

Indian Contract Act, 1872.

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Unit 1

→ Section [2(n)] -
Contract :- "An agreement enforceable by law"
[Contract = Agreement + enforceability]

→ i/ Agreement - The term agreement given in section [2(e)] of act is defined as "every promise and every set of promises, forming the consideration for each other."

→ Section [2(b)] defines promise/acceptance as - "when the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted. Proposal when accepted, becomes a promise."

[Agreement = Offer/Proposal + Acceptance + Consideration]

→ ii/ Enforceability by law - "An agreement to become a contract must give rise to a legal obligation which means a duty enforceable by law."

Law of Contract deals with only such legal obligations which has resulted from agreements. Such agreements must be contractual in nature.

Contract Law before ICA, 1872.

English law - Charter of 1726 - King George of East India Co.

- # Law relating to contract is governed by the Indian Contract Act 1872.
- It was formed on 25/4/1872 and came into force on 1/9/1872
- Preamble
"to define and amend certain parts of the law relating to contract."

ESSENTIALS OF VALID CONTRACT.

According to section 10
"all agreements are contracts if they are made by free consent of the parties competent to contract for a lawful consideration and with a lawful object and are not expressly declared to be void"

Elements:

1. Agreement consensus ad idem
2. Free Consent same thing same sense
3. Competency of parties sound mind not disqualified
4. Lawful consideration quid pro quo
5. Legal object
6. Not expressly declared to be void.

• Apart from size element in section 10 following 5 are other essential elements of a valid contract.

1. Two Parties State of Gujarat vs Parnani's
 One cannot make contract with himself.
 At least 2 parties are required whose contract may be made by natural or legal persons (companies).
Partners
Khusi maal
like eye
no sales
topc require

2. Parties must intend to create legal obligations Balguar vs Balguar.
 There must exist a legal relation special and domestic type of agreement are not enforceable in court of law and hence results into contract.
Bhumi ko
Paize nahi
dige ton
case nahi
no sales
social em
not legal

3. Other formalities to be complied with in certain cases:
 Contract may be oral or written. But in the interest of parties the contract must be written. Also any statutory requirement that any contract is to be made in writing or in presence of witness, or any law relating to the registration of documents must be complied with.
law to
batter
no party
from checks
like
registration
K time
witness etc
etc

of paragraph 10 of section 10

frinds friend

10/10

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चौथी
प्रश्न
दिया है?

Charand
Tarehe hai
K
Lauwara

4. Certainty of meaning
Agreement must be certain & not indefinite
or vague.

5. Possibility of performance of an agreement.
Agreement to do an act impossible in itself
cannot be enforced.

Before Indian Contract Act, 1872

→ In the ancient and medieval time, there was no specific law for contract.

→ There this Purpose, generally, different sources of Hindu law like Vedas, Shastras, etc were preserved.

→ During the period of 'Mauvas, contracts were in the form of 'bilateral transactions'

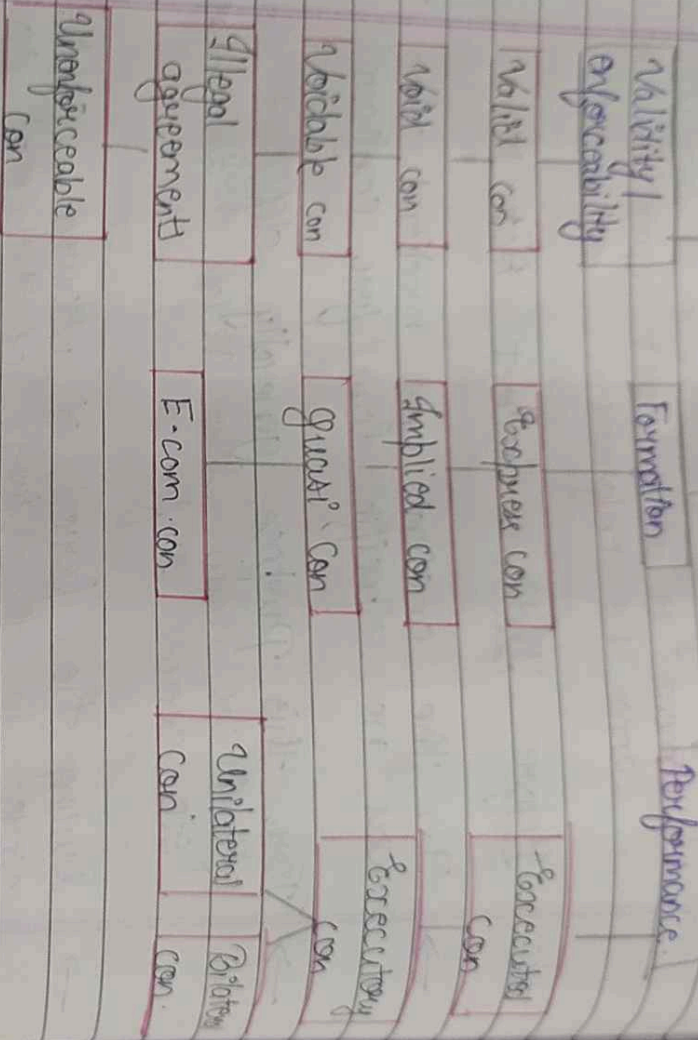
→ During Mughal rule, contracts were governed by Mohammedan law of contract. Tab - proposal Gabul - acceptance.

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TYPES OF CONTRACTS

Types of contract on the basis of



⇒ On the basis of validity

→ **Valid contract**
 An agreement which is binding & enforceable is a valid contract. It contains all the essential element of a valid contract.

→ **Void contract** : According to Sec 2(j)

Point Contract
 A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
 It cannot be enforced by law.

★ When contract becomes void, it is not a contract at all but for the purpose of identifying it, it is called as void contract.

Voidable contracts are valid until they are rescinded.

→ **Voidable contract**: According to section 2(i) "An agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a voidable contract."

→ Here one of the parties is legally entitled to avoid performing his part due to coercion, undue influence, fraud or misinterpretation then the agreement is treated to be voidable contract.

→ **Illegal contract**: It is a contract which law forbids to make. All illegal agreements are void but all void agreements are not necessarily illegal. Agreements collateral to illegal agreement are always void.

→ **Unenforceable contract**: When a contract is good in substance, but because of some technical defect i.e. absence in writing, barred by limitation, etc one or both parties cannot sue upon it, it is described as an unenforceable contract.

⇒ On the basis of formation of contract.

→ **Form contracts**: A contract would be an express contract if the terms are expressed by words or in writing.

Or in Oral + Written

→ Implied contracts :

Implied contract came into existence by such behavior. Such proposal or acceptance is made other than in words, the promise is said to be implied.

Tacit contract : Tacit = silent

Tacit contract are those that are inferred through the conduct of parties without any words spoken or written.
eg - Cash withdrawn by person from ATM.

→ Quasi contract :

A quasi contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. It is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon parties.

→ E-Contract :

When a contract is entered into by two or more parties using electronic means. These are known as EIT contract or cyber contracts (electronic) which of contracts.

⇒ On the basis of performance of contract

→ Executed Contract :
When the act is done or executed and the consideration is brought on record, then the contract is executed contract.

→ Executory Contract :
In an executory contract, the consideration is promise or obligation and is to be performed in future only and therefore these performed contract are described as executory contract.

a) Unilateral Contract :
It is a one sided contract in which one party has performed his duty while other party's obligation is outstanding.

b) Bilateral Contract :
Obligation of both parties is outstanding.

Proposal / Offer

“Act to exc (2(a))
“Whenever one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.”

Essentials of offer :-

1. Person making offer - promisor / offeror
Person to whom offer is made - promisee / acceptor / offeree
2. For a valid offer, the party making it must express his willingness to do or not to do something.
3. Willingness must be expressed with a view to obtain assent of other party.
4. An offer can be positive as well as negative.

Classification of offer :-

- ① General offers :- CHARITY VS Contractic
It is an offer made to public at large. anyone performing the conditions of the offer can be considered to have accepted the offer.

- ② Special offer / specific offer :- Boulton VS Jones
Offer made to specific person and can be accepted only by specified person to whom it is made.

③ Counter offer:

When offeres offers to qualified acceptance of the offer subject to modifications in terms of original offer, it is said to have made a counter offer. It is also called as conditional acceptance.

④ Cross offer:

When two Parties exchange identical offers in ignorance at the time of each others offer, the offers are called as cross offers. The offer cannot be construed as acceptance to other offer.

⑤ Standing / Continuing / open offer:

An offer which is allowed to remain open for acceptance over a period of time is known as open / standing / continuing offer.

ESSENTIAL OF VALID OFFER.

1] It must be capable of creating legal relations.

• Offer must be capable of creating legal relations when accepted.

• special invitation, even if it is accepted does not create legal relations.

② It must be certain, definite and not vague.

③ It must be communicated to the offeree.

④ It must be made with a view to obtaining the assent of the other party.

9. It may be contractual
- 6 offer should not contain a term the non-compliance of which would amount to acceptance
- 7 The offer may be either specific or general
- 8 The offer may be express or implied
9. Offer is different from a mere statement of intention, an invitation to offer, a mere communication of information, casual equity, a prospectus and advertisement.
- i) a statement of intention & announcement
- ii) offer must be distinguished from an answer to question
- iii) statement of price is not an offer
- iv) an invitation to make an offer or do business

What is invitation to offer?

An offer is definite and capable of converting an intention into a contract whereas an invitation to offer is only a circulation of an offer, it does not attempt to induce offer and precedes a definite offer.

Relationship between offer & acceptance:

According to Sir William Anson "FT" "Acceptance is to terminate what a offer what a match is to a grain of gun powder."



=# Legal Rules

regarding valid acceptance

- 1] Acceptance can be given only by the person to whom offer is made
- 2] Acceptance must be absolute and unqualified
- 3] Acceptance must be communicated
- 4] Acceptance must be in prescribed mode
- 5] Time
- 6] Where silence is not acceptance.
- 7] Acceptance by conduct | Implied acceptance.

Communication of offer and acceptance.

• One important common requirement for both 'offer' and 'acceptance' is their effective communication.

• The Indian Contract Act, 1872 gives a list of importance to "time" element in deciding the offer and acceptance is complete.

