	Aggrieved party can rescind the contract.
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\* Types of contract on the basis of formation.

- ① Express offer
  - spoken
  - written
- ② Implied contract
  - made otherwise than words
  - Parties never intended
  - Term and condition are not known

③ Tacit contract :- Tacit means silent

- It is a situation where a contract has to be understood from conduct of parties.
  - Term and condition are known
  - no use of word spoken or written.
- Example :- cash withdraw from ATM.

④ Quasi-contract

- Not an actual contract
- created by law under certain circumstances.

⑤ E-contracts

- contract is entered by two or more parties
- using electronic means
- such as e-mails
- is known as e-commerce contract.

\* Types of contract on the basis of performance

① Executed contract.

contract which is wholly performed

Both parties are performed in advance. (contn.)

② Executory contract

which is partially performed, or wholly unperformed.

a) unilateral contract :-

one sided contract in which only one party performs his obligations.

b) Bilateral contract :-

where obligation of both parties is outstanding.

Difference between void agreement and Illegal agreement

Basis	void agreement	Illegal agreement.
scope	Not necessary illegal	Always void
nature	not forbidden by law	forbidden by law
Punishment	Parties cannot be liable for punishment	Parties liable for punishment
connected collateral	Agreement connected / collateral to void agreement may also be void. It may valid also	connected / collateral agreements are always void.



### Difference between Illegal contract and Illegal Agreement.

**Illegal contract**  
 Jab contract kiya tha tab wo illegal nahi tha lekin performance date se pehle wo illegal ho gya.

**Illegal agreement**  
 Wo agreement Jo beginning se hi illegal tha.

### Example of Illegal contract.

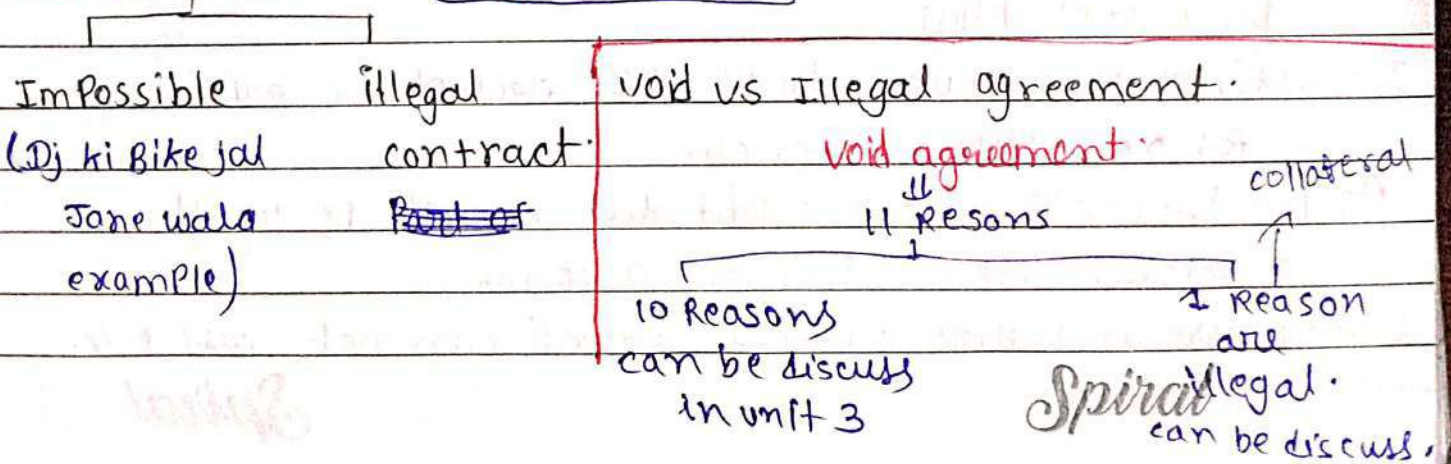
- section 2(1) - it is a contract which a law forbids to be made.
- Mr. Honey Singh agreed to sell 4 liquor bottles for Rs 10000 on 5 Jan 2022 - contract date.
- Delivery of liquor was scheduled on 10 Jan 2022 → Performance date
- Govt. Bans liquor on 7 Jan 2022.

This contract can automatically can be illegal.

### Example of Illegal agreement.

- Govt. Bans liquor on 7 Jan 2022
- Mr. Honey Singh agreed to sell 400 liquor bottles to Mr. Kabir for Rs. 100000 on 8 Jan 2022 (After Ban).
- Delivery of liquor was scheduled on 10 Jan 2022.
- This will be treated as illegal agreement.

**Void contract vs illegal contract** - it is the part of void contract



Note :- Saare illegal contracts void contracts hotay hai lekin saare void contract illegal nahi hotay

saare illegal agreement void agreement hotay hai lekin saare void agreement illegal nahi hote hai

\* collateral Agreement (Supporting) → loan etc.

collateral security can be used in illegal work this can be convert in illegal agreement and void.

Example :- A can borrow/taken loan from B to give this money to y so y can kill the c.

In this case lender/B koo yaa bat-pata thi ki a-c koo manne kee liya rupees laa raha haa. too laqee ke hisad see yaa illegal agreement mana jayega.

\* Unenforceable contract.

Section 2(i) - where a contract is good in substance but because of some technical defects i.e. absence in writing or barred by limitation etc. One or both the parties cannot sue upon it it is described an unenforceable contract.

Ex → Mr. Gopal has taken goods of Rs. 2 lakh from Vasooli Bhai in 2015 on credit → valid contract.

But no payment has been received since 2015 by Vasooli Bhai

In 2018, Vasooli Bhai wants to file case against Mr. Gopal for recovery of money.

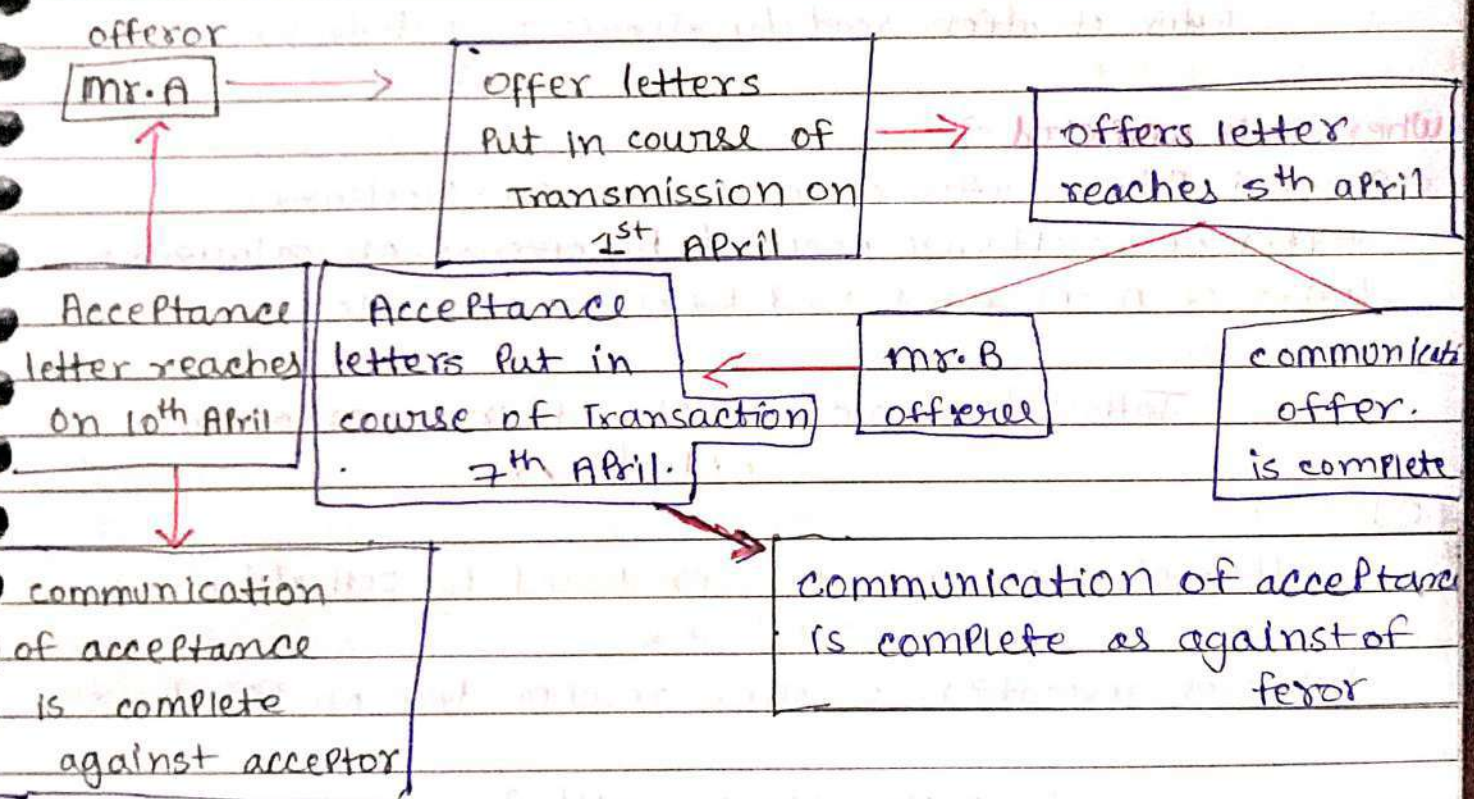
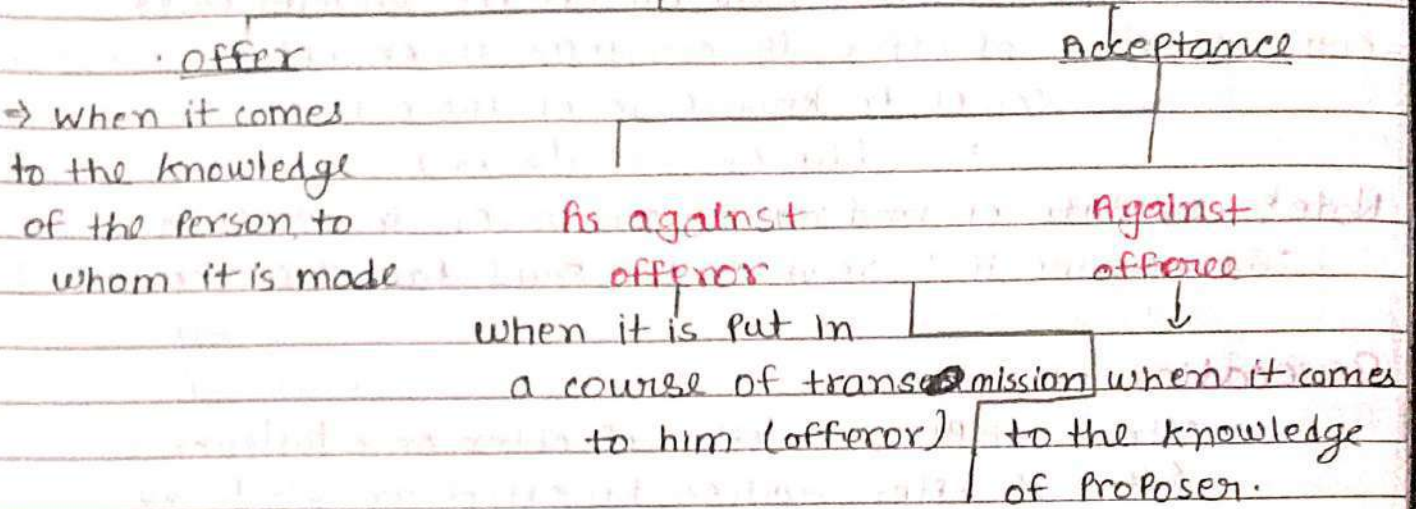
As per Limitation act; debt due cannot be legally collectable after expiry of 3 years

3 years already expired. Hence Vasooli can not case file.



\* Communication of offer and acceptance

communication of offer and acceptance / when complete?



communication of offer - when it is complete by post?

Offeror dispatched letter of offer on 02/01/20xx  
letter of offer received by offeree on 03/01/20xx  
letter of offer read by offerree on 04/01/20xx  
communication of offer is completed when offer comes to knowledge of the offeree (i.e on 04/01/20xx)

Note:- If date of reading is not given in question. Then assume it is read on the same day it is received.

Revocation of offer:

Offeror dispatched letter of offer on 01/01/20xx  
letter of offer received by offeree on 03/01/20xx  
letter of offer read by offerree on 04/01/20xx

When it is completed?

offeree dispatched letter of acceptance on 06/01/20xx  
letter of acceptance received by offeror on 09/01/20xx  
letter of acceptance read by offeror on 10/01/20xx

Jethalal cannot revoke offer on or after 06/01/20xx

case ①

letter of revocation of offer posted by jethalal on 02/01/20xx  
letter of revocation of offer reached Iyer on 05/01/20xx

Is revocation valid?

yes

Case - 2

Letter of revocation of offer posted by Jethalal on  
02.01.20xx

Letter of revocation of offer reached Iyer on 07.01.20xx

Is revocation valid?

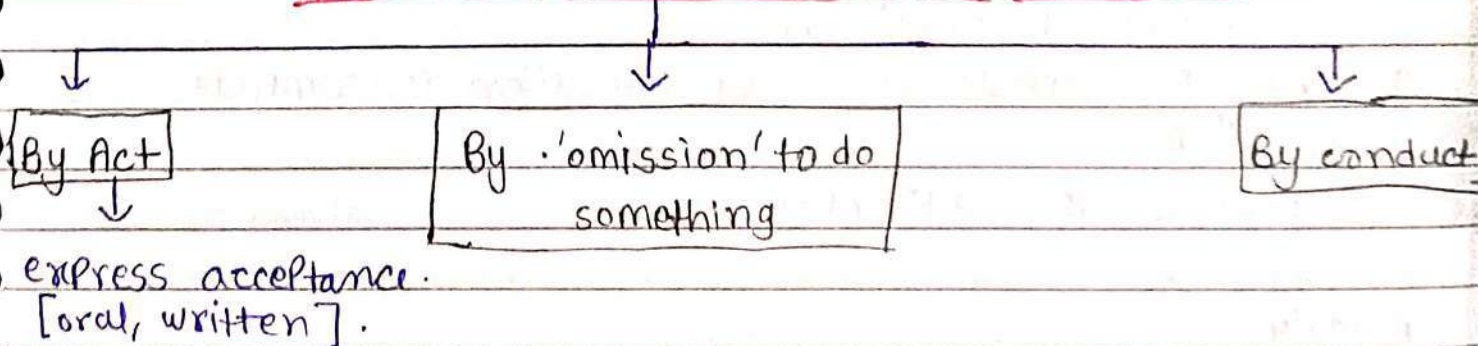
**NO**

Modes of revocation of offer. 1.26

Note: In English law, only revocation of offer is allowed but revocation is not allowed. But in India, both are allowed.

- Notice of revocation
- Lapse of time
- Non-fulfilment of condition precedent.
- Death or insanity.
- counter offer [conditional acceptance.]
- subsequent illegal
- non-acceptance of offer as per usual / prescribed mode.

Modes of communication of acceptance. 1.27



\* Upto when Revocation can be done ? 1-22.

↓ offer

Anytime before acceptance is complete as against offeror but not afterwards.

↓ Acceptance

Anytime before acceptance is complete against acceptor but not afterwards.

\* when communication of Revocation is completed.

↓

As against the person who makes it

When it is put in a course of transmission so as to be out of power of person who makes it

इसके वरिष्ठ acceptor acceptance की Revocation की जा सकती है।

As against the person to whom it is made when it comes to his knowledge.

letter को acceptor post करेगा तो इसके वरिष्ठ offeror offer की Revocation की जा सकती है।

Example :- Mr. A revokes his offer on 4<sup>th</sup> April and it reaches B on 6<sup>th</sup> April.

Then, Mr. A communication of revocation is complete on 4<sup>th</sup> April.

→ Against B → 6<sup>th</sup> April.