Thumb rule 1 : Communication of offer

According to section 41, communication of offer is complete when it comes to the knowledge of the person to whom it is made.

eg - Mr A offered to sell his car to Mr B
offer letter was written on 4/1/23
Posted on 6/1/23
Received on 10/1/23
∴ Date of completion of offer is 10/1/23

Note: Mere receiving of letter is not enough
one must read & understand the message.

Mr B receives the letter on 10/1/23,
but reads on 12/1/23, the communication
of offer i.e offer is said to have been
communicated on 15th March. 12th Jan 23.

→ Communication of acceptance (num)

Acc to Sec 33, there are generally

- 2 modes of acceptance
- 1] Communication by act
- 2] Communication of acceptance by 'admission' to do something

→ Thumb Rule 2: Communication of acceptance

2a) As against the proposer is complete -
when it is put in the course of
transmission to him

2b) as against the acceptor when
it comes to the knowledge of
proposer.

eg - Mr B wanted to accept the offer
made by Mr A.
Acceptance letter written - 12/1/23

note:

In the given case communication of acceptance is complete

- * as against the proposer (Mr A) on 19/1/23
- * as against the acceptor (Mr B) on 21/1/23.

Note: Proposer becomes bound by the contract the moment acceptor has posted the letter of acceptance. However, from the view point of acceptor, he will be bound by his acceptance only when the letter of acceptance has reached the proposer.

If letter isn't delivered, lost in transit, then the proposer would be bound by contract but the acceptor wouldn't.

→ Communication of special conditions.

Sometimes special conditions are conveyed tacitly and acceptance of these conditions are also conveyed by the offeror again tacitly or without him even realizing it.

→ Thumb Rule 3: Revocation of offer & acceptance

	Maker	Receiver
Offer	Offeror	Offeree
Acceptance	Acceptor	offeror

Thumb rule :-
Communication of Revocation of offer / acceptance
is complete

3a] As against the maker -
"Put in the course of transmission
by him"

3b] As against the receiver
"When it comes to his knowledge."

Sec 5

Last date of Revocation

Offer = at anytime before acceptance is
complete for Proposer

Acceptance = at anytime before it is
accepted by acceptor

If letter of acceptance & letter of
revocation of acceptance reaches
proposer at same time
Still Revocation is absolute

Modes of revocation to offer

- i] By notice of revocation
- ii] By lapse of time
- iii] By non fulfilment of condition precedent
- iv] By death or insanity

2. Indian Contract Consideration

- Consideration = quid pro
- Consideration is the price paid by the promisee to the promisor.

According to definition, there can be stranger to a consideration but not stranger to contract.

Acc to section {2(d)} of ICA, Consideration is "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise."

Consideration = Promise / Performance that parties exchange with each other.

LEGAL RULES REGARDING CONSIDERATION

- i] Consideration must move at the desire of the promisor.
- ii] Consideration may move from promisee or any other person.
- iii] Executed and executory consideration
- iv] Consideration may be past, present or future.
- v] Consideration need not be adequate.
- vi] Performance of what one is legally bound to perform.
- vii] Consideration must be real and not illusory.
- viii] Consideration must not be unlawful, immoral or opposed to public policy.

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Suit by a third party to a contract

Stranger to a contract cannot sue is known as a "doctrine of privity of contract". Only a person who is party to a contract can sue upon it.

- FOLLOWING ARE SOME EXCEPTIONS WHERE EVEN A STRANGER TO A CONTRACT MAY ENFORCE A CLAIM :-

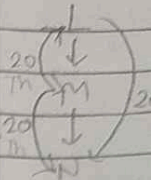
① In case of trust, beneficiary can enforce his right under the trust though he was not a party to the contract between the settlor and the trustee.

② In case of a family settlement, if the terms of settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.

③ In case of certain marriage contracts, a provision may be made for the benefit of a person, he may file the suit though he is not a party to the agreement.

Kisi k Badle Kisi ko Paisa de dena

④ In case of assignment of contract, when the benefit under a contract has been assigned, the assignee can enforce the contract.

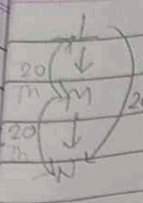


Covenant
Covenant
Covenant

Husband
wife
₹ 10000
Per
month

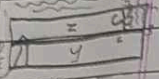
No consid
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⑤ Estoppel or acknowledgement, where the promisee by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards 3rd party.

Covenant (Restriction)
Benefit (Benefit)



⑥ In case of covenant running with the land the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successors or seller.

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⑦ Contracts entered into through an agent :
The Principal can enforce the contracts entered by the agent where the agent has acted within the scope of his authority and in the name of principal.

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≠ Validity of an agreement without consideration

IMP
① Natural love and affection { Sec 25(1) }

husband
wife
₹ 10000
Per
month.

- i] It must be made out of natural love and affection between the parties.
- ii] Parties must stand in near relationship
- iii] It must be in writing.
- iv] It must also be registered under the law.

with consideration
still
agreement

A written and registered agreement based on natural love and affection between the parties standing in near relation is enforceable even without consideration.

② Compensation for past voluntary service [Sec 25(2)]

In order to pay for past voluntary services, a promise must fulfill following essential factors -

- i] The services should have been rendered voluntarily.
- ii] The services must have been rendered for the promisee.
- iii] The promise must be in existence at the time when services were rendered.
- iv] The promisee must have intended to compensate the promisee.

statute under barred by limitation act - debt recovery within 3 years after expiry for bar of limitation

③ Promise to pay time barred debt [Sec 25(3)]

Where a promise in writing signed by the person making it or by his authorized agent, is made to pay a debt barred by limitation it is valid without consideration.

④ Agency [Sec 185]

No consideration is necessary to create an agency.

⑤ Completed gift

In case of completed gift, the rule no consideration no contract does not apply.

⑥ Bailment

No consideration is required to affect the contract of Bailment

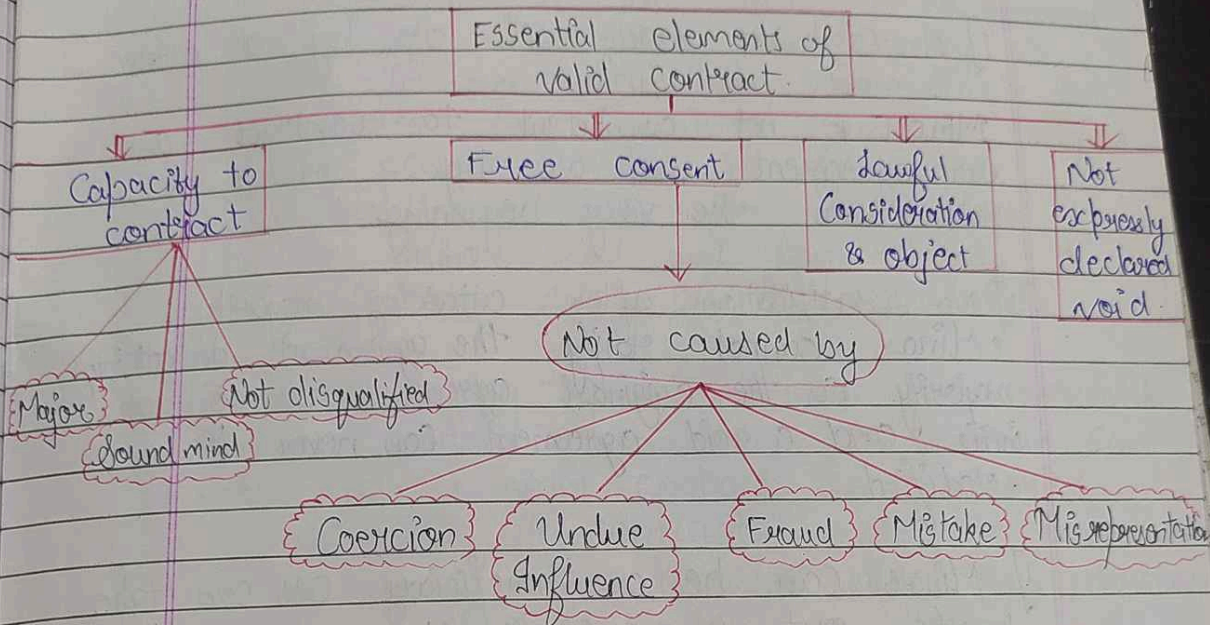
⑦ Charity

If a promisee undertakes the liability on the promise of a person to contribute to charity, the contract shall be valid.

2. Indian Contract act.

Other essential elements of a contract

Unit 13



Who is competent to contract. Sec 11

- Every person is competent to contract who
- has attained the age of majority
 - is of sound mind
 - is not disqualified from contracting by any law to which he is subject.

A] Age of majority :-

Indian majority act, 1875

Every person domiciled in India shall attain the age of majority on the completion of 18 years of age.

Date _____
Page _____

^{IMP} Law relating to Minor's agreement.

1] A contract made with or by a minor is void ab-initio:
Minor is not competent to contract and any agreement with or by a minor is void from the very beginning.

2] No ratification after attaining majority:
Minor cannot ratify the agreement on attaining majority as the original agreement is void ab-initio and a void agreement can never be ratified.

3] Minor can be a beneficiary or can take benefit out of a contract:
Any contract or promissory note executed in favour of minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.

4] A minor can always plead minority:
A minor can plead minority and is not stopped to do so even where he has taken any loan or entered into any contract by falsely representing that he was major. Rule of estoppel cannot be applied against a minor.

5. Liability for necessities:

A claim for necessities supplied to minor is enforceable by law. There is no personal liability of minor. Only his property is liable. To render minor's estate liable for necessities two conditions must be satisfied.

- i] The contract must be for goods reasonably necessary for his support.
- ii] The minor must not have already a sufficient supply of these necessities.

6. Contract by guardian - how far enforceable:

Under certain circumstances, a guardian can enter into a valid contract on minor's behalf. But all contracts made by guardian on behalf of minor are not valid. Eg - purchase of immovable property. Only a certified guardian appointed by court of law can enforce such contract.

7. No specific performance:

Minor's agreement being void, there can be no question of specific performance of such an agreement.

8. No insolvency:

Minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and he is not personally liable.