Similarly

B send revocation of acceptance on 8<sup>th</sup> April, reaches to A on 9<sup>th</sup> April, then -

→ Against B → 8<sup>th</sup> April

→ Against A → 9<sup>th</sup> April

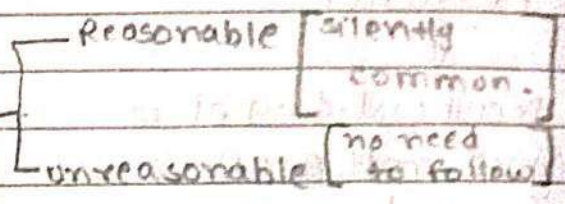
\* Acceptance over telephone or telax or fax or email.

→ contract is complete only when acceptance received from offeree.

Note :- [Entores Ltd vs Miles forecast co.]

→ call drops and disturbance in line, there may not be valid contract.

\* communication of special condition



→ special condition are ~~not~~ conveyed tacitly - silently and they accepted also tacitly.

Note :- In any event, acceptor is treated as having accepted special condition.

case law :- mukul vatta vs Indian Airlines

Ticket conditions :-

- ① self responsible for any damage
- ② If delay, we are not responsible.

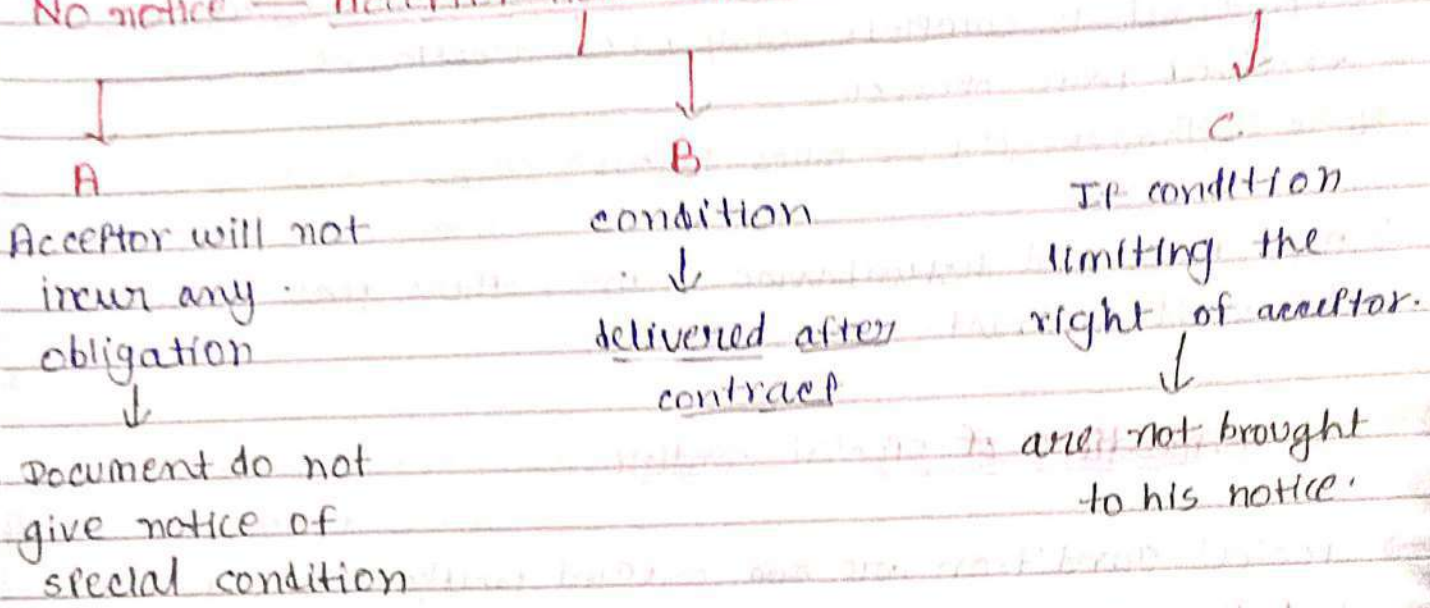
case law :- [lily white vs R. mannu swamy]

Notice of condition mandatory.

→ word like see back for conditions, please turn over, subject to terms and conditions are indicative of reasonable notice.

→ conditions are binding, even if the acceptor could not understand it.

No notice — Acceptor not bound.



case law :- [Railway transport co. vs Ghanashyam N. Hg]

facts :-

- Transport carrier accepted goods without conditions
- subsequently issued circular to owner limiting his liability

Decision :- Since special condition not communicated prior to contract, not binding to owner.

Example of standard form of contracts.

A can buy some goods to supplier B on 4th April. on this date any type of condition can't be in force in Bill. after 6th April supplier can msg. to A to follow new condition. give answer kya A ko condition follow karne hogi - According to law.

[The answer is NO]

\* Basic concepts are not in book but important to concept clarity.

- Party to contract
- stranger to contract
- stranger to consideration

Example :-

Three parties :- Salman, Aishwarya and Abhishek.

Salman can ask to aishwarya kya tum mera Flat Rs 5 crore mal loge On 10th Jun

Aishwarya reply yes.

On 10th June salman cancelled the promise In this case only aishwarya can case against ~~Abhishek~~ salman.

- Party to contract → Salman and Aishwarya.
- Stranger to contract → Abhishek other party can not case against party to contract (diffident)
- stranger to consideration → wo party to contract jiski consideration kisi aur ki person ke liye hai.

\* Some important concepts for related to upcoming concepts.

① What is special contract.

There are two types of contract

- (i) General contract - To applicable to all.
- (ii) special contract - these are those contract which are applicable to the special case. (this contract are deeply communicated in inter).

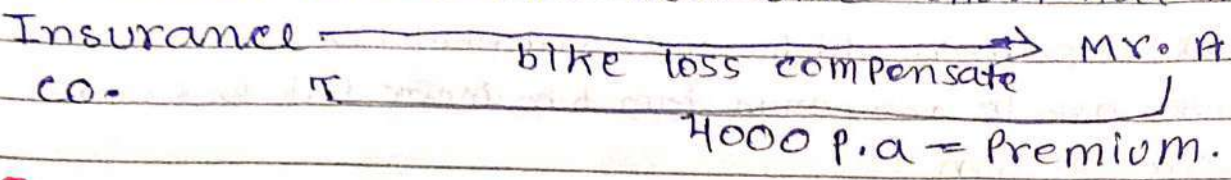
Example :- In the school the boys all rules are 100 90 rules are applicable to all but the remaining 10 rules are applicable to this boys only. This 10 boys case are [special].

② what is contract of indemnity ??

Promise to save from losses

Insurance company best example.

[Mr. A ko dar tha ke uski bike chori nae ho jaya]



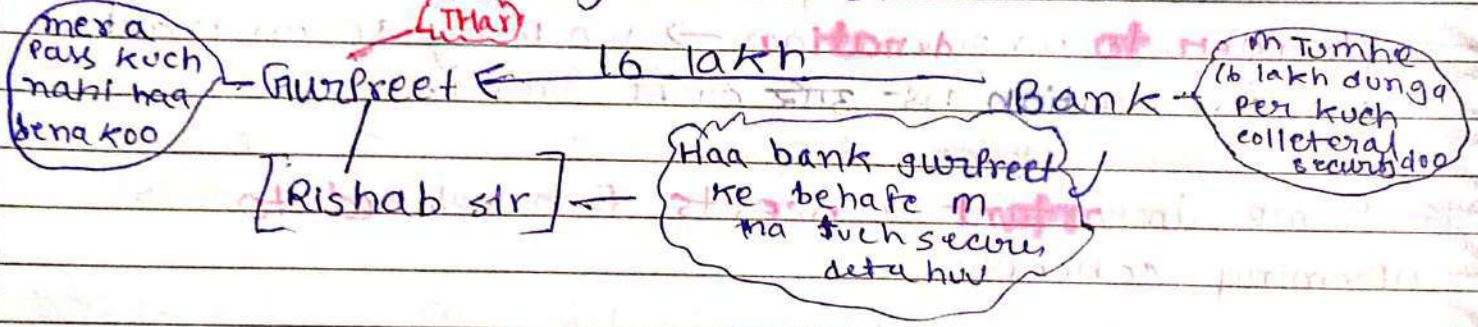
③ what is contract of Guarantee ?

Example: Three Parties

① Bank → Paise doo loan 100 (creditor)

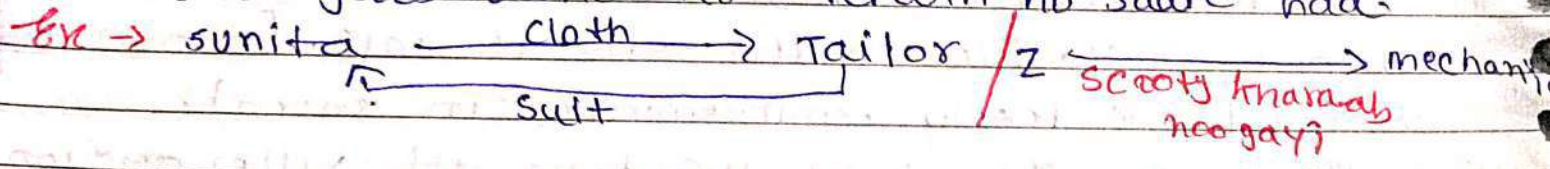
② Gurpreet → Debtor Bank see Paise laker Thar car lauga.

③ Rishab → security behafe of Gurpreet.

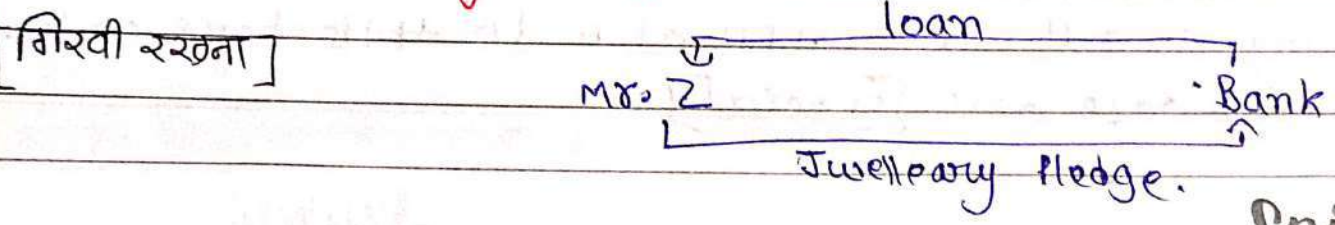


④ what is contract of bailment. ?

Owner of the goods kisi aur person ko kisi bhi purpose ke liye deta hai and wo purpose complete hone ke baad goods owner ko return ho sakte hai.



⑤ contract of Pledge (Goods)





⑥ Contract of Agency : [Agent rakhlana]

love sir → (Bhondee) agent → sale → shyam  
 after love sir appointed a agent for help in selling the house.  
 (ghar sale)

\* Suit by a third party to a contract 1.37

- consideration may come from third party.
- Only a person who is party to a contract can sue on it.
- The above rule is "doctrine of Privity of contract."
- Stranger to a contract cannot sue is known as a doctrine of Privity of contract.

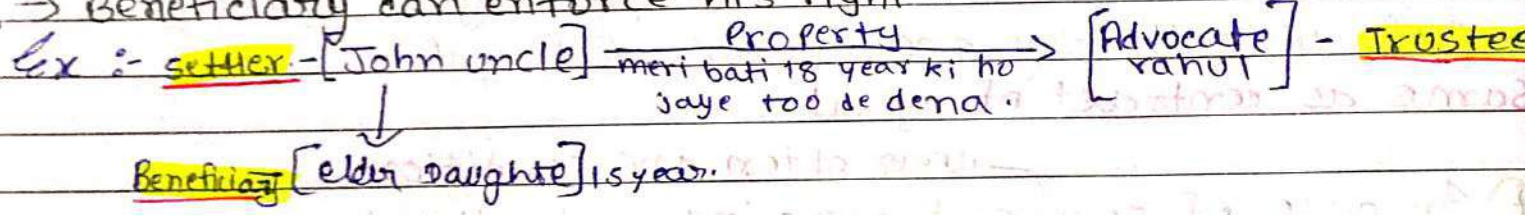
Exceptions:

→ जैत पर कर सकत है।  
 stranger to contract. Parties to contract पर case कर सकत है।

\* Exception to the above rule :-

① In case of trust .

→ Beneficiary can enforce his right .



② In case of a family settlement . [Property ka partition bina fam mem]

- If term of contract in writing
- members of family who was not a Party to contract can enforce the same.

③ In case of certain marriage contracts / arrangements.

→ Provision may be made for benefit of person

→ He/she may file suit even though not party to a contract.

Mr. A and Miss X husband - wife / Mr. Z - Miss X father.

Mr. A hamesa Miss X ko ill treatment karta tha after

Mr. A promised Simran father that he will treat his wife (X)

properly or else he will pay her monthly allowance after Mr. A no

Issa walse kya → can Miss X sue Mr. A for ill treatment

yes.

④ In case of Assignment of contract.

→ when benefit assigned under contract

→ Assignee can enforce it

APne Right ko hisi aur ko  
Transfer karna

⑤ Acknowledgement or estoppel

→ when a person represent himself as an agent of third party.

→ It would result into binding obligation towards third party.

⑥ Contract entered through an agent.

→ Principal can enforce the contract if agent acted in scope of authority and in name of Principal.

Same as contract of agent.

Restriction and condition.

⑦ In case of covenant running with the land

→ Person who purchase land with notice that owner of land is bound by certain duties.

→ covenant may be enforced by successor of seller.

\* Validity of an agreement without consideration 1.38

No consideration, No contract.

Ⓣ The general rule is that an agreement made without consideration is void (section 25)

In every valid contract, consideration is very important  
A contract may only be enforceable when consideration is there.

However, the Indian contract act contains certain exceptions to this rule.

① Nature love and affection:  
condition agreement [25(1)] - section.

- (i) must be made by natural love and affection.
- (ii) Parties - near relation
- (iii) writing
- (iv) Registered

② compensation for past voluntary services:  
conditions [sec 25(2)]

- (i) services - voluntarily
- (ii) services - promisor
- (iii) promisor - intended to compensate
- (iv) promisor must be in existence

case (1) Shyam (ka wallet khogya) ← Anuradha (Reward 100).  
(no general offer)

case (2) shyam (ka wallet khogya) ← Anuradha (shyam cam promise to annu)  
(no general offer)

③ promise to pay time barred debt..

- promise → writing
- signed → by person or his authorised agent to pay time barred debt / valid.

Ex :- Mr. Gopal has taken goods of Rs 2 lakh from Vasooli Bhai in 2015 on credit.

But no payment has been received since 2015 by Vasooli Bhai

In 2022, Vasooli Bhai wants to file case against Mr. Gopal for recovery of money

As per limitation Act, debt due cannot be legally collectable after expiry of 3 years.

Vasooli can not recover the amt because time barred debt

④ Agency.

→ As per section 185 of ICA, 1872

→ No consideration is necessary for agency.

⑤ Completed Gift

Rule :- No consideration, no contract.

does not apply to completed gift

Explanation section (1) to (25)

Section 25 does not affect the validity as between donor and donee of any gift actually made

[gift writing me lekh ke dena completed gift nahi hota or practice gift (real mai) dena ke completed gift nahi hota]

⑥ Bailment.

→ Bailment as the delivery of goods

→ from one person to another for same purpose

→ this delivery is made upon a contract

→ that post accomplishment of the purpose,

→ goods either return or disposed of.

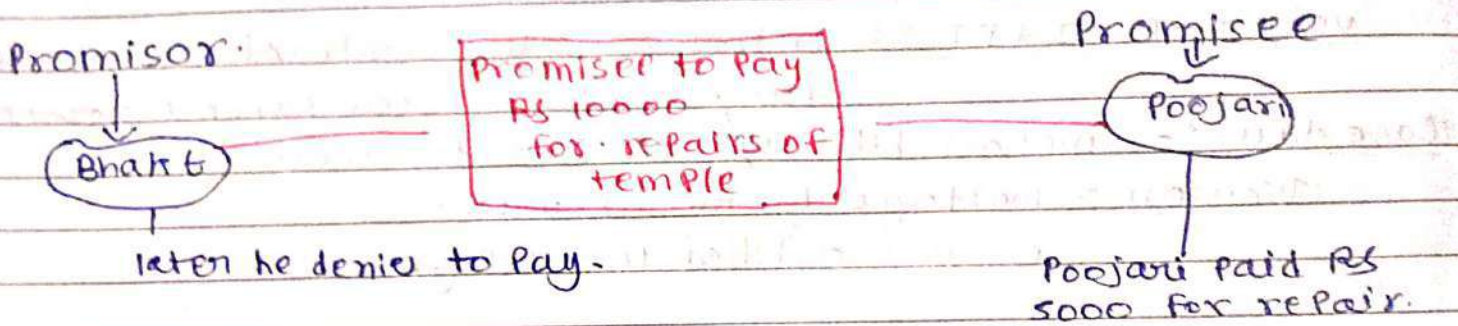
according to the direction of the person. delivering them.  
 → No, consideration is required to affect a contract of bailment.

eg- gave a bike to friend for some time

⑦ charity.

- If promisee takes liability
- on promise of person
- to contribute to charity
- contract shall be valid.

Case law :- [kedarnath vs gorie mohammad]



Poojari can recover the amt from promisee?

→ yes

It is valid contract.

material on the faith of promisee by Bhakti.

## UNIT - 3 : Other Essential Elements of a contract.

### 3.1 \* capacity to contract

Competence of the Party to make contract.

\* who is competent ?

- major/minor. [A] → major - 18 year com. minor - less than 18 year
- sound mind [B] [sec 12]
- No. disqualified by law

[A] \* law relating to minor's agreement / position of minor:

① A contract made with minor or by a minor is void - AB - INITIO: (minor ke saath contract karenge to usse void mana jayega karon ki nazari me)

Case law :- Mohori Bibi v/s Dharmo Das Ghose.

Decision :- mortgage by minor was void  
B was entitled for repayment.

② No Ratification after attaining majority:  
subsequent approval.

Pehle hum minor the tab contract kiya tha or ab hum major ho gaye, to pehle jo contract banaya usse hum raetify nahi kar sakte.

③ minor can be a beneficiary or can take benefit out of a contract.

→ It means Promisory note executed in favour of minor is valid.

→ contract act do not prevent minor from taking benefit. (Agar minor ko benefit ho raha hai to vo valid contract ho.)

request

④ A minor can always plead minority:

- Rules of estoppel cannot be applied against him
- He is allowed to plead minority in defence.

(Koe minor galte se contract kar leta hai fir vo baad me request kar sakta hai ki vo minor hai)

⑤ liability for necessities:

- liabilities for necessities to minor is enforceable by law.
- minor is not personally liable, only his property is liable.

Two conditions (to liable minor's property)

(a) contract must be for goods.

- reasonably necessary
- for his support
- in station in life.

(b) minor must not have already sufficient supply of necessities.

⑥ contract by guardian - how for enforceable:

- which is within his competence.
- and.

- for benefit of minor
- valid contract.

(Agar guardian contract kar rahi hai minor ke liye or usse minor ko sirf benefit milega tab vo valid contract hoga).

⑦ No specific performance : (Jo promise kiya hai vo nibhana nahi padega minor ko)

→ A minors agreement being absolutely void

→ no specific performance of such an agreement.

⑧ No insolvency :- (minor insolvent nahi ho sakta hai)

→ A minor cannot be declared insolvent.

⑨ Partnership :- (minor partner nahi ban sakta lekin beneficiary ban sakta hai)

→ cannot be a partner in a partnership firm but

→ can be admitted to the benefits of partnership.

⑩ minor can be an agent :- (minor agent ho sakta hai lekin agar voo kuch galat karega to principle liable hoga)

→ minor can act as an agent

→ But he will not be liable to his principle for his acts.

⑪ minor cannot bind parent or guardian :

→ In the absence of authority / liabilities. - minor cannot bind parent Even for necessities.

→ Parent is liable only when the child is acting as an agent for parents.

(minor ne koi transaction kiya or false nahi diya hai to guardian liable nahi hai. iske khye minor liable hoga)

⑫ Joint contract by minor and adult :

→ the adult will be liable on the contract and not the minor



Case law: Sain Das vs Ramchand

(jab minor or major milke kisi ke saath contract karite hai or minor pay na karne to major liable hota hai minor liable nahi hota)

⑬ surety for a minor:

(minor ke liye surety ho sakta hai jab koe major guarantee le to)

⑭ minor as shareholder

→ A minor cannot be a shareholder of the company

→ A minor, acting through his lawful guardian become a shareholder by transfer or transmission of fully paid share to him.

(minor shareholder nahi ban sakta lekin unke guardian fully paid shares unke naam par transfer kar sakte hai)

⑮ liability for torts: civil wrong (mara-mari).

→ minor is liable for tort

→ But not liable for breach of contract.

[B] \* Person of sound mind - section 12

→ A person is of sound mind

If → At the time of making contract.

→ capable of understanding the contract.

and

→ of forming rational judgement about terms of contract.

**[C] \* [contract by disqualified persons:]**

→ Alien enemy, Insolvent, convicts under Imprisonment, foreign sovereign etc.

**\* Free consent [Sec 14] 1.48**

Consent → section 13

consensus - ad - idem → agree upon the thing (meeting of minds) In the same sense

**3.3 Elements vitiating free consent**

**I [Coercion] - section-15**

Act

a) committing or threatening to commit

करना, उरना Act forbidden by IPC [Indian Penal code] की कार देता।

(c) Intention of causing any person to enter into an agreement

(b) Unlawful detaining or

Threatening to detain सरना

to keep in case study Any property to the prejudice of any person.

**\* [Effect of coercion / consequences / section 19]**

At the time in the contract the coercion can find in contract this effects are taken into force

(a) voidable at the option of the aggrieved party

(b) Reply money or thing obtained under coercion. (section 72)

Notes:-

It is not necessary that coercion must not proceed from a party to the contract.

- It is not necessary that coercion must be made with other contracting parties
- It may be directed against third person.
- It is immaterial whether IPC is in force or not in the place of coercion.

## II Undue Influence [Section 16]

mental pressure

- "Any contract is said to be induced/made by undue influence
- where relation subsisting (exists) between parties are such that.
  - (a) one party → position to dominate the will of other  
And
  - (b) uses that position to obtain unfair advantage over other.

• essential ingredients under this provision are

① Relation between the parties:

- near relation between the two person.

② Position to dominate the will:

- relation between the parties exists in such a manner
- that one of them is in a position to dominate the will of the other.

- A person is deemed to be in dominating position in the following circumstances:

① Real and apparent authority :-

- He holds real or Apparent authority over other
- In the case of master and servant, doctor and patient and etc.

### (b) fiduciary relationship :-

→ Relation of trust and confidence

eg. such type of relation exists between father and son, solicitor and client; husband and wife, creditor or debtor.

### (c) mental distress :-

→ He makes a contract with the person whose mental capacity is temporary or permanently affected by ~~reason~~ reason of.

→ age → mental or  
illness → bodily distress

### (d) unconscionable bargains :-

→ Unconscionable bargains are witnessed mostly in money-tending transaction and in gifts.

→ Zyada interest charge kar raha hai jo market se bhi high hai.

eg. lender and customer

(3) The object must be to take undue advantages;  
objective to take advantage of the other

### (4) Burden of Proof :-

→ burden of providing the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other

\* Note :

- ① No undue influence in the ordinary course of business
- ② Object must be to take unfair advantage.

- ③ Burden of Proof is on a person who is in a dominant position
- ④ Unconscionable bargain.  
→ where contract is apparently unconscionable.  
→ It is presumed by law that contract is made by undue influence.

Case law: Kirpa Ram ~~and~~ v/s Same - ul - din Ad Khan

\* Power to set aside contract induced/made by undue influence [sec 19 (A)]

such contract may be set aside by court either:

- Absolutely
- OR
- If Party has received some benefit.
- on such term as court deems fit.

### III Fraud [Section 17]

Fraud means and includes

commission of following act	committed by
(a) Suggestion as a fact / of something which is not true by a person who does not believe it to be true	(a) a party to contract or (b) any person with the connivance of party to contract or
(b) Active concealment of fact by one having knowledge of fact -	(c) agent of party to contract.
(c) promise made without an intention of performing it	

ऐसा वादा जो आप निभावना है

नहीं करना तो

(d) Any other act fitted to deceive

(e) Any act or omission specifically declared by law to be fraud.

### Intention

- to deceive another party or
- To induce another party to enter into contract.

### \* Essential elements of fraud Representation:

(a) false (b) Relate → material fact (c) made before conclusion (d) intention :- to deceive.

(e) other party.

→ Relied

→ Induced to act

→ suffered some loss

### \* Explanation to section 17

(A) mere silence as to facts likely to affect the willingness of the person to enter into contract is not fraud.

(B) Exception → silence = fraud.

(a) Having regard to the case it is duty of person keeping silence to speak.

(b) where silence is = speech

**Effect :-** Voidable at the option of aggrieved party.

### \* Effect of fraud upon validity of a contract.

(a) Rescind the contract in reasonable time.

(b) Sue for damages

(c) Insist / force performance of contract on condition in

which he would have been in the position if representation had been true.

\* mere silence is not fraud. 1.53

word v/s hobbs.

Silence = fraud.

1. Duty of person to speak.

- (a) where party stand in fiduciary relationship - <sup>(Trust)</sup> near relation
- (b) contracts of Insurance
- (c) contracts of marriage
- (d) contracts of family settlement
- (e) share allotment contracts.

memory Technic :-

Relationship share karme se marriage hoti hai fir family banti hai jiske baad hum Insurance lete hai.

2. where the silence itself is equivalent to speech.

→ In case of fraudulent silence, contracts is not voidable if the party whose consent was so obtained had the means of discovering the truth with ordinary diligence [exception to section 19.] common sense.

\* MISREPRESENTATION [section -18] - 1.54

• Positive assertion

→ of such fact which is not true, though he believes it to be true.

→ made in a manner not warranted by information of the person making it.

- Any breach of duty
  - made without an intention to deceive.
  - But bringing gains and advantage to person committing it.
- Causing other person to make mistake:
  - As to substance of subject matter of agreement.

Note:- In case of misrepresentation injured party is entitled to -

- to renege the contract.
- sue for restitution
- But cannot claim damages.
- Because there is no intention to deceive.

• Distinction between coercion and undue Influence.

Basis	coercion	undue Influence.
1. Section	Defined in sec. 15	Defined in sec. 16
2. Nature	Involves physical force or Threat.	Involves moral pressure
3. Relationship	Relationship between parties is not necessary	Some sort of relationship must exist between the parties
4. consent obtained	consent is given under the threat of an offence	consent is obtained by dominating will, no offence is committed.
5. exercise by whom	It may move even from a stranger	It employed by the party to contract.



\* Distinction between fraud and misrepresentation.

Basis	fraud	misrepresentation
1. Section	Defined in sec. 17	Defined in sec 18.
2. Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
3. Knowledge of truth	The person making the suggestion believes that the statement as untrue	The person making the statement believes it to be true, although it is not true.
4. claim of damage	The injured party can repudiate the contract and claim damages	The injured party can repudiate the contract but cannot claim damages.
5. means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	party can always plead that the injured party had the means to discover the truth.

\* legal effects of agreements without free consent - contract not voidable [section 19]

(A) where consent caused by -  
→ Silence amounting to fraud [OR] By misrepresentation.

If the party whose consent was so caused had the means to discover the truth with ordinary diligence.

(B) A fraud or misrepresentation which did not cause the consent of party to the agreement.

(C) where the party enters into a contract in ignorance of fraud.



Mistake

- If two parties enter into a contract thinking about different subject matter.
- No contract will arise.

Result / Effect :- Mistake may lead / cause a contract towards voidness.

• Effect of mistake on validity of a contract

Mistake

Mistake of law

- law of his own country / land
- Ignorantia juris non-excusat  
i.e. ignorance of law of land is no excuse.
- Such mistake will not affect the validity of the contract.
- Sec 21. Contract is not voidable
- But, contract is voidable when one party was induced by another.

- foreign law
- Sec: 21
- Treated as a mistake of fact
- Agreement is void
- Excusable.

Mistake

mistake of fact

- Unilateral
- only one party is under a mistake ↓
- subject matter, or
- Expressing or understanding terms or legal effect of agreement.

- Bilateral
- Section-21 Both parties are under a mistake as to a matter of fact essential to agreement

3.4 Legality of object and consideration

• which considerations and objects are lawful, and those which are not (section 23) unless - void

• The following is an example of the agreement which is void because of unlawful

Example 31 :- A promises to obtain for B an employment in the public services and B promises in return, to pay 10000 to A. The agreement is void the consideration, being opposed to public Policy, is unlawful

(i) when consideration or object is forbidden by law :

→ vo hai jo kanun ke nazam me prohibited / banned hai consideration or object

Ex :- A jo hai vo B ke saath chori ka contract karta hai To yee contract forbidden by law hai — void

violate / todna

(ii) when consideration or object defeats the provision of law :

→ aise contract jo lawful hai lekin kanne ka tarika galat hai / Rule todna / ke act ka section ka paalan na karna

Ex :- Purchase laptop without making the payment of GST

(iii) when it is fraudulent : (irada hi dhoka dena hai)

Ex :- out of country ke saath smuggling karna ye apne country ko dhoka dena hua aise contract void hote hai

(iv) when consideration defeats any rule for the time being in force in India.



(v) when consideration involves injury to the person or property of another: [kisi ko ya uske property ko harm karna ye unlaful hai.]

Ex :- A, B ke saath contract karta hai c ka ghar jalane ke liye isme jo contract hua vo c ke property ko harm kar raha hai isliye ye contract unlaful hai or void hai  
void - ab - initio hai.

(vi) when consideration is immoral [hamare value ke against OR] against principle

-> also len-den nahi hona chahiye contract me jo kisi ke agay ho  
Ex - jaise ki, kisi ko paise dete kisi ki shaadi tod vana  
[void - ab - initio hai]

(vii) where consideration is opposed to public policy :-

-> also consideration jo against public pol- hai.

① Trading with enemy - China ke saath sale and purchase

② stifling prosecution -> kisi ko court me jaane se rokna

Ex - A ne B ka murder kar diya or C witness tha is case ka lekin A so hai vo C ko case na karne ke liye darata hai dhamketa hai or paise detar chup rehne bolta hai yaa public policy ke against hai lekin vo C chup rehta hai to valid contract hai.

③ Trafficking related to public offices and titles :-

-> koi public service ke post ko paise dete uski post apne naam karna ye against hai public policy ke including padma vibhushan reward

④ Agreements tending to create monopolies:

single sellers create kamma

commission  
⑤ marriage brokernage agreements:

→ kisi ki shadi ke ladai ya ladya dila paise lekar

⑥ Interference with the course of Justice:

→ isme case hone ke baad interference karke hai

→ jaise ki judge ko paise lekar apni taraf kar lena

⑦ interest against obligation :- Zimedari

jo karama zimedar hai uske liye paise nahi mang sakte

⑧ maintenance and champerty.

no interest

kuch exchange me maagte hai

malafidi hai (intention are not good)   
 bona fide (genuine) (YITHRUKI) → valid hai  
void.

⑨ consideration unlawful in part.

Ex:- hum ghar khrid rah hai B se or B ko hum drugs de rahi hai

### 3.5 | Void Agreements |

Expressly declared void Agreements.

These five agreements are ~~also~~ already covered.

1. made by incompetent parties (section 11)
2. Agreements made under Bilateral mistake of fact (sec 20)
3. Agreements the consideration or object of which is unlawful (sec 23)
4. Agreement the consideration or object of which is unlawful in part (sec 24)
5. Agreement made without consideration (sec 25)

⑥ Agreement in restraint of marriage (section 26)

→ major ko rok nahi sakte hai bhale vo sign bhi karde , → other than minor.

⑦ Agreement in restraint of trade (sec 27)

→ A which restrained any person exercising a lawful profession / trade or business of any kind.