9. Partnership:
under section 30 of TPA, minor can enter a partnership firm for the benefit of Partnership

10. Minor can be an agent:
A minor can be agent and can draw, deliver and endorse negotiable instruments without himself being liable.

11. Minor cannot bind parent or guardian:
Minor is not capable of binding his parent or guardian even for necessities. Parents will be held liable only when the child is acting as an agent for parents.

12. Joint contract by minor and adult:
Adult will be liable for contract and not minor.

13] Surety [Guarantee] for a minor:
When an adult stands surety for a minor then he (adult) is liable to third party.

14] Minor as shareholder:
Minor cannot be shareholder. If by mistake he becomes a member, the company can rescind the transaction and remove his name from register. By lawful guardian, can be enter into shareholding of fully paid shares.

15] Liability for tort:
A minor is liable in tort (civil wrongs) unless the tort in reality is a breach of contract.

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Person of sound mind: Sec 12
"A person is said to be of sound mind for the purpose of making a contract if, at the time & when he makes it is capable of understanding it and of forming a rational judgement as to its effect upon his interests."

- Usually unsound mind → Contract → when sound
- Usually sound mind → cannot contract → when unsound.

Contract by disqualified persons:

- Contract by such person are void
- Incompetency may arise from political status, corporate status, legal status, etc.
- Following persons fall in this category:
Foreign sovereigns and Ambassadors, Alien enemy, Corporations, Convicts, Insolvent, etc.

FREE CONSENT.

- Sec 13 : Consent
- Sec 14 : Free consent
- Sec 15 : Coercion
- Sec 16 : Undue influence
- Sec 17 : Fraud
- Sec 18 : Misrepresentation
- Sec 19/19A : What happens when contracts are formed by F, M, U, C.
- Sec 20, 21, 22 : Mistake.

Consensus ad idem = Meeting of minds.

Consent {Sec 13}

"Two or more persons are said to consent when they agree upon some thing in the same sense"

Free Consent {Sec 14}

[Consent is said to be free when it is not caused by:

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

When consent to an agreement is caused by coercion, fraud, misrepresentation or undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

When consent is vitiated by mistake, contract becomes void.

Coercion {Sec 15}

"Coercion is the committing or threatening to commit, any act forbidden by the Indian Penal code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."

• EFFECTS OF COERCION

- i] Contract induced by coercion is voidable at the option of the party whose consent was so obtained
- ii] A person to whom money has been paid or anything delivered under coercion must repay or return it (Sec 72)

• Threat to commit suicide is also coercion as it is forbidden under Indian Penal Code.

Under Influence. (Sec 16)

"A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other."

ESSENTIAL INGREDIENTS OF THIS PROVISION.

- 1) Relation between the parties
- 2) Position to dominate the will
 - a) Real and apparent authority - Authority (Master - servant, Doctor - Patient, etc.)
 - b) Fiduciary relationship. - Trust & confidence. (Father - son, husband - wife, etc.)
 - c) Mental distress
 - d) Unconscionable bargains.
- 3) Object must be to take undue advantage
- 4) Burden of proof.

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EFFECT OF UNDER INFLUENCE (Sec 19 A)

i) When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

ii) Any such contract may be set aside either absolutely or if the party was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court may seem just.

FRAUD. (Sec 17)

Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract.

- 1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- 2) the active concealment of a fact by one having knowledge or belief of the fact;
- 3) a promise made without any intention of performing it;
- 4) any other act fitted to deceive;
- 5) any such act or commission as the law specially declares to be fraudulent.

IMP.

Rescind = Revoke, Cancel.

ESSENTIAL ELEMENTS OF A FRAUD

- 1) There must be representation or assertion and it must be false.
Silence is fraud in following situations
 - a) There is duty to speak
 - b) where silence is equal to speech.
- 2) The representation must be related to a fact.
- 3) The representation should be made before the conclusion of the contract with the intention to induce the other party to act upon it.
- 4) The representation should be made with a knowledge of its falsity.
- 5) Other party must have been induced to act upon assertion.
- 6) Other party must have relied upon the representation and must have been deceived.
- 7) Other party acting on representation must have consequently suffered a loss.

EFFECT OF FRAUD

Contract is voidable at the option of party defrauded and he has following remedies:

- 1) He can rescind the contract within a reasonable time.
- 2) He can sue for damages.
- 3) He can insist on the performance of contract on condition that he shall be put in the position in which he would have been had the representation made been true.

Misrepresentation (sec 18)

There is misrepresentation if:

- 1) statement of fact which is false, would constitute misrepresentation if the maker believes it to be true but which is not justified by the information he possesses;
- 2) when there is breach of duty by a person without any intention to deceive which brings an advantage to him
- 3) when a party causes, even though done innocently, the other party to the agreement to make a mistake as to the subject matter.

Mistake

Mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others. Mistake may be either mistake of law or mistake of fact.

• Mistake of Law

a) Mistake of Indian Law

A person may not be allowed to get any relief on the ground that it had done a particular act in ignorance of law.

b) Mistake of foreign law

Such a mistake is treated as mistake of fact and the agreement in such case is void.

• Mistake of Fact

a) Bilateral mistake. {Sec 20}

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake. In such a case, the agreement is void.

b) Unilateral mistake. {Sec 22}

A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

Legality of Object and Consideration

Which considerations and objects are lawful and those which are not. {Sec 23}:

FOLLOWING CASES THE CONSIDERATION OR OBJECT IS SAID TO BE UNLAWFUL:

1) When consideration or object is forbidden by law:

Those acts which are punishable under any statute as well as those prohibited by regulations or orders made in exercise of the authority conferred by Legislature.

2) When consideration or the object are of such a nature that if permitted it would defeat the provisions of law.

- Date _____
Page _____
- 3) When it is fraudulent
 - 4) When consideration involves injury to person or property of another.
 - 5) When consideration is immoral
 - 6) When consideration is opposed to Public Policy.

Some of the agreements which are held to be opposed to Public Policy are -

1. Trading with Enemy:

→ Any trade with person owing allegiance to a government at war with India without the licence of Govt. is void.

2. Stifling Prosecution:

→ An agreement to stifle prosecution i.e. "an agreement to prevent proceedings already instituted from running their normal course with force" tends to be a perversion or an abuse of justice; therefore such an agreement is void. The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal.

Unconscionable
offence
Law ko
apne haath
KARNE
SE ROKNA

3. Maintenance and Champerty:

→ Maintenance is an agreement in which a person promises to maintain a suit in which he has no interest.

VALID UNTIL IT IS
UNJUST, UNREASONABLE,
oppressing, gambling, malicious

EARN.

ChamPERTY is an agreement in which a person agrees to assist another in litigation in exchange of a promise to hand over a portion of the proceeds of the action.

4. Trafficking relating to Public offices and titles

→ An agreement to traffic in public office is opposed to Public Policy as it interferes with the appointment of a person best qualified for the service of public.

5. Agreements tending to create monopolies

→ Agreements having for their object the establishment of monopolies are opposed to Public policy and therefore void.

6. Marriage brokerage agreements

→ An agreement to pay money to a person hired to procure a wife is opposed to Public policy and therefore void.

Marriage bureau only provide info and don't negotiate marriage

7. Interference with the Court of justice.

→ Agreement whose object is to induce any judicial officer of the state to act corruptly is void.

Bribe under table

8. Interest against obligation:

→ An agreement by an agent or to receive without his principal's consent compensation from another for the performance of his agency is void.
(Manager - Contract - A - a compensation Privately ₹ 1,00,000 - Manager)

9. Consideration unlawful in Part:

→ The general rule is that where the legal part of a contract can be severed from the illegal part, the bad part may be rejected and the good one can be retained. But where the illegal part cannot be severed (determined), contract is altogether void.

Void Agreements

1. Agreement in restraint of marriage (Sec 26)
→ Every agreement in restraint of marriage of any person other than a minor, is void.

2. Agreement in restraint of trade (Sec 27)

→ An agreement by which any person is restrained from exercising a lawful profession or business of any kind, is to that extent void.

EXCEPTION - a) SALE OF GOODWILL K BARD LAGE Restrictions
b) Partners for large restrictions to not involve in similar

d) Employer employee.

Date _____
Page _____

3) Agreement in restraint of legal proceedings (Sec 28)
Agreement by which any party is restricted absolutely from enforcing his rights under a contract through a court or abridges usual period of starting legal proceedings. Such contract is void.
EXCEPTION: ARBITRATION (valid if in written).

4) Agreement - the meaning of which is uncertain (Sec 29)
Uncertain meaning - void
Capable to make it certain - valid.

5) Wagering agreement (Sec 30)
An agreement by way of a wager is void.
Essentials of wager :-

1. There must be promise to pay money/money's worth
2. Conditional promise - happening or non happening
3. Uncertainty of event.
4. two parties.
5. Common intention to bet at the time of making agreement
6. No interest in event except for stake.

• TRANSACTIONS SIMILAR TO WAGER.

i] LOTTERY TRANSACTION.

→ SANCTIONED BY GOVT BUT STILL A WAGERING TRANSACTION.

→ SANCTION IS FOR THE PURPOSE OF NON-PUNISHMENT TO THE PERSON RUNNING LOTTERY.

Date: _____
Page: _____

2] CROSSWORD PUZZLES & Competitions

These are puzzles in which prizes depend upon the correspondence of competitors' solution with a previously prepared solution kept with the editor of a newspaper is a lottery and therefore, a wagering transaction.

3] Speculative transactions:

Transaction where parties intend to settle the difference between the contract price and market price of certain goods or shares on a specified day, is a gambling and hence void.

4] Horse race transactions:

Horse race competition where prize payable to the bet winner is less than ₹500 is a wager.

TRANSACTIONS RESEMBLING WITH WAGERING TRANSACTION BUT ARE NOT VOID.

- ① Chit fund.
- ② Commercial or share market transactions
- ③ Games of skill and Athletic Competition.
(Till ₹1000 not a wager.)
- ④ Contract of Insurance.

2. TCA 1872

Performance of Contract

Unit 4

Performance of contract

• Performance of Contract means fulfilment of obligations to the contract

Sec 37:-

The parties to a contract must either perform, their respective promises unless such performance is dispensed with or excused under the provisions of the contract act or of any other law.