→ Is to that extent void.

koe bhi lawful kaam karne se rok nahi sakte hai

\* Exceptions :-

(1) sale of Goodwill (exception to sec 27)

→ seller of goodwill may agree with buyer.

→ Not to carry on similar business

→ within specified limits

→ limit and conditions must be reasonable.

(2) Outgoing Partner agreeing not to carry on similar business with specified limit or specified period.

(sec 36 of I PA 1932) - Jo company chod ke ja rahi hai unko rok sakte hai business karne se.

(3) Agreement of service :- (jaha job kar rahi hai vaha ka business hum nahi kar sakte)

→ breach karna

(4) Agreement in restraint of legal proceedings (section 28)

→ the one by which any party there to is.

→ restricted absolutely.

→ from enforcing ~~his~~ his right through court.

OR

→ Which limits usual period for starting legal proceeding  
 kee bhi contract ke dwara hum iski ko rokne hai  
 cont mee janne are vo void contract hai

### \* exceptions

- ① Agreement to subject dispute to arbitration And  
 only amount awarded by arbitration is recoverable  
 is valid contract high court banne ke kabil hai
- ② Dispute / question already arise or which may arise  
 in future can be referred.

Note :- It is valid and agreement must be in writing.

- ⑤ Agreement - the meaning of which is uncertain (see 33)  
 → However if meaning is capable of being made  
 certain, agreement is valid.

Imp

shart lagana.

### ⑥ Wagering Agreements (section 30)

- Agreement involving payment of sum of money upon  
 determination of an uncertain event.

### \* Essentials of wages.

- ① Promise to pay money or money's worth
- ② Promise → conditional on uncertain event.
- ③ each party - must stand to win or lose.
- ④ common intention of agreement → Bet.
- ⑤ Parties have no interest in event except for stake.

### \* Transactions similar to wager (Gambling)

- ① lottery transactions.
- ② crossword puzzles & competitions.
- ③ speculative transactions.
- ④ Horse Race transactions.

\* Effect of wagering agreements: Wagering agreements are void but not illegal. However in Maharashtra and Gujarat wagering agreements have been declared illegal.

\* Suit to recover money deposited under wagering agreements: money deposited with a person (called stake holder) to be paid to the party winning upon a wager cannot be recovered by the winner. on the other hand, the loser can recover his deposit from the stakeholder. But where the stakeholder pays the money to the winner, the loser cannot recover it from him.

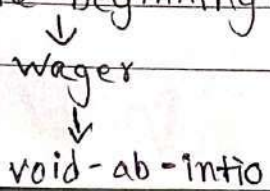
\* Exceptions similar.

• Transaction resembling with wagering transaction but are not void (valid)

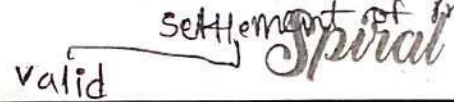
- ① Chit fund (kitty parties)
- ② commercial transactions or share market transactions.
- ③ Games of skill and Athletic competition.
- ④ A contract of insurance. (KBC)

\* Settlement of Price.

Intention of the parties is to settle the price right from the beginning.



Intention of the parties it was to deals in the good but later on their was an settlement of price.







★ Collateral Transaction :- The validity of collateral transaction can not be challenged because the main contract which is a wager and have void .  
Eg. in a wagering contract the broker is entitled to collect his brokerage.

	<u>Insurance</u>	<u>wagering</u>
<u>Basis</u> legal or illegal	legal	Illegal and void
<u>Beneficial</u> <u>for Public</u>	✓	opposed to Public Policy
<u>Indemnity</u>	✓	✗
<u>Interest</u>	Insurable	No interest except for stake.
<u>Protection</u> <u>of subject</u>	Both parties Interested	only one party interested.

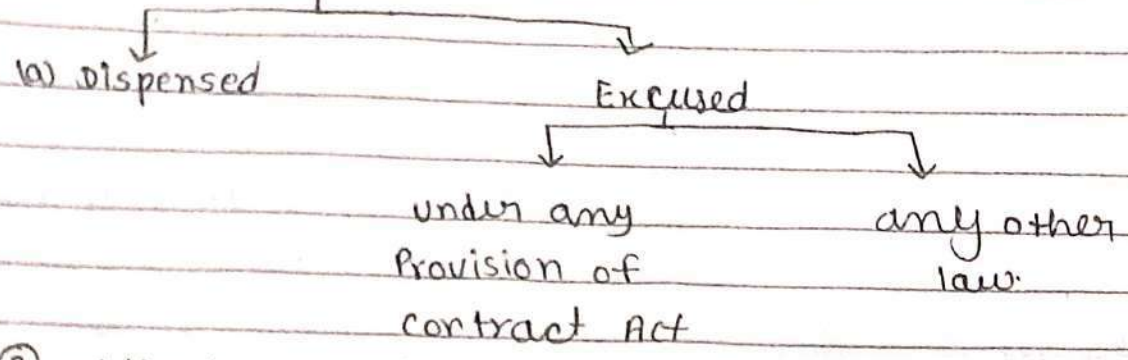
### UNIT : 4 Performance of a contract

#### 4.1 Obligations of parties to contracts (section 37)

- ① Parties to contract must either
  - 1a) perform or
  - 1b) offer to perform

} reflective promise

#### ② No [performance]

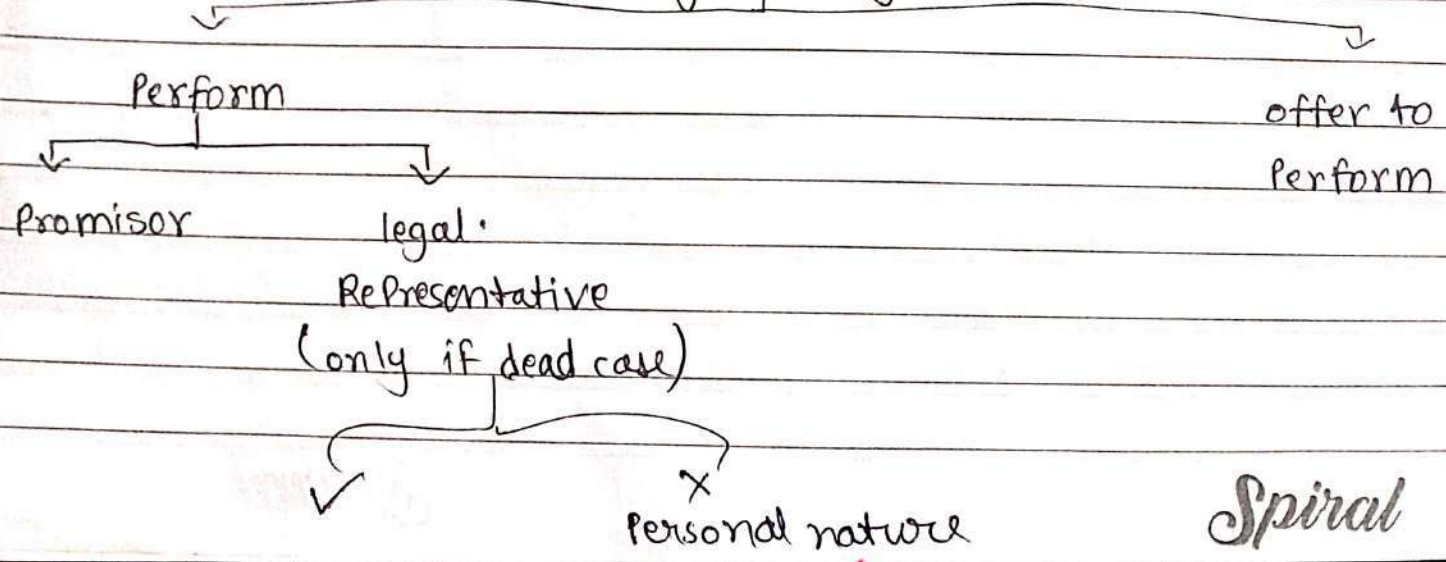


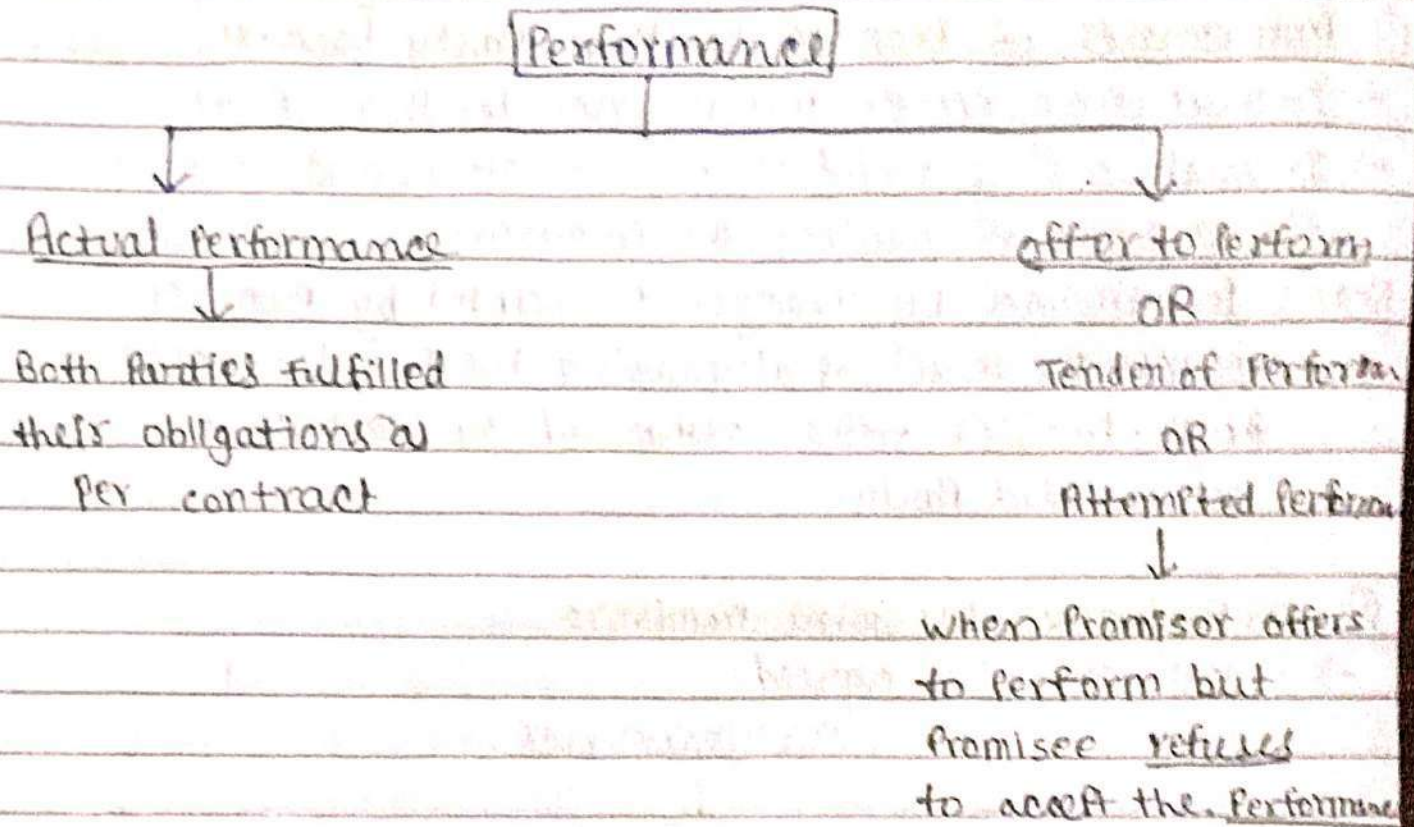
- ③ obligation continues even after death of Promisor
  - Representative of promisor will be bound by promisee
  - Unless otherwise agreed.

#### • Exceptions :-

- a) Involves personal skill of promisor
- b) No provision in contract.

#### Section 37 contract ↓ legal obligation





4.4 By whom a contract may be performed (section 40, 41 and 42)

① only by promisor

- 1.76

- (a) if contract shows the intention of the parties that any promise contained in it should be performed by promisor himself.
- (b) in most cases :- it involves personal skill.
- (c) where promise is based on personal confidence between the parties.

② By the promisor or other.

case other than ①

- promisor himself
- His representatives or
- other competent person employed by promisor  
i.e representative or agent.

③ Performance of Promise by third party [sec. 41]

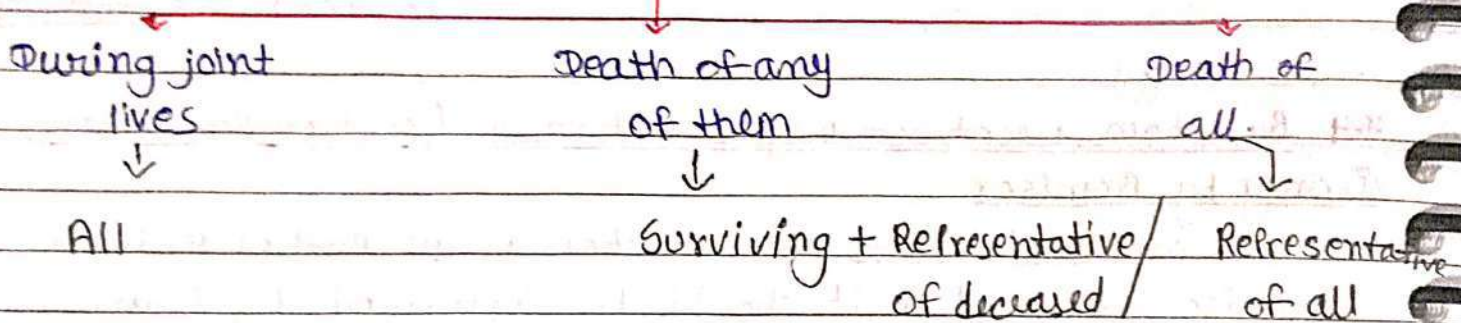
- Promisee may accept performance by third party
- In such case ; Promisee cannot afterwards enforce the performance against the promisor.

Note:- Performance by stranger if accepted by promisee produces the result of discharging the promisor even though promisor neither authorised nor satisfied act of third party.

④ Performance by joint promisors

→ unless otherwise agreed.

Performance



4.5 Distinction between Succession and assignment

	<u>Succession</u>	<u>Assignment</u>
Nature	Succession occurs by the process of law (i.e. compulsory by law).	Assignment occurs at the wish of the parties (i.e. voluntary in nature)
Transfer	Both the burden and benefits attaching to the <del>the</del> contract are transferred to legal heirs.	In assignment, only the benefit of the contract can be assigned.
Liability	The person who succeeds is liable only to the extent of properties inherited by him	⊙ There is no question of liability of the assignee as only benefits are assigned.

Eligibility	A successor must be a family member	Assignee can be any person.
Example	on death of father son succeeds his estate; but he is liable to the extent of his estate received	A assigns his right to recover money from B to C.

402 and 403

Non Performance / Part Performance and non-Acceptance

	Default by Promisee Refusal to accept Performance (Section 38)	Default by Promisor Part Performance (Section 38)
Default	Promisee	Promisor
Description	Refusal to accept	Part Performance.
Situation	a) Promisor offered to perform his promise i) to the promisee <b>OR</b> (ii) one of joint promisee <b>AND</b> (b) promisee refused to accept performance	a) promisee ready to accept the performance by promisor but. (b) promisor refused perform <b>OR</b> disabled himself from performing promise in completeness
Effect.	a) Promisor not responsible for non-performance b) Promisor does not lose his right under <del>the</del> contract.	(a) Promisee may put an end to contract (b) where promisee expressly or impliedly consents for continuance he cannot put an end. (c) Promisee is entitled for damages for <del>non</del> performance

### 4.6 Liability of Joint Promisor and joint Promisee 1.7.8

① Devolution of joint liabilities (obligations to perform joint promises): (section 42)

→ Devolution means passing over from one person to another.

→ When two or more persons have made a joint promise, they are known as joint promisors, unless a contrary intention appears from the contract; all joint promisors must jointly fulfill the promise. If any of them dies, his legal representative must, jointly with the surviving promisor, fulfill the promise. If all of them die, the legal representative of all of them must fulfill the promise jointly.

• The rules regarding performance of joint promises are:

a) Anyone of the joint promisors may be compelled to perform.  
sec 43 Ex :- A, B and C jointly promise to pay Rs 3000. I may compel either A or B or C or any two of them to pay him Rs 3000.

(b) Right of contribution:

Ex :- A, B and C are under a joint promise to pay Rs 3000. A is compelled to pay the whole. A can recover Rs 1000 each from B and C.

Note :- If any one of the joint promisors make default in such contribution, the remaining joint promisors must bear the loss arising from such defaulting in equal share.

(c) Release of joint promisor: (section 44)

→ when two or more person have made a joint promise a release of one such joint promisors by the promisee

does not discharging the other joint Promisor is responsible to the other joint Promisor or Promisors

② devolution of joint rights : [sec 45]

→ when a person has made a promise to two or more persons jointly these persons are known as joint Promises.

#### 4.7 Time and Place for Performance of the Promise - 1080

① Time for Performance of Promise, where no application is to be made and no time is specified - [sec 46]

→ Agar contract me koe specific time or notice nahi diya hai tab us contract ko reasonable time per performe karna hai depends upon facts of the case.

② Time and Place for Performance of Promise, where time is specified and no application to be made - [sec-47]

→ Time specified hai contract me lekin koe notice nahi hai to hum usse usual hours of business me perform karna hai.

10:00 to 7:00 → depend upon the business to business  
agar business hours me nahi hai to hum use reject kar sakte hai

③ Application for Performance on certain day to be at Proper time and Place - [sec-48]

→ Promisee ki duty hai ki Promisor ko batana / kis din or kis samay or kis Place par aana hai Promise ko perform karne ke liye.

(4) Place for the performance of promise, where no application to be made and no place fixed for performance - [sec. 49]

→ koe place nahi ~~hai~~ bataya hai to hum promise ko reasonable place par jaake perform karina hai

(5) Performance in manner or at time prescribed or sanctioned by promisee - [sec. 50]

→ Agar dalke contract "kuch" kehta toh dalke kuch hi sunna hoga

#### 4.9 Appropriation of Payments - 1.85

(1) Application of Payments where debt to be discharged is indicated [sec. 59]

→ Application of money where indicated → as per debtor indication.

(2) Application of Payments where debt to be discharge is no indicated (sec. 60).

→ Application not indicated

→ creditor may apply to any law full debt.

(3) Application of Payment where neither party appropriate [sec. 61]

→ No act done by anyone

→ apply chronological order (order of time)

→ similar day → proportionately.



ek hi jan vaada karu to use promise bolte hai.



wada ke badle  
wada milta hai wada  
reciprocal promise bolte hai

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#### 4.8 Performance of Reciprocal Promise

(i) Promisor not bound to perform unless reciprocal promise ready and willing to perform - [sec-51]

⇒ ek haath se lena dusre haath se dena (saath-saath)

→ Same wala ready nahi hai to promise kaise perform nahi ho sakta.

→ A or B ne contract kiya A goods deliver karega or B false dega jab tak B goods deliver karne ke liye false nahi dega tab tak goods kaise deliver hoga.

(ii) order of performance of reciprocal promises :- [sec-52]

→ Pehle tum kuch karo fir hum kuch karre.

Eg :- Pizza ki jab tak delivery nahi hoti tab tak hum use paise nahi dete Pizza pehle aayega tab na hum paise denge or same hotel me hum order karenge khana fir khayenge tab paise denge. khane se pehle paise nahi dete.

(iii) liability of party preventing event on which the contract is to take effect - [sec-53]

→ do person ke bich me contract ho raha hai or ek party ko roka ja raha hai promise perform karne us case me party contract ko void bana sakta hai or vo losses bhi recover kar sakta hai.

(iv) Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises [sec-54]

→ Hamara kaam depend rehta hai promisor par.

Promise perform hoga tab naa reciprocal promise hoga.

→ Pehle aap perform karoge tab hum use mana karu.

Paayenge naa, aap perform hi nahi karoge to hum

kaise perform karenge / agar aap perform nahi karde

uske liye aalko hame compensation dena hoga or losses bhi

eg :- A or B ne contract kiya A → B ko bolta hai tu mujhe

diamond ka ring banake de Jo mene design bataya hai

use hisab se meekr machine baad lene aaunga B apna

paisa kharch karke diamond ring bana deta hai & lekin

A lene se mana kar deta hai vo apna promise

perform nahi karta - B →

Point ③ ka example → A or B contract karite hai.

A → B ko bolta hai kuch kaam karne 1000 rs

me or B ok bolta hai fir A mana karita hai contract

voidable hai B ke liye or vo compensation bhi le sakte hai

(V) Effects of failure to perform at a time fixed in a contract in which time is essential [section 55]

→ contract - Time essential element hai → or vo time pe

perform nahi hoti to hum contract ko - rescind kar

sakte hai or damages bhi claim kar sakte hai.

→ contract becomes voidable at the option of the promisee.

⇒ eg. shaadi ke liye jewellery ka order diya tha vo shaadi

ke din se pehle nahi aata to hum contract ko

rescind kar sakte hai or damages bhi claim kar sakte hai

(a) Effect of such failure when time is not essential.

→ agar time essential element nahi hai contract me to

vo valid contract hota hai or vo voidable nahi hota  
lekin hum compensation le sakte hai or losses bhi  
recover kar sakte hai.

(b) Effect of acceptance of performance at time other than  
agreed upon:

→ agar promisee waive off karta hai matlab usse maaf  
karke hai promisee ka performance accept kar leta hai  
us case me vo compensation or losses claim nahi  
kar sakte or contract voidable nahi ho sakte kyunki  
usne accept kar liya promisee ka performance late hame par  
bhi

(vi) Agreement to do Impossible Act [sec 56]

① Initial impossibility (impossibility existing at the time  
of contract):

→ shuruwat se hi impossible tha (void - ab initio)  
Ex :- make ~~dead~~ dead person alive

(a) If known to the parties → void

Ex :- ~~A or B contract~~ B promise karke hai ki agar aap Indian  
ocean from Mumbai to Aden swim kar loge ek week  
me to vo 50000 Rupees dega

(b) If unknown to the parties → void

ex :- A or B contract karke hai A → B ko brown horse  
behega Rs 50000 me lekin dono ko pata nahi hota  
ki horse agreement ke pehle hi mar gaya  
also agreement void hote hai.

(C) If known to the promisor only → void + damage claim  
Ex :- A → B ko redmi ke phone apple ka sticker lagake bechta hai • A ko pata rehta lekin B apna diligence use karta to vo nahi khridta B khrid leta hai fir B → A se uske losses recover kar sakta hai.

② subsequent or supervening impossibility (Becomes impossible after entering into contract.  
 - • Pehle valid hota hai lekin kuch ghatna hone ki wajah se vo void ho jata hai baad me.

Ex :- hamne plastic bags bechne ka deal kari • lekin plastic bags banned kar diya government ne to ab hum perform nahi kar sakte.

⑦ Reciprocal promise to do certain things that are legal and also some other things that are illegal - [sec-57]

→ A or B contract karite hai, A → B ko house sell karta hai 50000 me agar B gambling ke liye use karega to A 75000 charge karega.

→ isme jo ghar sell kiya or B ne 50000 diya ye valid contract tha.

→ lekin jo A ne 75000 manga B se gambling ke use ke liye vo unlawful contract tha isliye ye contract void hoga.

⑧ 'Alternative promise' on branch being illegal - [sec-58]

→ A → 100000 → B  
 ↙ 1000 kg rice → valid contract

OR  
 100 kg drugs → void contract.

4.10

Contracts, which need not be performed - with the consent of both the parties :-

(1) Effect of novation, rescission, and alteration of contract [sec 62]

a) Effect of novation :- Parties to a contract agrees to 'substitute a new contract for old contract'

- It may take place.
- between same parties \* Parties have changed
- OR \* terms are the same
- different parties

Note :-

- (1) Novation must be made with mutual consent of all the parties to original contract.
- (2) original contract rescinded

(b) Rescission :- (cancellation)

- when parties to a contract agrees to rescind it, contract need not be performed.
- No new contract comes into existence.

(c) Alteration :- contract me kuch change karna

- parties are the same
- terms have changed (major)

(2) Promises may waive or remit performance of promise (sec 63)

→ remit the whole or part of promise.

[OR]

→ Extend the time of performance

[OR]

→ accept other satisfaction.



② Restoration of Benefit under a voidable contract [sec 64]  
→ aggrieved party job contract ko rescind kariega to use uska property mil jayega or badle m jo use mila hoga vo use btard hoga.

① Obligations of person who has received advantage under void agreement or contract that becomes void (sec 65)

Provision :-

When an agreement -  
→ discovered to be void.

OR

- when a contract becomes void
- Any person who has received only advantage under such agreement or contract.
- is bound to restore it.
- To the person from who he received.

Ex :- A → B ko 1 lakh pay karata hai B ko A ke daughter se shadi karini hogi. lekin C mar jaati hai promise ke time par. ye agreement void, lekin B must repay A Rs 100000

③ Communication of Rescission [sec-56]

- Rescission must be communicated to the other party
- In the same manner as a proposal is communicated under section 4 of the contract Act.
- Similarly, a rescission may be revoked in the same manner as a proposal is revoked

③ Effects of neglect of Promisee to afford Promisor reasonable facilities for performance. [sec 67]

→ If any Promisee neglects or refuses to afford the Promisor reasonable facilities for the performance of his promise, the Promisor is excused by such neglect or refusal as to any non-performance caused there by.

→ reasonable facilities dena hai.

→ Ex: If student refuses to learn, the teacher cannot be held liable for not teaching.

#### 4.11 Discharge of a contract

① Discharge by performance :-

- a) Actual Performance
- b) Attempted Performance

② Discharge by mutual agreement :-

- |   |   |  |
|---|---|--|
| <ol style="list-style-type: none"> <li>(a) Novation</li> <li>(b) Rescission</li> <li>(c) Alteration</li> <li>(d) Remission</li> </ol> | } | <p>section 62 of the Indian contract Act provides if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter it, the original contract need not be performed.</p> |
|---|---|--|

③ Discharge by impossibility of performance :-

- ① Initial Impossibility
- ② Supervening impossibility.
  - an unforeseen change in law

the destruction of the subject matter essential to that performance

→ declaration of a war (section 56)

→ the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing.

④ Discharge by lapse of time: If a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time-barred and irrecoverable.

⑤ Discharge by operation of law: → by death of the promisor or by insolvency.

⑥ Discharge by breach of contract:

→ Breach of contract may be actual breach of contract

[OR]

→ anticipatory breach of contract.

⑦ Promisee may waive or remit performance of promise:

→ a contract may be discharged by remission (sec 63)

⑧ Effect of neglect of promisee to afford promisor reasonable facilities for performance:

The promisor is excused by such neglect or refusal as to any non-performance called there by.





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### ④ merger of Rights :-

- When inferior rights and superior rights meet in one and the same person.

→ merger  $\begin{cases} \rightarrow \text{Inferior} \rightarrow \text{vanish} \\ \rightarrow \text{Superior} \rightarrow \text{exist.} \end{cases}$

Unit - 5 :- Breach of contract and its Remedies  
↳ Breaking of an obligation

Actual Breach of contract

→ Party fails or refuses to perform his promise on

- (1) Due date of performance or
- (2) During course of performance
- Refusal or failure may be express or implied

Anticipatory Breach of contract

(a) When a Party declares his intention of not performing the contract before performance is due by  
⇒ Refusing to perform his promise.

OR

→ By his act disabling himself from performing before due date of performance  
(b) Expressly or impliedly

Remedies under anticipatory breach.

Aggrieved party → Party not at fault may.

1. Put an end to the contract and treat the anticipatory breach as actual breach.

- (a) Promisee is excused from performing or further performance.
- (b) Promisee can sue promisor immediately without waiting till date of performance
- (c) Amount of damage = contract price - market price.

2. Choose to keep the contract alive till date of performance

- (a) Promisor may choose to perform and promisee is bound to accept it.

- (b) contract becomes void if some event happens outside the power of Promisor and Promisee will be discharged  
 → Promisee shall have no right of action against Promisor
- (c) Amount of damage same as above

### Suit for damages [sec 73]

2. Aggrieved party is entitled to receive compensation for loss which

(i) Arise naturally in the usual → (ordinary damage) course of things from such breach.

(ii) which are the parties know to → (special damage) be likely result of such breach.

2. No compensation for remote loss or indirect loss.

### Kind of damage

2. Special damage -

where

- a party to a contract receives
- affecting the contract.
- He will be liable.
- not only for natural damages of breach
- but also for ~~special~~ special damages.

2. ordinary damage.

3. vindictive or exemplary damage.

Purpose :- To punish defendant and not compensation when awarded.

(a) Breach of Promise to marry.

(b) wrongful dishonour of cheques

### manner of measuring

• depends upon severity of shock to the sentiments of aggrieved party :-

Rule :- smaller the amount of cheque, larger will be the amount of damage.

### 4. Nominal Damages -

→ Plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage.

→ It is awarded just to establish the right for the breach of contract.

→ The amount may be a rupee or even 10 paise

### 5. Damage for deterioration caused by delay :

(a) when goods get deteriorated due to delay damages can be recovered without notice.

(b) deterioration means.

→ Physical damage.

→ loss of special opportunity.

### 6. Prefixed damages :-

liquidated damage

penalty

→ when a sum is named in a contract as amount to be paid in case of breach.

→ Aggrieved party

- entitle for reasonable compensation not exceeding the amount (section 74)

Note: court will never allow more. But the court may allow less.

Exception :- Bond given by a person in ~~the~~ public duty shall be liable to pay the whole sum mentioned there.

Other remedies :-

1. Rescission of contract :

contract → broken

other party → may treat contract as rescind

Effect :- Party not in fault is absolved from his obligation and entitled for compensation for any change

2. Quantum merit

As much as merited (earned)

General Rule :-

Unless a party performs his performance in full, he cannot claim performance from other party.



Unit - 6 Contingent and quasi contract.

Contingent contract [section 31]

meaning of happening of event with example.

Buyer :- I want to buy 1 tonne rice for Rs 500000

seller :- Yes, I will sell you rice if my ship carrying rice arrives in India.

→ main contract ←

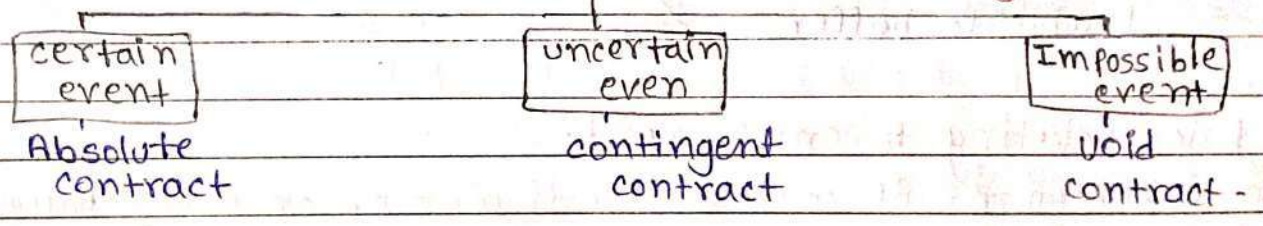
sale of Rice collateral event :- ship arrival in india

This is a contingent contract as contract depends on happening of an uncertain event.

definition :- [sec 31]

A contract to do or not to do if some event collateral to such contract does or does not happen.  
ship arrives

Contract dependent on happening of →



collateral event:

Neither performance directly promised as part of contract

Nor the whole of the consideration for a promise.