ON THE BASIS OF SEC 37, Performance may be of 2 types:-

a) Actual performance

b) Attempted performance / Tender of performance

Pizza boy
Tinned Puri
Tanjira

me dastuaza nahil khotar

still, Paisa, denhi Padega

Conditions to be satisfied for a valid tender or attempted performance.

- 1] It must be unconditional
- 2] It must be made at proper time and place
- 3] Reasonable opportunity to examine goods.
- 4] It must be for whole obligation.

Who Can Perform a contract

1. Promisor himself.

If intention of parties is that the promise should be performed by promisor himself, such promise must be performed by the promisor.

[Contracts involving personal skill or diligence.]

2. Agent :

Personal consideration is not the foundation of contract, the promisor may employ a competent person to perform it.

3. Legal Representative :

On death of promisor the legal representatives of deceased promisor are bound to perform it unless a contrary intention appears from the contract.

Their liability under a contract is limited to the value of asset they inherit from the deceased.

4. Third person : Effect of accepting performance from third person : Sec 413 :

When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

That is performance by a stranger, if accepted by the promisee, this results in discharging the promisor, although the latter has neither authorised nor ratified the act of third party.

5. Joint promisors. Sec 42

When 2 or more persons have made a joint promise, all such person must jointly fulfil the promise. If one dies, others must fulfil the promise jointly. If all of them die, representatives must fulfil the promise jointly.

Date _____
Page _____

Distinction between Succession and Assignment.

1. Succession :-

When the benefits of a contract are succeeded to by the process of law, then both burden and benefits attaching to the contract may sometimes devolve on legal heir.

2. Assignment :-

The benefit of the contract can only be assigned but not the liabilities thereunder. This is because when liability is assigned, a third party gets involved therein.

Section 42

Deals with voluntary discharge of obligations by joint promisors.

If promisors do not discharge their promise. Acc. to Sec 43

"Any one of joint promisors may be compelled to perform."

→ Nothing in the section shall prevent the surety to recover from principal, payments made by him on behalf of principal.

Effect of release of one joint promisor.

Acc. to Sec 44

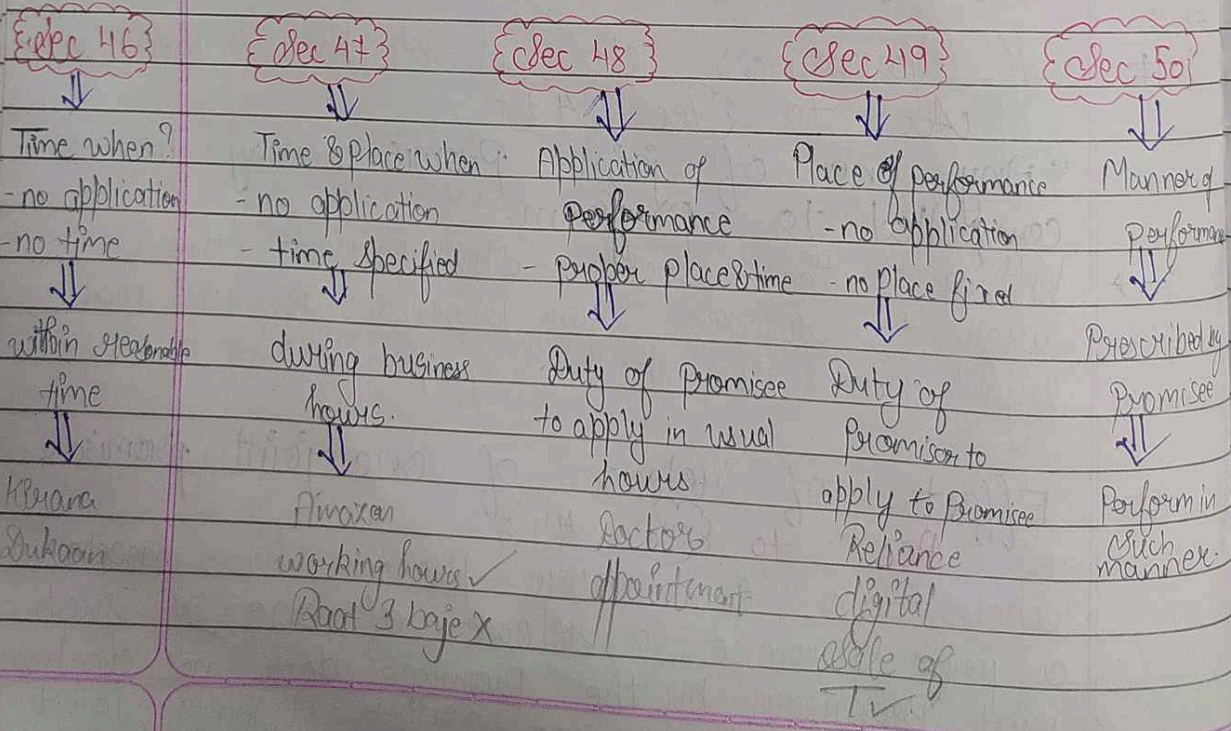
Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor, neither it frees joint liability of other joint promisors.

Rights of Joint Promisors Promisees

According to Section 45

"When a person has made a promise to two or more persons jointly then unless a contrary intention appears from the contract the right to claim performance rests, as between him and them, with them during their joint lives and after the death of any of them with the representative of such deceased person jointly with the survivor or survivors, and after the death of last survivor, with representatives of all jointly."

Time & Place for Performance of the Promise.



Performance of Reciprocal Promise.

→ Sec 51
Promisor not bound to perform unless reciprocal promisee ready and willing to perform.

→ Sec 52
Order of performance of reciprocal promises

→ Sec 53
Liability of party preventing event on which the contract is to take effect
Contract becomes voidable at the option of party prevented and damages can be claimed too.

→ Sec 54
Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.
If promises are reciprocal & dependent and promisor who has to perform his part before fails to do so, he is liable for compensation payment due to his non performance.

→ Sec 55
Effects of failure to perform at a time fixed in a contract in which time is essential.
Contract is voidable at the option of the party if time is specified and promisor fails to fulfil promise in specified time.

Gardener
4 din
late glass
material

Effect of such failure when time is not essential.
Contract is not voidable but loss can be recovered if any.

Effect of acceptance of performance at time other than agreed upon:
After acceptance - no claim
At the time of acceptance - claim by giving notice to promisor of his intention.

→ Sec 56

Agreement to do impossible act.

- a) Initial impossibility
 - 1. If known to parties
 - 2. If unknown to parties
 - 3. If known to the promisor only
(Promisee entitled to claim compensation)
- b) Subsequent or supervening impossibility.
(Void)

→ Sec 57

Reciprocal promise to do certain things that are legal and also some other things that are illegal [Legal part - Valid Illegal part - void]

→ Sec 58

'Alternative promise' one branch being illegal [Legal branch alone can be enforced.]

Appropriation of Payments.

→ Sec 59

Application of Payment where debt to be discharge is indicated.
(Must be applied acc. to instruction of debtor)

→ Sec 60

Application of Payment where debt to be discharge is not indicated.
(Creditor may apply it at his own discretion.)

→ Sec 61

Application of Payment where neither party appropriates.

[Appropriation in order of time
Same date / Equal standing - Proportional distribution]

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

i] Effect of novation, rescission and alteration of contract
Acc. to Sec 62

"If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."

a) Effect of novation:

It is a case where a contract in existence is substituted by a new contract either between same parties or other parties. Novation can take place only by mutual agreement.

Class
join k
k gya
nahi to
refund
nahi mil

b) Effect of rescission:

Only old contract is cancelled and no new contract comes to exist in its place.

c) Effect of alteration:

The terms of contract may be altered by mutual agreement but parties to the contract remains the same.

ii) Promisee may waive or remit performance of promise Sec 63

[Contract may be discharged by remission]

iii) Restoration of benefit under a voidable contract Sec 64

[Contract can be terminated at the option of the party who is empowered to do so]

Limited
act, 19
Actual
article

iv) Obligations of person who has received advantage under void agreement or contract that becomes void. Sec 65

[Advantage received must be restored back or a compensation, sufficient to put the position prior to contract, should be paid.]

Only benefit received can be restored

Land contract
↓
Taken cannot be recovered in case of cancellation

not desirable to submit

v) Communication of rescission Sec 66
[Rescission is communicated in the same manner as a proposal is communicated under section 4]

vi) Effects of neglect of promisee to afford promisor reasonable facilities for performance
[If promisee neglects to afford the promisor reasonable facilities for performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.]

Discharge of Contract

A contract is discharged when the obligations created by it comes to an end.

- i] Discharge by performance
- ii] Discharge by mutual agreement
- iii] Discharge by impossibility of performance
- iv] Discharge by lapse of time
- v] Discharge by operation of law
- vi] Discharge by breach of contract
- vii] Promisee may waive or remit performance of promise
- viii] Effects of neglect of promisee to afford promisor reasonable facilities for performance.
- ix] Merger of Rights.

Limitation act, 1963

Actual or anticipatory

2. TCA, 1872.

Unit 5 BREACH OF CONTRACT.

Breach means failure of party to perform his / her obligation under a contract.

Anticipatory Breach of Contract.

When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called anticipatory breach.

• TYPES OF ANTICIPATORY BREACH.

- i] Express
- ii] Implied.

• EFFECTS :-

Promisee is excused from performance and further gets an option:

1. To either treat the contract as "rescinded" and sue the other party for damages from breach of contract immediately without waiting until the due date of performance

OR

2. He may elect not to rescind but to treat the contract as still operative and wait for the time of performance and then hold the other party responsible for the consequence of non performance.