- (d) contingent on happening of specified event within the fixed time [sec 35]  
 (e) contingent on specified event not happening within fixed time [sec 36]  
 (f) contingent on an impossible event (sec 36)

Difference b/w contingent and wagering contract

	contingent contract.	wagering contract
<u>Basis meaning</u>	A contingent contract is a contract to do or not to do something with reference to a collateral event happening or not happening	A wagering agreement is a promise to give money or moneyworth with reference to an uncertain event happening or not happening
<u>Reciprocal promises</u>	contingent contract may not contain reciprocal promise	A. wagering agreement consist of reciprocal promise
<u>uncertain event</u>	In a contingent contract the event is collateral	In a @ wagering contract the uncertain event is the core factor
<u>Nature of contract</u>	contingent contract may not be wagering in nature	A wagering agreement is essentially contingent in nature
<u>effect of contract</u>	contingent contract are valid	wagering agreement is void

Quasi Contracts

- quasi contract are based on principles of equity justice and good conscience.
- under certain special circumstances, obligation resembling those created by a contract are imposed by law, although the parties have never entered into a contract.



Such obligation imposed by law are referred to as 'quasi contract'

### Salient features of quasi contract :-

- (a) In first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.
- (b) secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law.
- (c) Thirdly, it is a right available not against all the world, but against a particular person or persons only so that in this respect it resembles a contractual right.

### Cases deemed as quasi-contract :-

(a) claim for necessaries supplied to person incapable of contracting (sec 68) :-

→ If necessaries are supplied to a person who is incapable to contracting; the supplier is entitled to claim their price from the property of such a person.

(b) Payment by an interested person :-

→ A person who is interested in the payment of money

→ which another is bound by law to pay.

therefore pays it is entitled to be reimbursed by other.

(c) Obligation of person enjoying benefit of non gratuitous act

→ Plaintiff must prove

(i) that he had done act or had delivered thing lawfully

And

(ii) He did not do so gratuitously And (iii) other person enjoyed

the benefit.

case law :- Shyam Lal vs state of UP

Spiral

(d) Responsibility of finder of goods.

→ If he takes it into his custody

→ he has some responsibility as bailee.

\* Responsibilities :- [case law :- *Hollins vs Fowler*]

(i) To take proper care of property as man of ordinary prudence

(ii) No right to appropriate the good.

(iii) Restore goods if owner found.

(e) money paid by mistake or under coercion [sec 72].

- must repay or return it

[sales tax officer vs *Kanhaiyalal*]

*Seth Khanje* vs national bank of India

money paid coercion is also recoverable.

(i) Oppression (ii) extortion (iii) or such other means.



## Chapter 1: Indian Contract Act

### Unit 1: Contract of Indemnity and Contract of Guarantee

#### Section 124: Def<sup>n</sup> of contract of indemnity:

Contract by which one party promises to save the other from losses caused by conduct of promisor himself or by any other person is called contract of indemnity

#### Mode of contract of indemnity:

- Express ie person expressly promises to compensate (word/written)
- Implied ie when it is to be inferred from conduct of parties or circumstances of the cases.

#### Contract of indemnity must fulfill essentials valid contract:

- Offer and acceptance
- Intention to create legal obligation



- Consideration
- Competency to contract
- Free consent
- Lawful object
- agreement not expressly declared void
- terms of agreement - not vague
- capable of performance

#### Examples of contract of indemnity:

1. Mr. A, a SH of a co. lost his share certificate. He applied for the duplicate. The co. agreed to issue the same on the term that Mr. A will compensate co. against the loss where any holder produces the original certificate. Here, there is contract of indemnity between Mr. A and the co.
2. A may contract to indemnify B against consequences of any proceedings which C may take against B in respect of a sum of Rs. 5000/- advances by C to B. In consequence, when B who is called upon to pay sum of money to C fail to do so, C would be able to recover amt. from A as u/s 124.



Sec 125: Rights of indemnity holder when sued:

The promisor / indemnity holder in a contract of indemnity, acting within the scope of his authority, is entitled to recover from promisor / indemnifier:

- (1) All damages which he may be compelled to pay in any suit w.r.t. matter to which indemnity applies.
- (2) All cost which he may be compelled to pay in bringing or defending any suit provided:
  - he did not contravene the orders of promisor, and
  - acted as a prudent man would act if there were no contract of indemnity.
- (3) all sums which he may have paid under terms of any compromise of any such suit provided compromise:
  - was not contrary to orders of promisor, and
  - was one promisee would have prudently made in the absence of such contract.

When does the liability of an indemnifier commence?

Although the Act, is silent here, on basis of judicial pronouncements it can be stated that liability of an indemnifier commences as soon as liability of indemnity-holder becomes absolute and certain.

Sec 126: Contract of Guarantee (CoG):

A contract of Guarantee is a contract to perform the promise made or discharge the liability, of a third person (principal debtor) in case of default.



3 parties involved in a COG:

Surety - Person who gives guarantee

Principal Debtor (PD) - Person in respect of whose default the guarantee is given.

Creditor - Person to whom the guarantee is given

Example:

When A requests B to lend Rs. 10,000/- to C and guarantees that C will repay the amount within the agreed time and that on C falling to do so, he (A) will himself pay to B, there is a COG. Here, B is the creditor, C the principal debtor and A the surety.

In a COG, there are 3 contracts in effect:

(i) A principal contract (of loan) between the principal debtor and the creditor (C1)

(ii) A secondary contract between the creditor and the surety (C3)

(iii) An implied contract of indemnity between surety and debtor (C2) whereby debtor is under an obligation to indemnify the surety; if the surety is made to pay or perform.

Essential features of contract of guarantee:

- Principal debt
- Consideration
- Existence of liability
- No misrepresentation or concealment



- Writing not necessary (can be oral)
- Joining of the other co-sureties

#### 1. Principal debt:-

Purpose of a guarantee being to secure the payment of a debt, the existence of recoverable debt is necessary. If there is no principal debt, there can be no valid guarantee.

#### 2. Consideration :-

- Like every other contract, a COG should also be supported by some consideration
- A guarantee without consideration is void
- There is no need for a direct consideration between surety and creditor

As per Section 127:

- Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.
- Past consideration is no consideration for the COG.
- Even if debtor is incompetent to contract, the guarantee is valid i.e. debtor can be minor
- But, if surety is incompetent to contract, the guarantee is void.

Examples;

- B requests A to sell goods to him on credit. A agrees to do so provided C will guarantee payment thereof. C promises the payment in consideration of A's promise to deliver the goods. As per sec 127, there is a sufficient consideration for C's promise. Therefore, the COG is valid



- A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

### 3. Existence of a liability :-

There must be an existing liability or a promise whose performance is guaranteed. Such liability or a promise whose performance is guaranteed. Such liability or promise must be legally enforceable by law and not time barred.

### 4. No misrepresentation or concealment (Sec 142 and 143) :-

Any guarantee obtained by means of :

- Misrepresentation by creditor or with his knowledge
  - Keeping silence as to material circumstance
- is invalid.

### Example :

A engages B as clerk to collect money on his behalf. B fails to account for some of his receipts, and A, then calls upon him to furnish security for his duty accounting. C gives his guarantee for B's duty accounting. A does not acquaint C with B's previous conduct. B afterwards make default. The guarantee is invalid.

### 5. Writing not necessary :-

Sec 126 expressly declares that a guarantee may be either oral or written.

### 6. Joining of the other co-sureties (Sec 144) :-

Where a person gives a guarantee upon a contract that creditor shall act upon it only when another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.





## Types of Guarantee :-

### 1. Specific Guarantee :

- Extends to single debt / specific transaction.
- Surety's liab. discharged when debt is paid.

#### Example :

A guarantees payment to B of price of 5 bags of rice to be delivered by B to C and to be paid in a month. B delivers bags to C. C pays for them

This is contract of guarantee as he intended to guarantee only for payment of price of 5 bags delivered one time.

### 2. Continuing Guarantee :

- Extends to a series of transactions
- Surety's liab. continues until revocation of guarantee or discharge of all transactions entered into

#### Example :

- Guarantee given in favor of person employed for collecting monthly rentals on behalf of landlord
- A guarantees payment to B for all the loan that he lends to C in the next 1 year. This is a continuing guarantee.



Distinction Point	Contract of Indemnity	Contract of Guarantee
No. of parties to the contract	2 parties - Indemnifier [promisor] and the indemnified [promisee]	3 parties - Creditor, principal debtor and surety
Nature of liability	Indemnifier - primary and unconditional	Principal debtor - Primary liability Surety is secondary and conditional
Time of liability	The liability of indemnifier arises only on happening of a contingency	The liability arises only on non-performance of existing promise or non-payment of an existing debt
Time of Act	The indemnifier need not act at the request of indemnity holder	The surety acts at the request of principal debtor
Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts
Purpose	Reimbursement of loss	For the surety of the creditor
Competency	All parties must be competent	Where minor is a debtor, the COG is still valid



### Sec 129 : Surety's liability :-

The liability of the surety is co-extensive with that of the PD, unless it is otherwise provided by contract.

#### Note :-

- 'Co-extensive with that of PD' means that surety is liable for what debtor is liable.
- Liability of surety may be made less (not more) than debtor by express contract to that effect
- Where a debtor cannot be held liable on account of any defect in the document, the liability of the surety also ceases
- A creditor may choose to proceed against a surety first, unless there is an agreement to contrary

#### Example :

A guarantee B the payment of a bill by C, the acceptor. The bill is dishonored by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it

### Sec 132 - Liability of two person:

Where 2 persons contract with a 3<sup>rd</sup> person to undertake a certain liability (contract 1) and also contract with each other that one of them shall be liable only on default of other (contract 2) the third person not being a party to such contract, the liability of each of such two persons to the 3<sup>rd</sup> person under the first contract (C1) is not affected by the existence of the second contract (C2), although such 3<sup>rd</sup> person may have been aware of its existence.

#### Example :

A and B makes a joint and several promissory note to C. A makes it, in fact, as surety for B and C knows that

at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

Discharge of surety:

1. By revocation of a continuing COG:

↳ by notice (sec 130):

- the continuing guarantee may at any time be revoked by surety as to future transactions by notice to the creditors
- once it is revoked, the surety is not liable for any future transaction
- However, he is liable for all the (past) transactions that happened before the notice was given

\* A specific guarantee can be revoked only if liab. to debtor has not accrued

Ex: A guarantees to B, to the extent of Rs. 1 lakh, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation after the bill is drawn and accepted. C dishonors the bill at maturity. A is liable upon his guarantee.

↳ by death (sec 131):

- in absence of any contract to contrary
- the death of surety operates as a revocation of a continuing COG as to future transactions taking place after death
- However, the surety's estate remains liable for the past transactions which have already taken place before the death of the surety.



↳ by novation (sec 62):

The surety under original contract is discharged if a fresh contract is entered into either between the same parties or between the other parties, the consideration being the mutual discharge of the old contract.

Revocation by conduct of creditors:

↳ By variance in terms of contract (sec 133):

Where there is any variance in terms of contract between PD and creditor without surety's consent, it discharges surety in respect of all transactions taking place subsequent to such variance.

Ex: A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and B will also be liable for losses on overdrafts. B allows a customer to overdraw and bank loses money. A is discharged from his suretyship by variance made without his consent and is not liable to make good his loss.

↳ By release or discharge of PD (sec 134):

Enters into a fresh / new contract with PD by which the PD is released, or does any act or omission, the legal consequence of which is the discharge of PD

Ex: A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying necessary timber. C is discharged from his suretyship

↳ When creditor compounds with, gives time to or agrees not to sue, PD (sec 135):

A contract between creditor and PD, by which the creditor makes a composition with, or promises to give time to or not to sue, PD — discharges the surety, unless surety assents to such contract.



Surety is not discharged in below cases :-

→ Surety not discharged when agreement made with 3<sup>rd</sup> person to give time to PD [sec 136]

Ex: C, the holder of an overdue BoE drawn by A as surety for B and accepted by B, contracts with M to give time to B. A is not discharged.

→ Creditor's mere forbearance to sue PD does not discharge surety [sec 137]

Ex: B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his securityship.

↳ Discharge of surety by creditor's act or omission impairing surety's eventual remedy [sec 139]:

If creditor does any act which is inconsistent with rights of surety or omits to do any act which his duty to the surety requires him to do, and eventual remedy of the surety himself against PD is thereby impaired the surety is discharged

Supreme Court of India - State Bank of Saurashtra V Chitranjan Ranganath Raja

A bank granted a loan on the security of the stock in the godown. The loan was also guaranteed by the surety. The goods were lost from godown on account of the negligence of the bank officials. The surety was discharged to the extent of the value of the stock so lost.

Ex: A puts M as apprentice to B and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see that M make up the cash. B omits to see this done as promised and M embezzles. A is not liable to B on his guarantee.



By invalidation of CG :-

↳ Guarantee obtained by misrepresentation invalid - Sec 142 :

Any guarantee which has been obtained by means of misrepresentation made by creditor or with his knowledge and assent, concerning a material part of the transaction, is invalid.

↳ Guarantee obtained by concealment invalid - Sec 143 :

Any guarantee which creditor has obtained by means of keeping silence as to material circumstances is invalid

↳ Guarantee on contract that creditor shall not act on it until co-surety joins - Sec 144 :

Where a person gives a guarantee upon a contract that creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join

Right of surety :-

[A] Right against PD

↳ Sec 140 : Rights of subrogation

- Where, a guaranteed debt has become due or default of PD to perform a guaranteed duty has taken place
- the surety, upon payment or performance of all that he is liable for
- is vested with all the rights which the creditor had against the PD
- this right is known as right of subrogation

i.e. when surety makes payment of guaranteed debt, he steps into the shoes of the creditor.

↳ Sec 145 : Implied promise to indemnify surety

- In every COG, there is an implied promise by the PD to indemnify the surety
- the surety is entitled to recover from PD whatever sum he has rightfully paid under the guarantee, but not sums which he paid wrongfully.

Ex. B is indebted to C and A is surety for the debt. C demands payment from A and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

[B] Right against the creditor

↳ Sec 141 : Surety's right to benefit of creditor's securities

- A surety is entitled to the benefit of every security which creditor has against the PD at the time when the contract of suretyship is entered into
- whether the surety knows of the existence of such security or not
- and if the creditor loses, or, without the consent of the surety, parts with such security
- the surety is discharged to the extent of the value of the security

Ex: C advances to B, his tenant, Rs 2 lakh on guarantee of A, C has also a further security for the Rs 2 lakhs by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to amount of value of furniture.





### ↳ Right to set off

If the creditor sues the surety may have the benefit of the set off, if any, that the PD had against the creditor

### ↳ Right to share reduction

The surety has right to claim proportionate reduction in his liability if the principal debtor becomes insolvent.

### [C] Right against co-sureties

Co-sureties - when same debt/duty is guaranteed by two or more persons, such persons are called co-sureties

### ↳ Sec 146 : Co-sureties liable to contribute equally

- Equality of burden is the basis of co-suretyship
- All the co-sureties (whether under same or different contracts and whether with or without the knowledge of each other)
- the co-sureties in the absence of any contract to the contrary
- are liable, as between themselves, to pay each and equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor



↳ Sec 147 : Liability of co-sureties bound in different sums

The principle of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Ex: A, B and C, as sureties for D, enters into three several bonds, each in a different penalty, namely, A in the penalty of Rs 1 lakh, B in that of Rs 2 lakhs, C in that of Rs 4 lakhs, conditioned for D's duty according to E

Case 1: D makes default of Rs 3 lakhs. A B and C are each liable to pay Rs 1 lakh

Case 2: D makes default of Rs 4 lakhs. A is liable to pay Rs 1 lakh. B and C Rs 1.5 lakhs each

Case 3: D makes default of Rs 7 lakhs. A B and C each have to pay full penalty of his bond.



## UNIT 2 : BAILMENT & PLEDGE

### Sec 148 : Def<sup>n</sup> of bailment

Delivery of goods by one person to another for some purpose  $\Rightarrow$  upon a contract that, when purpose is accomplished  $\rightarrow$  they shall be returned / disposed as per the directions of person delivering them.

#### Parties to bailment :

- Bailor - Person delivering the goods
- Bailee - Person to whom goods are delivered

Ex: - Delivery of car for repair  
- Giving cloth to tailor for stitching  
- Goods given to a friend for his own use for free  
- Goods given to courier co. for carriage

#### Essential elements of bailment :

##### ↳ Contract :-

- Contract may be expressed or implied
- No consideration is necessary to create a valid contract of bailment

##### ↳ Delivery of goods :-

- Bailment is only for movable goods. It is never for immovable property or money
- Delivery of possession of goods can be :
  - Actual - Goods are physically handed over (eg. delivery of car)



- Constructive - Delivery is made by doing anything that has effect of putting goods in possession of bailee or his authorized person (eg. delivery of keys of the car)

↳ Purpose :-

- Goods are delivered for some purpose. The purpose may be express or implied

↳ Possession :-

- In bailment, possession of the goods changes (by actual or constructive delivery)
- Ownership of the goods remains unchanged
- Where a person is in custody without possession, he does not become a bailee (Ex: servant having possession of master's good does not become bailee)

↳ Return of goods :-

- Bailee is obliged to return good physically to Bailor
- Return in the same form as given or may be altered as per bailor's director
- The bailee cannot deliver some other goods, even not those of higher value

Types of bailments :

↳ Gratuitous bailment : [free of charge]

- one when provider of service does it gratuitously i.e. free of charge
- Such bailment would be either for exclusive benefits of either bailor or bailee (not both)

↳ Non-gratuitous bailment :

- where both the parties get some benefit is bailment for the benefit of both bailor & bailee



### Duties of bailor :-

- disclose known facts
- bear necessary expenses
- indemnify bailee
- bound to accept the goods

Duties	Gratuitous (free)	Non - Gratuitous
Bailor to disclose faults in goods bailed (Breaks not working fine in car or dangerous horse)	<ul style="list-style-type: none"><li>- Bound to disclose fault of which bailor is aware and materially interfere with use thereof or extraordinary risk</li><li>- Non disclosure - bailor to pay damages arising directly due to such faults</li></ul>	- If bailed for hire bailor responsible bailor responsible whether or not he was aware of existence of such fault.
Pay necessary and/or extra ordinary expenses	Where, the goods are kept / or are to be worked upon by bailee free of cost - Bailor shall repay to bailee - Necessary expense (petrol) and extra ordinary expense (engine repair)	Bailor is liable to pay the extraordinary expenses <u>only</u> incurred by the bailee
Indemnify bailee for premature termination	Bailor must compensate bailee for loss or damage suffered by bailee that is in excess of the benefit received (in case of gratuitous bailment is terminated before expiry)	Will depend on the term of bailment between bailor and bailee



Indemnify any loss	Bailor to indemnify any loss that bailee may sustain by reason that bailor was not entitled to make the bailment, or to receive back the goods
Bound to receive goods	- It is the duty of bailor to receive back the goods when bailee returns them after expiry of time or purpose of bailment is accomplished - If bailor refuses - when offered at the proper time - the bailee can claim compensation for all necessary expenses incurred for safe custody

### Duties of bailee:

#### ↳ Take reasonable care of bailed goods

Bailee is bound to take as much care of such goods as a man of ordinary prudence would, under similar circumstances, take care of his own goods of the same bulk, quality and value, as the goods bailed

Note: The bailee, in the absence of any special contract, is not responsible for loss, destruction or deterioration of the thing bailed, if he has taken reasonable amount of care of it

- Ex:
1. If X bails ornaments to Y and Y keeps these ornaments in his own locker at his house along with his own ornaments. If all ornaments are lost / stolen - Y will not be responsible for loss to X.
  2. If X specifically instructs Y to keep them in a bank, but Y keeps them at his residence, then Y would be responsible for the loss.

#### ↳ Not make inconsistent or unauthorized use

If the bailee makes any use of the goods bailed, which is not according to the T&Cs of bailment, he is liable to compensate bailor for any loss or destruction of goods [Ex. speed limit of car → 50 km/hr]

Note: Bailment contract is voidable at option of the bailor, if bailee does not use the goods



according to the T&Cs of bailment

↳ Not to mix the goods

Mixing with consent of bailor - If bailee, mixes the goods bailed with his own goods, with consent of bailor, both parties shall have an interest in proportion to their respective shares in the mixture thus produced

Mixing without consent of bailor

• Separable

Where mixed goods can be separated or divided, property in goods remains in the parties respectively. However, bailee is bound to bear expenses of separation and damage arising from mixture [Ex. mixing colored cottons]

• Impossible to separate

Where it is impossible to separate the goods bailed from other goods and to deliver them back the bailor is entitled to be compensated by the bailee for loss of goods [Ex. Rice, flour, etc]

↳ Return the goods

It is the duty of bailee to return / deliver as per directions of bailor, the goods bailed without demand, as soon as bail period expired or purpose is accomplished

Bailee responsible for damage:

If by default of the bailee, the goods are not returned, delivered or tendered at the proper time, bailee is responsible to the bailor for any loss, destruction or deterioration of the goods from that time [Ex. books burnt in accidental fire]

↳ Return an accretion from goods

In absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed

↳ No adverse title

Bailee must not set up a title adverse to that of the bailor. He must hold the goods on behalf of and for the bailor. He cannot deny the title of the bailor.

Rights of Bailor:

- Terminate bailment is voidable if bailee acts inconsistent to T&C
- Demand back goods any time (in case of gratuitous bailment)
- File suit against any wrong doer
- File suit for enforcement of duties
- Claim compensation (for unauthorised use or mixing)

Right of bailor and bailee against wrong doers:

- If a third person wrongfully deprives bailee of use/possession of goods bailed or does them any injury
- bailee is entitled to use remedies as owner might have used in like case if no bailment was made and
- either bailor or bailee may bring a suit against a third person for such deprivation or injury

Note: Whatever is obtained by way of relief or compensation in any such suit shall, as between bailor and bailee, be dealt with according to their respective interests





## Rights of bailee :-

↳ Right to deliver goods to one of the joint bailors

Unless there is contract to contrary, bailor can deliver to any of the joint bailors

Ex A B C are joint owners of harvesting machine. They bailed to D. D may return the machine to A B C after expiry of term

↳ Indemnity - in case of bailor's defective title

for any loss arising to him by reasons that bailor was not entitled to make bailment or to receive back goods or to give directions in respect to them.

↳ Right to claim compensation - for faulty goods

- Bailee is entitled to receive compensation from bailor for loss caused due to failure of bailor to disclose any faults in goods known to him
- If bailment is for hire, the bailor will be liable to compensate even though he was not aware of the existence of such faults

↳ Right to claim necessary expenses

In case of gratuitous bailment - bailor shall repay to bailee necessary and extraordinary expenses incurred by him for purpose of bailment

↳ Right to apply to court to decide the title of the goods

If goods bailed are claimed by person other than bailor, bailee may apply to the court to stop its delivery and to decide the title to the goods.

Ex: TV given on rent on summer vacation by dealer. Mr. X claimed that the TV was his and he had



given to dealer for repair. Bailee can apply

Termination of contract of bailment (COB)

Expiry of goods - If goods were given for stipulated period, COB to terminate after expiry of such period

Fulfillment of purpose - If goods were given for specific purpose, COB to terminate after fulfillment of that purpose

By notice - where bailee acts in a manner inconsistent with T&C of COB bailor can terminate such COB by giving notice to bailee  
Gratuitous bailment can be terminated anytime by giving notice to bailee (but, compensate bailee to extent of loss in excess of benefit)

By death - Gratuitous bailment terminates upon death of either bailor or bailee

Destruction of subject matter - COB is terminated if subject matter of bailment is destroyed or there is a change in nature of goods which makes it impossible to be used for purpose of bailment

Finder of lost goods :-

- A person who finds some goods which do not belong to him, is called the finder of these goods
- It is the duty of the finder of goods to find true owner and surrender goods to him



Can finder sue the real owner?

- Finder has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him in finding the owner and preserving the goods found
- But he has a right to retain the goods against owner until he receives such compensation
- However, where the owner has offered a specific reward on the lost goods, finder may sue owner for such reward and may retain goods until then.

Finder of goods may sell such goods:

- Generally, the finder does not have right to sell the goods
- However, if owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it:
- when the thing is in danger of perishing or of losing the greater part of its value or
  - when lawful charges of finder amount to  $\frac{2}{3}$ rd of its value

General v/s Particular lien :-

Sec 170 : Particular lien

- In case of COB for a specified purpose
- where the bailee has, as per purpose of bailment, rendered any service involving exercise of labour or skill w.r.t. goods bailed
- he has a right to retain such goods until he receives due remuneration for such services

Note: 1. In above case, the bailee has no right to sue as long as he has bailed goods. However, if bailee returns goods w/o receiving remuneration - he has right to sue the bailor



2. Right to particular lien is lost if - bailee does not complete the work within the time agreed
3. Bailee has no rights to sell such goods

#### Sec 171 : General lien

- Bankers, factors, wharfingers, attorneys of a High Court and policy brokers may
- in the absence of a contract to the contrary
- retain, as a security for general balance of account
- any goods bailed to them
- but no other persons have such a right to retain unless there is an express contract to that effect.

Ex: A borrows Rs 500/- from bank without security and subsequently again borrows another Rs 1000/- but with security of say certain jewellery. In this illustration, even where A has returned Rs 1000/- being second loan, banker can retain jewellery given as security to second loan towards first loan which is yet to be repaid

Under the right of general lien the goods cannot be sold but can only be retained for dues. The right of lien can be waived through a contract



### General lien

### Particular lien

Sec 171 : Right of general lien

Sec 170 : Rights of particular lien

It is the right to keep possession of goods belonging to other against general balance of account

It implies a right to retain specific goods bailed for non payment of amount

It is not automatic but is recognised through an agreement

It is automatic

It can be exercised against goods even without involvement of labor or skill

It comes into play only when some labor or skill is involved resulting in increase in value of goods

Only bankers, factors, wharfingers, policy brokers etc are entitled to general lien

Bailee, finder of goods, pledge, unpaid seller, agent, partner etc are entitled.

### Pledge

- Bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'
- Bailor in this case is called 'pawnor or pledger'
- Bailee is called the pawnsee or pledgee'

Ex: Jewellery deposited as security against loan



### Essentials of a contract of pledge:

- All essentials of a valid bailment contract
- Bailment for security against payment or performance of promise
- Subject matter of pledge is goods
- Goods pledge shall be in existence
- Delivery of goods

### Rights of a pawnee / pledge

#### ↳ Right to retain the goods pledged:

- May retain goods pledged, not only for payment or performance of promise
- but for the interest of debt and all necessary expenses incurred by him wot the possession or for the preservation of the goods pledged

Ex: Bank may retain pledged goods if interest amt is pending

#### ↳ Right to retain goods for subsequent debts:

- Pawnee can retain goods pledged for any debt / promise other than the debt or promise for which they are pledged
- But he can exercise this right only when there is a contract to this effect

#### ↳ Right to extraordinary expenses incurred:

Entitled to receive from pawnor, extraordinary expenses for preservation of pledged goods (he doesn't have right to retain goods for this but can sue)



### ↳ Right to file suit:

When pawnor makes default wot payment / performance, the pawnee has the following rights -

- the pawnee may bring a suit against pawnor and retain the goods pledged as a collateral security
- or • he may sell goods pledged on giving the pawnor reasonable notice of sale

Note: If sales proceed  $<$  amount due - Pawnor still liable to pay balance

If sales proceed  $>$  amount due - pay over surplus to pawnor.

### Rights of pawnor / pledger (rights of bailor + right of redemption)

- As the bailor of goods, pawnor has all the rights of the bailor
- Pawnor also has right of redemption to the pledged goods

### Right of redemption:

- If a time is stipulated for payment / performance, for which the pledge is made
- and pawnor makes default in payment / performance at the stipulated time
- he may redeem the goods pledged at any subsequent time before actual sale of them
- but he must, in that case, pay, in addition, any expenses which have arisen from his default



#### Duties of pawnee:

1. Take reasonable care of pledged goods
2. Not make unauthorised use
3. Not to mix with his own goods
4. Return the goods when debt paid / promise performed
5. Return accretion to the goods
6. Not act inconsistent with terms

#### Duties of pawnor:

1. Liable to pay debt / perform promise
2. Compensate pawnee for extraordinary expenses for preserving
3. Indemnify the pawnee
4. Disclose all the faults which may put pawnee at extraordinary risk
5. If pawnee sells the pledged goods and receives shortfall pawnor to pay the deficit

#### Pledge by non-owners:

Usually the owner of goods pledges them to secure a loan. But under certain circumstances the law permits a non-owner who is in the possession of the goods to pledge the goods. Thus, the following non-owners may create a valid pledge:

##### 1. Mercantile Agent

- such agent having the possession of goods / documents to title of goods with consent of owner
- can pledge these goods while acting in the OCOB
- This pledge is as valid as if the owner of the goods expressly authorizes him to do so





- Valid only when the pawnee acts in good faith and
- at the time of pledge is unaware of fact that such agent did not have the authority to pledge

## 2. Pledge by person in possession under voidable contract

- When pawnor has obtained the possession (back) of goods pledged by him under contract voidable u/s 19 or 19A (not free consent)
- but contract has not been rescinded at the time of the pledge
- the pawnee acquires a good title to the goods
- provided he acts in good faith and without notice of the pawnor's defect of title
- Ex: A acquired valuable diamond at a very low price by a voidable contract. The voidable contract was not rescinded. A pledged the diamond with B. This pledge is valid

## 3. Limited interest

When the pawnor not being the owner of the goods and having limited interest pledges the goods, the pledge is valid only to the extent of such limited interest

Ex: X finds a defective phone lying on road. He picks it up, gets it repaired for Rs 5000/- He later pledges phone for Rs 10000/- True owner can recover the phone only on paying Rs 5000/-

## 4. Pledge by a co-owner

When a co-owner in possession of the goods with the assent of all the other co-owners pledges them, it is a valid pledge



### 5. Pledge by seller or buyer in possession

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

Point of distinction	Bailment	Pledge
1. Meaning	Transfer of goods by one person to another for some specific purpose	Transfer of goods from one person to another as security for repayment of debt or performance of promise
2. Parties	Bailee and Bailor	Pawnee and Pawnor
3. Purpose	can be made for any purpose	for securing a debt or performance of promise
4. Right to sell goods	bailee has no right to sell the goods even if the charges of bailment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed	The pawnee has right to sell the goods if the pawnor fails to redeem the goods.
5. Right to use goods	Only for purpose specified	Cannot use pledged goods



### UNIT 3 : AGENCY

Agent means a person employed to do any act for another or to represent another in dealing with the third person

Principal means a person for whom such act is done or who is so represented.

Test of agency :

- (a) Whether the person has the capacity to bind the principal and make him answerable to third party?
- (b) Whether he can establish privity of contract between the principal and third parties?

If answer to both the above question is yes, then it's an agency relationship

Rule of Agency is based on the maxim 'Qui facit per alium, facit per se' i.e. he who acts through an agent is himself acting.

Appointment of an agent :

Any person who has attained majority and who is of sound mind, may employ an agent

Who may become an agent ?

Any person may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal

Can a minor become an agent ?