Date _____ Page _____

Actual Breach of Contract

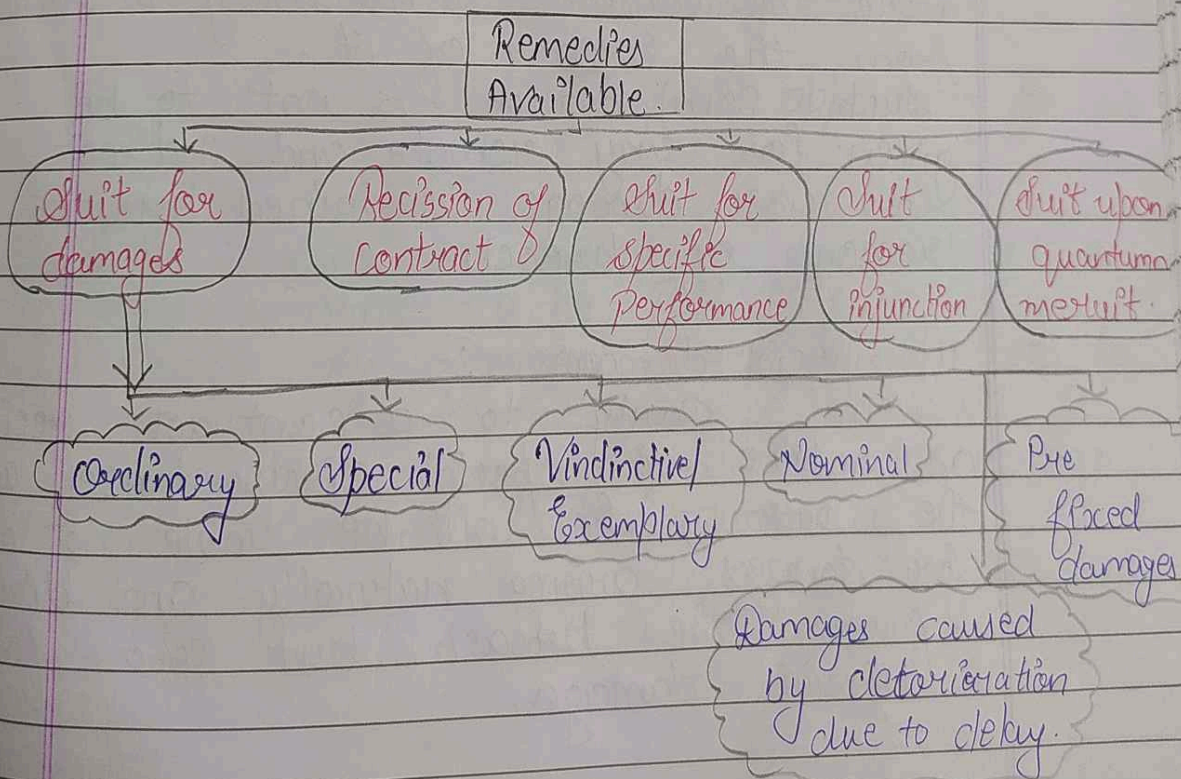
It is a case of refusal to perform the promise on the scheduled date. When a party breaches the contract, the other party gets right to take actions against him.

• Actual breach may be committed.

a) at the time when performance of contract is due

b) During the performance of contract.

REMEDIES FOR BREACH OF CONTRACT



suit for damages

The act is sec 73 has laid down the rules as to how the amount of compensation is to be determined.

i] Ordinary damages :- {Sec 73}

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by the reasons of breach.

ii] Special damages :-

When a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

iii] Vindictive damages / Exemplary damages :-
Such damages awarded in 2 cases -

- i] For breach of promise to marry
- ii] For wrongful dishonour by a banker of his customer's cheque.

iv] Nominal damages :-

Awarded when plaintiff proves breach of contract but there is no real damage. It is awarded just to establish the right to decree for the breach of contract.

v] Damages for deterioration caused by delay

Damages can be recovered from carrier even without notice

Deterioration - Physical damage to goods

+

loss of special opportunity for sale.

vi] Pre - fixed damages :- {elec 74}

If a sum is named in a contract as the amount to be paid in case of a breach, the aggrieved party is entitled to receive from the party at fault a reasonable compensation not exceeding the amount so named.

Date: _____
Page: _____

Penalty and Liquidated damages

ENGLISH LAW:-

⇒ Liquidated damages:- sum fixed in contract representing genuine pre estimate by parties of loss, which would be caused by future breach of contract.

⇒ Penalty:- sum fixed in contract which is unreasonable and is used to force the other party to perform the contract.

Indian Law {Sec 74}

⇒ Section 74 entitles a person complaining breach of contract to get reasonable compensation and does not entitle him to realise anything by the way of penalty.

EXCEPTION

⇒ A person breaking a bond given to Central or state government shall be liable to pay the whole sum mentioned therein.

Besides claiming damages (Other Remedies)

i) Rescission of Contract:

Aggrieved party is absolved of all his obligations under the contract and is entitled to compensation for damages that he might have suffered.

ii] Quantum Meruit

→ Quantum meruit = as much as the party doing service has deserved
→ Useful in understandings where services are rendered before without deciding fix payment.

→ Law will interfere & promise to pay

→ Condition to be fulfilled :-

i] Only available when original contract has been discharged.

ii] The claim must be brought by a party not in default.

iii] Suit for specific performance.

→ Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his performance according to term of contract.

iv] Suit for injunction

→ Party - negating terms of contract
Court - issue injunction order

Restrain the party from doing what he promised not to do.

• Party Rightfully rescinding the contract entitled to compensation. {Sec 75}

Person who rightfully rescinds the contract is entitled to compensation for any damage which he has sustained through non-fulfilment of contract.

Date _____
Page _____

2. TCA 1872.

Unit 6 - Contingent & Quasi Contracts.

→ A Contract may be absolute or contingent.

→ Absolute contract is one where promisor undertakes to perform the contract in any event without any condition.

→ Contingent Contract Sec 313

"A contract to do or not to do something, if some event, collateral to such contract, does or does not happen."

→ Contracts of indemnity & guarantee falls under this category.

Collateral event

Acc to Pollock and Mulla

"an event which is neither a performance directly promised as part of the contract, nor the whole of the consideration for a promise."

Essentials of a contingent contract.

- i] The performance of a contingent contract would depend upon the happening or non-happening of some event or condition.
- ii] Event must be collateral to the contract
- iii] The contingent event should not be a mere 'will' of the promisor
- iv] The event must be uncertain.

Rules Relating to enforcement.

a) Enforcement of contracts contingent on an event happening. {sec 32}

→ "Where a contingent contract is made to do or not to do anything if an uncertain future event happens, it cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void."

b) Enforcement of contracts on an event non happening. {sec 33}

"Where a contingent contract is made to do or not to do anything if an uncertain future event does not happen, it can be enforced only when the happening of that event becomes impossible and not before."

c) A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the event or conduct as impossible of happening {sec 34}

d) Contingent on happening of specified event within fixed time {sec 35}

e) Contingent on specified event not happening within fixed time {sec 35}

f) Contingent on an impossible event {sec 36}

Always void

Quasi Contracts

Even in absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as quasi contracts.

A quasi or constructive contract rest upon the maxims -

"No man must grow rich out of another persons loss."

- Salient features of quasi contracts.
- a) Such a right is always a right to money
- b) It doesn't arise from agreement but is imposed by law.
- c) Right is available against a particular person.

Cases Deemed as Quasi Contracts.

Claims for necessities supplied sec 68	Payment by an interested person sec 69	Obligation of a person enjoying a non-gracious act sec 70	Responsibility of finder of goods sec 71	Money paid by mistake or under coercion sec 72
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a) Claim for necessities supplied to persons incapable of contracting § 68

→ If necessities are supplied to any person incapable of entering a contract suited to his condition in life, the person is entitled to be reimbursed by the property of incapable person.

b) Payment by an interested person § 69

A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by other.

c) Obligations of person enjoying benefits of non-gratuitous act § 70

“Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered”

d) Responsibility of finder of goods § 71

A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.

Thus finder of goods has:

- i) To take proper care of goods
- ii) No right to appropriate goods
- iii) Restore the goods if owner is found.

e) Money paid by mistake or under coercion (Sec 72)

'A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it'.

	Quasi Contract	Contract
Essentials	The essential for the formation of valid contract are absent	Essentials for the formation of valid contract are present
Obligation	Imposed by Law	Created by consent of parties

2 ICA. 1872.

Unit 7: Contract of Indemnity and Guarantee

→ Contract of indemnity {sec 124}
"A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person."

→ • Loss caused by an accident not caused by any person, or an act of God/natural event is not covered.

→ • Party who promises to indemnify - indemnifier
• Party who is promised - indemnified/indemnity holder.

Mode of contract : a) Express (b) Implied

→ CA contract of indemnity is like any other contract and must fulfil all the essentials of a valid contract.

• Rights of indemnity holder when sued {sec 125}

⇒ The promisee is entitled to recover :-

- a) all damages which he may be compelled to pay in any suit.
- b) all costs which he may have been compelled to pay in bringing the suit
- c) all sums which he may have paid under the terms of any compromise of suit.

Contract of Guarantee Sec 126

• Contract of Guarantee.
A contract of guarantee is a contract to perform the promise made or discharge the liability, of a third person in case of his default.

Three Parties to the contract :-

Implied contract
Principal contract
secondary contract

- a) Surety - person who gives guarantee.
- b) Principal debtor - person in respect of whose default guarantee is given
- c) Creditor - person to whom guarantee is given

Essential features of Guarantee :-

1. Purpose

→ The purpose of guarantee being to secure the payment of a debt, the existence of recoverable debt is necessary.

2. Consideration Sec 127

→ Consideration received by principal debtor is sufficient consideration to the surety for giving the guarantee.

Principal debtor - incompetent - Contract valid
surety - incompetent - Contract void.

3. Existence of Liability.

There must be an existing liability or a promise whose performance is guaranteed. Such liability or promise must be enforceable by law.

4. No misinterpretation or concealment
→ Any guarantee which has been obtained by the means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid. Sec 142

Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid. Sec 143

5. Writing not necessary

6. Joining of the other sureties Sec 144

The guarantee by a surety is not valid if a condition is imposed by a surety that some other person must also join as a co-surety, but such other person does not join as a co-surety.

TYPES OF GUARANTEES

i] specific guarantee

→ single debt / specific transaction.

ii] Continuing guarantee. Sec 129

→ series of transaction.

Nature & extent of surety's liability.

a) Liability of surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. Sec 128

- Date: _____
Page: _____
- ii] secondary in nature.
 - iii] Where a debtor cannot be held liable on account of any defect in the document liability of surety also ceases.
 - iv] Creditor may choose to proceed against a surety first, unless there is an agreement to the contrary.

Discharge of surety.

Modes of discharge

By Revocation

By conduct of the creditor

On invalidation of contract of guarantee

i] By Revocation of contract of guarantee

a) Revocation of continuing guarantee by Notice Sec 130

→ Continuing guarantee may any time be revoked by the surety by giving notice to the creditors.

→ He would be then liable for only those transactions which took place before giving the notice and not after that.

b) Revocation by surety's death. Sec 131

→ surety's death operates as revocation of guarantee for future transactions

→ However surety's estate remains liable for past transactions which have already taken place before the death of surety.

c. By novation. Sec 62
→ Surety in original contract is discharged if a fresh contract is entered into either between same parties or between the other parties, the consideration being the mutual discharge of old contract.

ii) By conduct of the creditor

a) By variance in terms of contract Sec 133
→ Any variance in contract by creditor & debtor without surety's consent would discharge surety of his future liabilities.

b) By discharge of principal debtor. Sec 134
Surety is discharged if creditor:-

- ① enters in fresh/new contract with debtor.
- ② does any act or omission, the legal consequence of which is the discharge of principal debtor.

c) Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor. Sec 135

→ a) Composition: If creditor makes a composition with the principal debtor without consulting the surety, the latter is discharged.

b) Promise to give time: It is one of the duties of creditor towards surety to not allow principal debtor more time for payment.

c) Promise not to sue: If creditor under an agreement with principal debtor promises not to sue him, surety is discharged.

Cases where surety not discharged:

- 1] when agreement is made with 3rd person to give time to principal debtor
- 2] Creditors forbearance to sue does not discharge surety {Sec 137}

By the invalidation of contract of guarantee.

a) Guarantee obtained by misrepresentation {Sec 142}

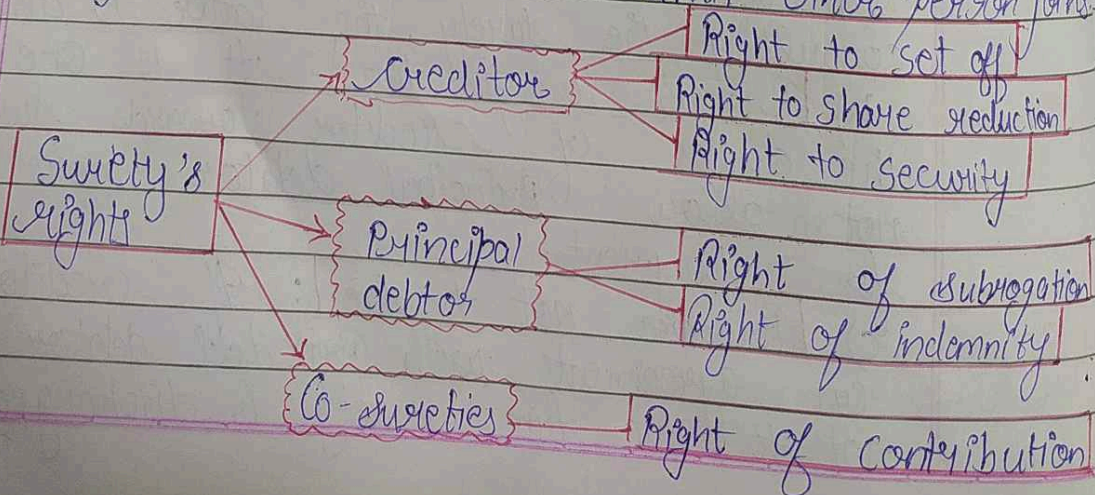
→ Any guarantee obtained by misrepresentation by creditor or with his knowledge and assent, concerning a material part of the transaction is invalid.

b) Guarantee obtained by concealment {Sec 143}

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

c) Guarantee on contract that creditor shall not act on it until co-surety joins {Sec 144}

→ Guarantee isn't valid until other person joins



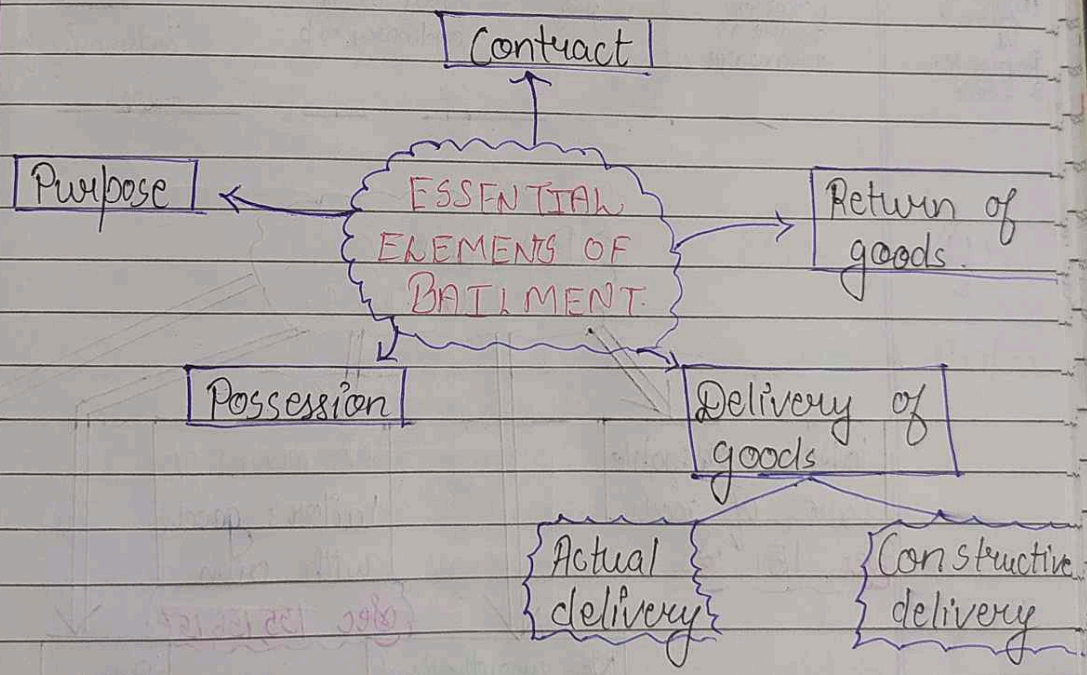
⇒ Bailment - French word - To deliver.
Bailler [Change of possession]

Sec 148

Bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to directions of the person delivering them.

→ Parties : Bailor, Bailee.

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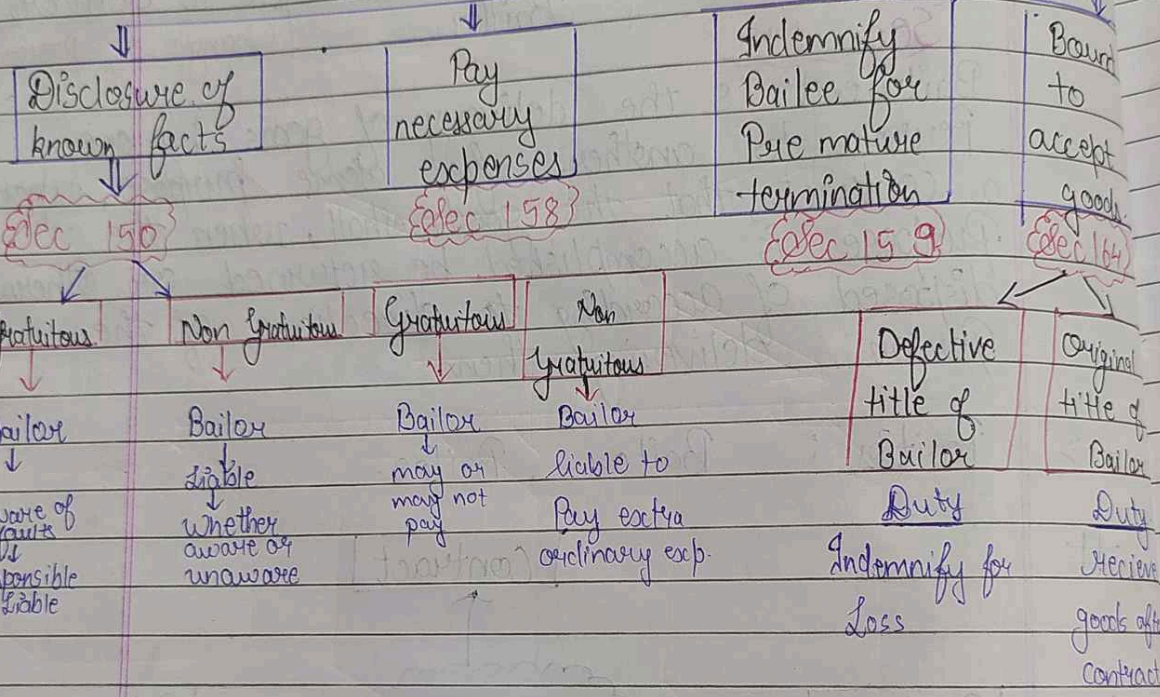
TYPES OF BAILMENT

ON THE BASIS OF

- | | |
|--|--|
| <p><u>Benefit</u></p> <ul style="list-style-type: none"> i] of bailor ii] of bailee iii] Mutual benefit | <p><u>Reward</u></p> <ul style="list-style-type: none"> i] Gratuitous bailment ii] Non gratuitous bailment |
|--|--|

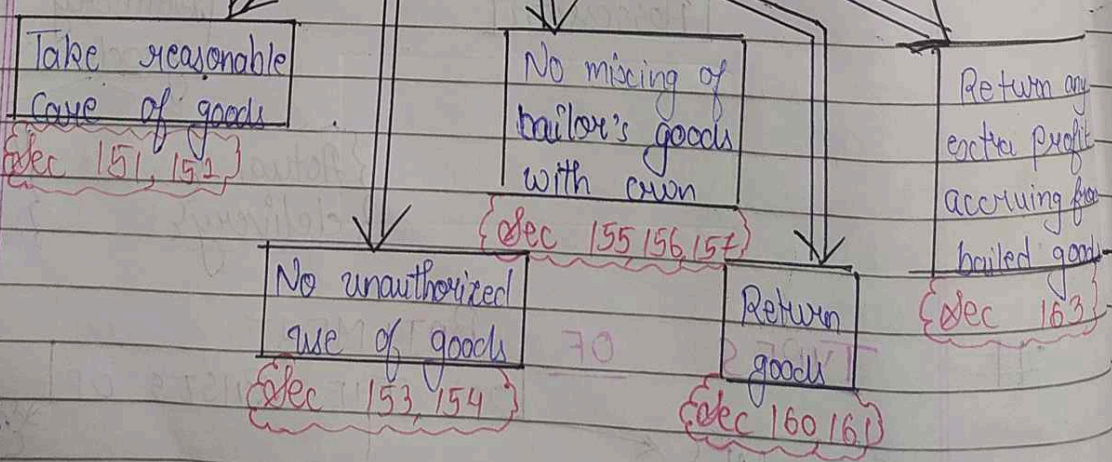
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DUTIES OF BAILOR