YES. But he can't be held responsible for his acts but the principal will be bound by his acts



Ex: A appoints B, a minor, to sell his car for not less than Rs 25000/- . B sells it for Rs 20000/- . A will be held bound by the transaction and further shall have no right against B for claiming the compensation for having not obeyed the instructions, since B is a minor and a contract with a minor is 'void-ab-initio'

Note: No consideration is necessary to create an agency. The acceptance of the office of an agent is regarded as a sufficient consideration for the appointment

### Modes of creation of agency

#### ↳ Express authority

A authority is said to be express when it is given by words - spoken / written

Ex: Appointment of caretaker by way of power of attorney

#### ↳ Implied Authority

An authority is said to be implied when it is to be inferred from:

- the circumstances of the case
- conduct of the parties and
- things spoken / written or
- in ordinary course of dealing, may be accounted from the circumstances of the case

Ex: - Person realising rental on behalf of landlord

- Manager of a shop ordering from fixed vendors on behalf of owner of the shop



#### ↳ Agency by estoppel

Based on principle of estoppel ie when a person by declaration, act or omission has intentionally caused or permitted another person to believe a thing to be true, he shall not be allowed to deny his previous statement

- When agent has without authority done acts or incurred obligations on behalf of principal
- the principal is bound by such acts or obligations if
- he has by his words or conduct (express / implied)
- induced such 3<sup>rd</sup> person to believe that such acts were within scope of agent's authority

Ex: if A gets to know that B is dealing on his behalf with C and does not take any steps to clarify his position, A would be liable for the transaction performed by B on his behalf

#### ↳ Necessity

An agency of necessity arises due to some emergent circumstances. Thus here an agent is authorised to do certain act, and while doing such an act, an emergency arises, he acquires an extra-ordinary or special authority to prevent his principal from loss

#### Essentials for a valid agency in an emergency:

- Agent was not in position / had no opportunity to communicate with principal within available time
- Actual and definite commercial necessity for agent to act promptly
- Agent has acted bonafide and for the benefit of the principal
- Agent adopted most practical and reasonable course under such circumstances
- Agent must be in possession of goods which are subject of contract



- Ex:
1. If the owner is away from home, and home catches fire, caretaker can incur expenses to stop the fire and owner shall be responsible
  2. Agent having authority to sell goods may also repair it
  3. If perishable goods are consigned to be sent from one place to another. If they begin to perish consignee may sell it off

#### ↳ Ratification

Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts

Ex: Agent who was authorized to purchase only in cash purchased in credit. Now principal may authorize such purchase

#### Essentials of valid ratification:

1. It may be express / implied (Ex. accepting interest on loan lent without authority)
2. Proper knowledge of the facts (ie complete knowledge of the transaction)
3. The whole transaction must be ratified (ie part of transaction cannot be ratified)
4. Such ratification cannot injure third parties

Ex.- A not being authorized thereto by B demands on behalf of B the delivery of a chattel the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver

- A holds a lease from B, terminable on 3 month's notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A

5. Ratify within reasonable time
6. Communicate ratification (to third person)
7. Valid act can only be ratified (ie Illegal act cannot be ratified)



### Extent of Agent's Authority:

The extent of an agent's authority, whether expressed / implied is determined by:

- a) the nature of the act or the business he is appointed to do
- b) things which are incidental to the business or are usually done in the course of such business
- c) the usage of trade or business

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

1. every lawful thing necessary for the purpose of carrying it out
2. every lawful thing justified or usually done in the course of conducting such business
3. in an emergency, all such acts for the purpose of protecting the principal from loss as will be done by a person of ordinary prudence in his own case under similar circumstances

Ex: A is employed by B to recover at Mumbai a debt due to B. A may adopt any legal process necessary the purpose of recovering the debt and may give a valid discharge for such debt

### Sub-Agents:

Person employed by, and acting under the control of the original agent in the business of the agency

General Rule - Agent cannot delegate further:

- An agent cannot lawfully employ another to perform acts
- which he has expressly or impliedly undertaken to perform personally
- unless by ordinary custom of trade a sub-agent may be employed or
- from the nature of the agency, a sub-agent must, be employed



Exception where an agent can appoint sub-agent :

1. Where the terms of appointment of the agent originally contemplated appointment of sub-agents
2. Custom of trade
3. Where in the course of employment, unforeseen emergency arises making it necessary for agent to delegate the authority that was given to him by the principal

Sec 192 : Representation of principal by sub-agent properly appointed [ie with authority]  
where a sub-agent is properly appointed

1. Principal is bound and responsible to 3<sup>rd</sup> party for acts thereof as if he were agent originally appointed
2. Agent is responsible to the principal for acts of sub-agent
3. Sub-agent responsible for his acts to agent, but not to principal, except for fraud or willful wrong

Sec 193 : Agent's responsibility for sub-agent appointed without authority

where an agent, without having authority to do so, has appointed a person to act as a sub-agent

1. Agent acts as a principal to the sub-agent and is responsible for his acts to principal and third person
2. Principal is not responsible for the acts of sub-agent
3. Sub-agent is answerable to the agent but not to the principal

Substituted agents

Person appointed by the agent to act for the principal, in the business of agency, with the knowledge and consent of the principal

Substituted agents are not sub-agents. They are direct agents of the principal



Sec 194 : Relation between principal and substituted agents

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

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

Sec 195 : Agent's duty in naming such person

- In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case and
- if he does this, he is not responsible to the principal for the acts or negligence of agent so selected.

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

Note: Appointment of substituted agent can never be improper. It always has to be within authority



Sub-Agent	Substituted Agent
• A sub-agent does his work under the control and directions of agent	• A substituted agent works under the instructions of the principal
• The agent not only appoints a sub-agent but also delegates to him a part of his own duties	• The agent does not delegate any part of his task to a substituted agent
• There is no privity of contract between the principal and the sub-agent	• Privity of contract is established between a principal and a substituted agent
• The sub-agent is responsible to agent alone and is not generally responsible to the principal	• Substituted agent is responsible to principal and not to original agent who appointed him
• The agent is responsible to principal for the acts of the sub-agent	• The agent is not responsible to principal for the acts of the substituted agent
• The sub-agent has no right of action against the principal for remuneration due to him	• The substituted agent can sue the principal for remuneration due to him
• Sub-agents may be improperly appointed	• Substituted agents can never be improperly appointed
• The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.	• The agent's duty ends once he has named the substituted agent



## Duties and obligation of an agent :-

### ↳ Duty to execute mandate :

- The foremost duty of every agent is to carry out the mandate of his principal (ie perform work for which he is appointed)
- Any failure in this respect would make the agent absolutely for the principal's loss

### ↳ Sec 211 : Duty to follow instructions or customs

An agent is bound to conduct business as per the principal's direction or in absence as per the customs which prevails in doing such business

where agent acts otherwise - Indemnify losses sustained by principal and account for profit accrued

Ex: 1. A, an agent is engaged for managing business of B, in which it is a custom to invest money at hand for interest. If A omits to make such investment, he must indemnify B for the losses ie for the interest B would have obtained for such investment

2. B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, before payment, becomes insolvent. B will have to indemnify A for the losses.

### ↳ Sec 212 : Duty of reasonable care and skill :

An agent is bound to conduct business of the principal with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill

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



Ex: 1. A (a merchant in Kolkata) has an agent, B (in London) to whom a sum of money is paid on A's account with orders to remit. B retains money for a considerable time. A, in consequence thereof, becomes insolvent. B is liable for interest from the day on which it ought to have been paid, as per usual rate and for any further direct loss - eg. by variation of exchange rate - but not further

2. A, an agent for the sale of goods having authority to sell on credit without making the proper and usual enquiries as to the solvency of B. B at the time of such sale is insolvent. A must compensate his principal for the loss sustained by him

↳ Sec 214: Agent's duty to communicate with principal

In case of difficulty - agent to communicate with principal and obtain his instructions

↳ Sec 215: Duty to avoid conflict of interest

- If an agent deals on his own account in business of agency
- without first obtaining consent of principal and acquainting him with all material circumstances which have come to his own knowledge on the subject
- principal may repudiate the transaction, if:
  - any material fact has been dishonestly concealed from him by the agent, or
  - the dealings of the agent have been disadvantageous to him

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

2. A directs B to sell A's estate. B on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals



the discovery of the mine. A allows B to buy. A on discovering that B knew of the mine at the time he bought the estate, may either repudiate or accept the sale at his option

Sec 216: Principal's right to benefit gained by agent dealing on his account

- If an agent, without knowledge of his principal deals on his own account
- Principal is entitled to claim from agent any benefit which may have resulted from such transaction

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

↳ Duty to make secret profits

Agent's relationship with principal is of fiduciary nature and this requires absolute good faith in the conduct of agency

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

↳ Sec 213: Duty to render proper accounts on demand

Rendering accounts does not mean showing the accounts but the accounts supported by vouchers (Anandprasad vs. Dwarkanath)

↳ Sec 190: Duty not to delegate

An agent cannot lawfully employ to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of agency, a sub-agent, must be employed

↳ Sec 218: Agent's duty to pay sums received for principal

↳ Duty not to use any confidential information received in the course of agency against the principal

Rights of an agent:

↳ Sec 217: Right to retain out of sum received on principal's account

Agent can retain, out of any sum received on account of principal for the foll. payments:

- all moneys due to himself in respect of advances made
- in respect of expenses properly incurred by him in conducting such business
- such remuneration as may be payable to him for acting as agent

↳ Sec 219: Right to remuneration

- Agent in normal course is entitled as per contract
- In absence of any agreed amount - Entitled for usual remuneration which is customary in business
- However, an agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted [Sec 220]

Ex: A employs B to recover Rs 100000 from C and invest it in securities that give good returns. B recovers the amount and lays out Rs 90000 on good securities but lays out Rs 10000 on securities which he ought to provide poor returns, whereby A loses Rs 2000. B is entitled to remuneration for recovering the Rs 100000 and for investing Rs 90000. He is not entitled to any remuneration for recovering the Rs 10000 and for investing Rs 10000. He is not entitled to any remuneration for recovering for investing the Rs 10000 and he must indemnify A for Rs 2000.



2. A employs B to recover Rs 10000 from C. Because of B's misconduct the money is not recovered. B is entitled to no remuneration for his services and must good the loss

↳ Sec 221: Agent's lien on principal's property against remuneration

In the absence of any contract to the contrary an agent is entitled to retain the goods papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursement and services in respect of the same has been paid or accounted for him

The conditions of this right are:

- The agent should be lawfully entitled to receive such commission
- The property over which the lien is to be exercised should belong to the principal and
- it should have been received by agent in his capacity and during the course of his ordinary duties as an agent (If the agent obtains possession of the property by unlawful means, he cannot exercise particular lien)

The agent's right to lien is lost in the following cases [PWC loses]

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

↳ Right to indemnity

• Right to indemnification for lawful acts - Sec 222

The Principal is bound to indemnify the agent against all consequences of lawful acts done in exercise of his authority

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

- Right of indemnification against acts done in good faith - Sec 223  
Where the agent acts in good faith on the instruction of principal, agent is entitled for indemnification of any loss/damage from the principal

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

- Non liability of employer of agent to do a criminal act [Sec 224]  
Where a person employs another to do an act which is criminal, employer is not liable to the agent, either upon an express or implied promise, to indemnify him against the consequences of that act

Ex: A employs B to beat C and agrees to indemnify him against all consequences thereof B thereupon beats C and has to pay damages to C for so doing. A is not liable to indemnify B for those damages

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





↳ Right to compensation for injury caused by principal's neglect [sec 225]

A principal must compensate his agent w.r.t. injury caused to such agent due to principal's neglect or want of skill. Every principal owes to his agent duty of care and not expose him to unreasonable risks

Ex: A employs B as a brick layer in building a house and puts up the scaffolding himself. The scaffolding is unskilfully put up and B is in consequence hurt. A must compensate B

Principal's liability to third parties :-

↳ For the Acts of the Agent (which are within scope of authority [sec 226])

Contracts entered into through an agent and obligations arising from acts done by an agent may be enforced in the same manner and will have the same legal consequences as if the contracts had been entered into and the acts were done by the principal in person

Ex: C buys goods from A knowing that he is an agent from their sale but not knowing who is the principal. A's principal is the person entitled to claim from C the price of the goods and C cannot in a suit by the principal set off against that claim a debt due to himself from A

Ex: A being B's agent with authority to receive money on his behalf receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B

↳ When agent exceeds authority [sec 227]

When an agent does more than he is authorised to do and when the part of what he does which is within his authority can be separated from the part which is beyond his authority so much only of what he does as is within his authority is binding as between him and his principal



Ex: A being owner of a ship and cargo authorizes B to procure an insurance for Rs 400000 on the ship  
B procures a policy for Rs 400000 on the ship and another for the like sum on the cargo.

↳ Not bound when excess of agent's authority is not separable [Sec 222]

Where an agent does more than he is authorized to do and what he does beyond the scope of his authority cannot be separated, principal is not bound to recognize the transaction

Ex: A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of Rs 60000. A may repudiate the whole transaction

Ex: A authorizes B to draw bills to the extent Rs 200 each. B draws bills in the name of A for Rs 1000 each.  
A may repudiate the whole transaction

Exception:

Liability of principal including belief that agent's unauthorized acts were authorized [Sec 211]

When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third person to believe that such acts and obligations were within the scope of the agent's authority

Ex: A consigns goods to B for sale and gives him instructions not to sell under fixed price. C being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract



Ex: A entrusts B with an instrument endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

Consequences of notice given to agent [sec 229]

- Any information obtained by the agent, in the course of business transacted by him for principal
- shall have the same legal consequence as if it had been obtained by the principal

Ex: Ajay is employed by Bijay to buy certain goods from Chiru (of which Chiru is apparent owner). Ajay buys them accordingly. In course of such sale, Ajay learns that goods really belonged to Dev, but Bijay is ignorant of that fact. Bijay is not entitled to sell off a debt owing to him from Chiru against the price of the goods. Thus, the knowledge of the agent is treated as the knowledge of the principal.

↳ Principal's liability for the agent's fraud, misrepresentation or torts [sec 238]

Misrepresentations or frauds by agents shall have same effect on agreements as if committed by the principal. But misrepresentations or frauds which do not fall within agent's authority do not affect their principals.

Ex: 1. A being B's agent for sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

2. A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.



Ex: A authorises B to buy 1000 bales of cotton on account of A and to pay for it out of A's money remaining in B's hands

1. B buys it in his own name, so as to make himself personally liable for the price -  
In this case, A cannot revoke B's authority so far as regards payment for the cotton
2. B buys 1000 bales of cotton in A's name and so as not to render himself personally liable for the price  
A can revoke B's authority to pay for the cotton

Compensation for revocation by principal [Sec 205]

If there is premature revocation of agency without sufficient cause, the principal must compensate the agent, for such revocation

Note: Compensation is NOT mandatory in case where it is justified with sufficient cause

Notice of revocation [Sec 206]

When the principal, having justification to do so, revokes the authority, he must give reasonable notice of such revocation to the agent, otherwise, he can be liable to pay compensation for any damage caused to the agent

Revocation and renunciation may be expressed or implied [Sec 207]

Ex: A empowers B to let out A's house. Afterwards A lets it himself. This is an implied revocation of B's authority

b) Renunciation by agent [Sec 206]

- An agent may renounce the business of agency in the same manner in which the principal has the right to revoke
- If the agency is for a fixed period, the agent would have to compensate the principal for any premature



renunciation without sufficient cause [sec 205]

- A reasonable notice of renunciation is necessary. Length of notice is to be determined by the same principles which apply to revocation by the principal. If the agent renounces without proper notice, he shall have to make good any damage thereby resulting to the principal

c) Completion of business:

An agency is automatically and by operation of law terminated when its business is completed. Thus for example the authority of an agent appointed to sell goods ceases to be exercisable when the sale is completed

d) Death or insanity

An agency is terminated automatically on the death or insanity of the principal or the agent. Winding up of a company or dissolution of partnership has the same effect. Act done by agent before death would remain binding

e) Principal's insolvency

An agency ends on the principal being adjudicated insolvent

f) On expiry of time

Where an agent has been appointed for a fixed term the expiration of the term puts an end to the agency whether the purpose of agency has been accomplished or not. An agency comes to an automatic end on expiry of its term

When the agency is irrevocable?

When the agent is personally interested in the subject matter of agency the agency becomes irrevocable

Note: In such cases even death or insanity doesn't lead to termination of agency contract)

- Ex: 1. A gives authority to B to sell A's land and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death
2. A consigns 1000 bales of cotton to B, who has made advances to him on such cotton and desires B to sell the cotton and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death

When does termination take effect? [sec 208]

The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them

- Ex: 1. A directs B to sell goods for him and agrees to give B 5% commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B after the letter is sent, but before he receives it sells goods of Rs 1 lakh. Sale is binding on A and B entitled to Rs 5000 as his commission.
2. A, at Chennai, by letter directs B to sell for him some cotton lying in a warehouse in Mumbai and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Chennai. B after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.
3. A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D



### Agent's duty on termination of agency by principal's death or insanity [sec 209]

When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interest entrusted to him

### Termination of sub-agent's authority [sec 210]

The termination of the authority of an agent causes the termination of the authority of all sub-agents appointed by him



*Thank You*