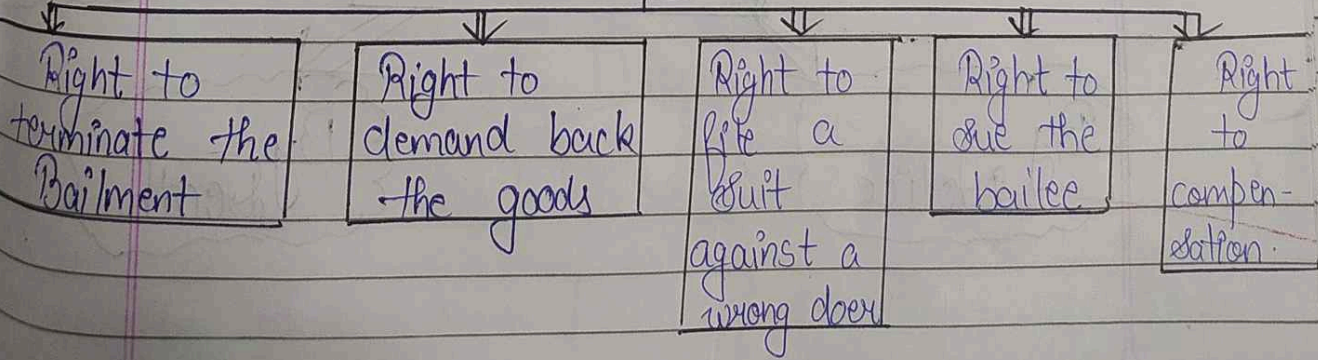
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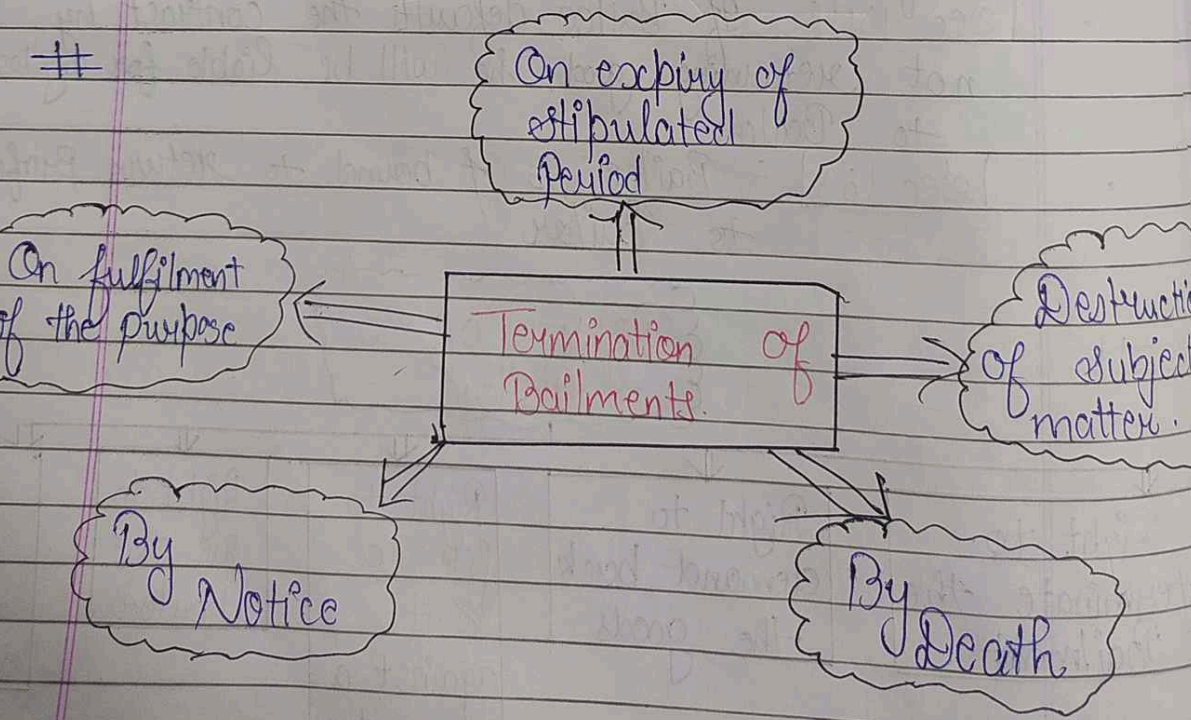
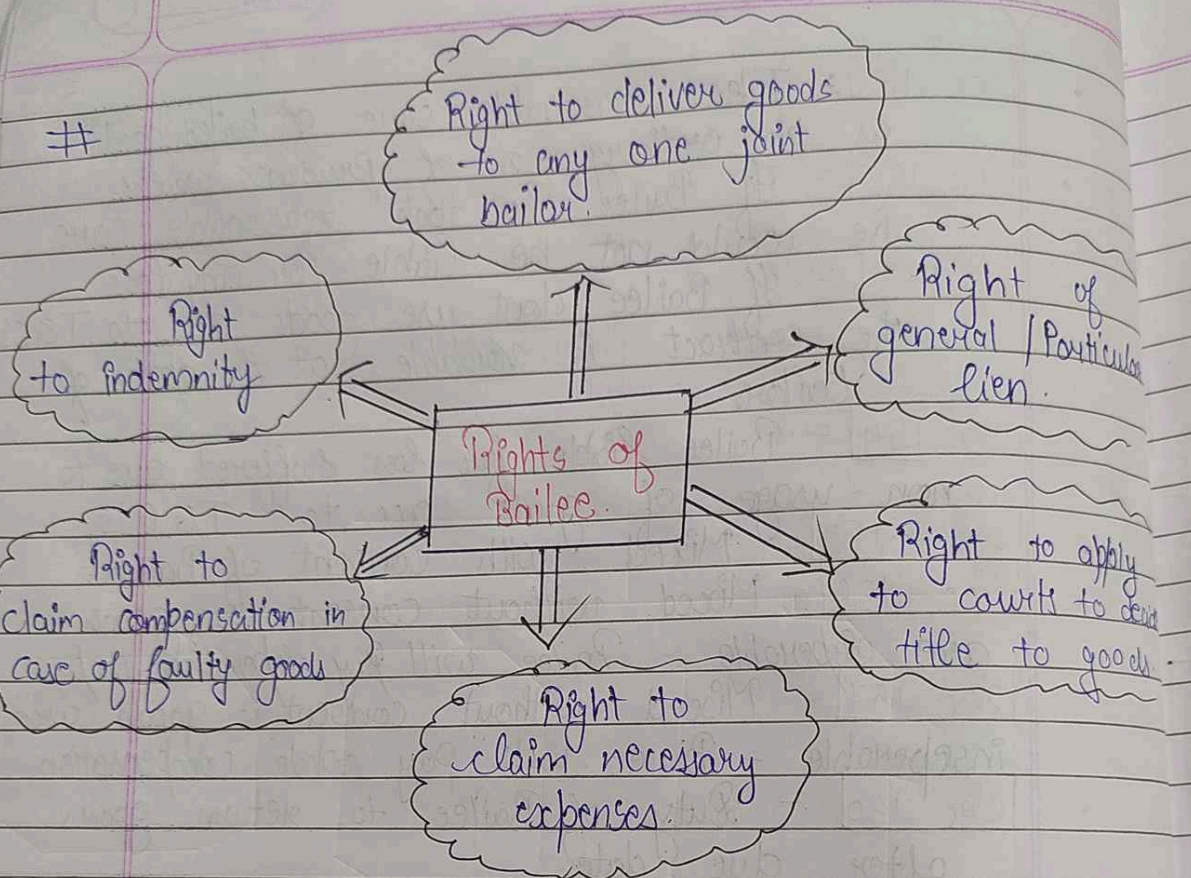
BAILEE'S DUTIES.



- Sec 151 :- Take reasonable care of bailed goods as an ordinary man of prudence would.
- Sec 152 :- If Bailee has took reasonable care, he would not be liable for any loss.
- Sec 153 :- If Bailee dont use goods acc to T&C's the contract is voidable at the option of Bailor.
- Sec 154 :- Bailee liable for loss suffered due to non-usage of goods acc to T&C's.
- Sec 155 :- Mixed with consent of Bailor.
- Sec 156 :- Mixed without consent & goods are deperable - Bailee will pay deperation esp.
- Sec 157 :- Mixed without consent & goods are inseperable - Bailee will pay whole compensation.
- Sec 160 :- Duty of Bailee to return goods after due date.
- Sec 161 :- If Bailee defaults the contract by not returning goods, he will be liable for any loss to Bailor.
- Sec 163 :- Bailee is bound to return profits to Bailor.

Rights of a Bailor





Finder of Lost Goods.

Sec 163

• Finder of lost goods can claim compensation for trouble and expenses voluntarily incurred by him to find goods and can retain goods if owner refuses to pay such compensation.

• If the owner had declared any reward for FOLG, he can be sued if reward is not paid.

Sec 164

• Finder can sell the thing if he don't find the owner or owner refuses to pay lawful charges

1) when commodity found is perishable.

2) when lawful charges amounts to $\frac{2}{3}$ rd of value of goods.

Right of Lien.

Lien is the right of a person

- to retain the goods belonging to another
- until his claim is satisfied
- some debt due to him is repaid.

Lien

General Lien

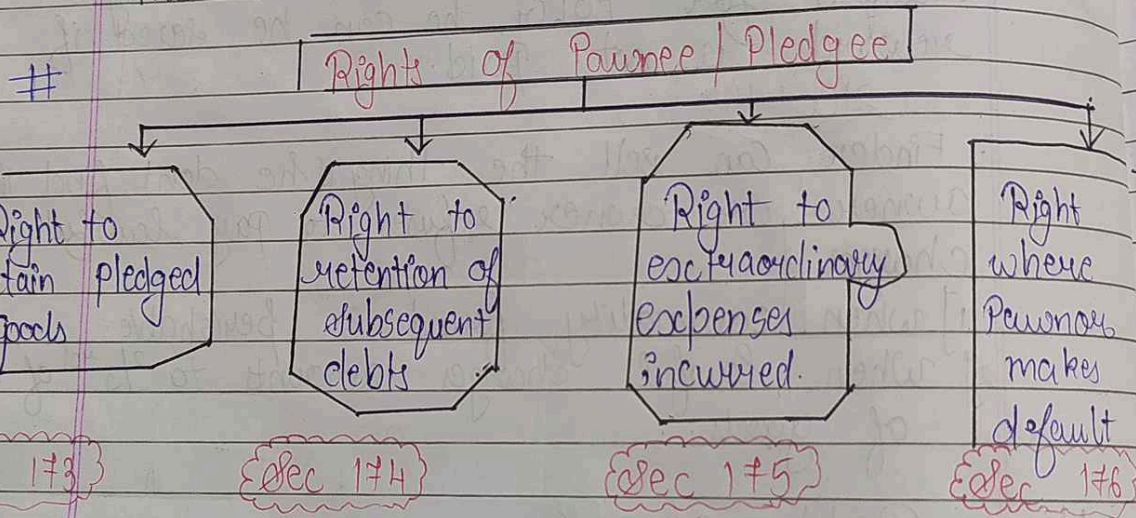
Particular Lien

• For any goods belonging to person
• Rights given to Bankers, Factors,
Policy makers, Attorneys of law.

• For Particular goods
given as security against
particular debt.

Pledge

- Acc to Sec 172
- "The bailment of goods as security for payment of a debt or performance of a promise is called Pledge."
 - The bailor in this case is called 'Pawnee'
 - The bailee is called 'Pledgee'



PLEDGE BY NON OWNERS.

IN ORDER TO FACILITATE mercantile transactions, following people who are non owners can also pledge goods.

- Pledge by mercantile agent Sec 178
- Pledge by person in possession under voidable contract Sec 178 A
- Pledge where pawnee has only a limited interest Sec 179
- Pledge by co-owner in possession
- Pledge by seller or buyer in possession

2. ICA, 1872.

Unit 9

Agency.

Sec 182

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

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

Who may employ an agent.

Sec 183

"Any person who has attained majority according to law to which he is subject and who is of sound mind, may employ an agent."

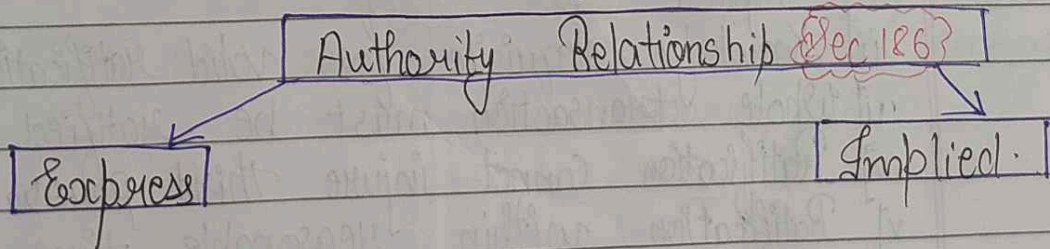
Who may be an agent.

Sec 184

A minor or person with unsound mind can even be an agent if principal agrees to be bound by their act.

Consideration not necessary.

Sec 185



Implied agency Includes :-

1. Agency by Estoppel Sec 237
→ Here, the principal by his actions or statement indicates other person to believe that certain person is his agent
→ He is subsequently prevented or estopped from denying the fact of agency.

2. Agency by necessity
→ Agency of necessity arises in emergency situations where a person is authorised to do what he cannot do in ordinary circumstances.

3. Agency by operation of Law
→ eg - Partner is agent of Partnership firm.

4. Rights of person as to acts done for him without his authority, effect of ratification Sec 196
→ The person may elect to ratify or disown such acts.

→ Essentials of valid Ratification are :-

- i] Ratification may be expressed or implied Sec 197
- ii] Knowledge requisite for valid ratifications Sec 198
- iii] Whole transaction must be ratified Sec 199
- iv] Ratification cannot injure third person Sec 200
- v] Ratification within reasonable time
- vi] Communication of Ratification
- vii] Act to be ratified must be valid.

Extent of Agents Authority

i] Agent's authority in normal circumstances.

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

ii] Agents authority in an emergency Sec 189

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

Sub agent

→ A sub agent is a person employed by, and acting under the control of, the original agent in the business of agency.

→ Appointment of sub agent is unlawful unless it is in nature of agency or pre-decided under the contract. Also in case of emergency agent may delegate his authority

Sec 192

Where sub agent is properly appointed.

i] Principal liable to sub parties for sub agent

ii] Agent responsible to ^{third} principal

iii] Sub-agent responsible to agent, not principal.

(Exceptions - Fraud / willful wrong)

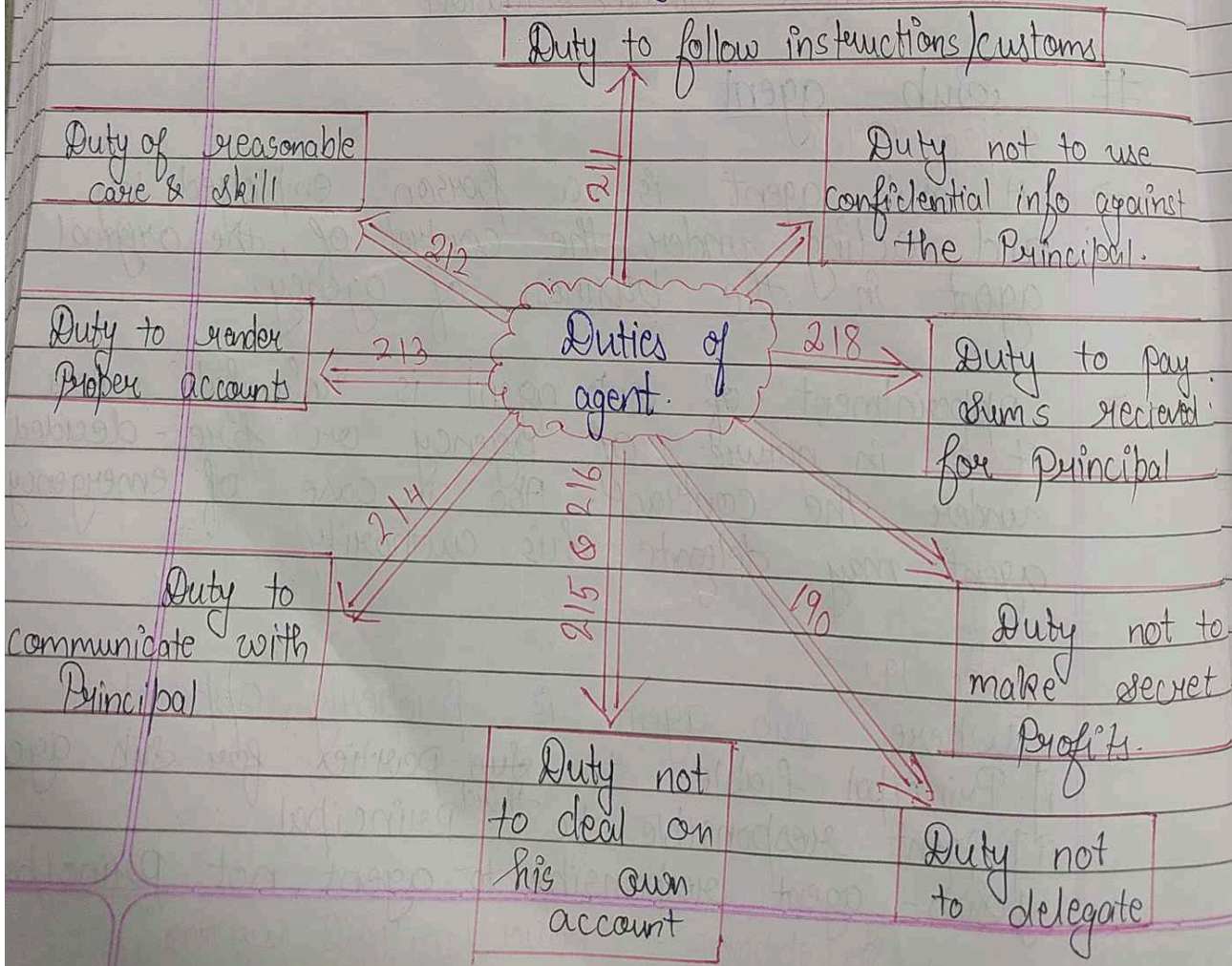
Sec 193

- sub agent appointed without authority
- i) Agent is responsible to principal for acts of sub agent.
- ii) sub agent not responsible to principal.

substituted agent.

- substituted agent is a person appointed by an agent to act for the principal.
- They are agents for principal hence differs from sub agents.

Duties and obligations of agent.



Rights of an agent

- i] Right of retain out of sums received on Principal's account Sec 217
- ii] Right to remuneration Sec 219
- iii] Agent's Lien on Principal's property Sec 220
Lien is lost when -
 - i] Possession of Property is lost
 - ii] agent waives his right
 - iii] Lien is subject contrary to contract.
- iv] Right to indemnity
 - a) Right of indemnification for lawful acts
 - b) Right of indemnification against acts done in good faith
 - c) Non liability of employer of agent to do a criminal act.
- v] Right to compensation for injury caused by Principal's neglect.

Principal's Liability to third Parties.

- i] Principal's Liability for the acts of agent
→ Principal liable for the acts of agents which are within the scope of his authority.
 - ii] Principal's Liability when agent exceeds authority
→ Principal liable for authorised part
Agent liable for extra part
 - iii] Principal not bound when excess of agent's authority is not severable.
- EXCEPTION:** When principal induced 3rd party to believe agents unlawful acts as lawful.

iv) Consequence of notice given to agent
v) Principal's liability for agents fraud, misrepresentation or torts.

→ Within authority - Principal liable
outside authority - No effect on Principal.

Personal Liability of agent to third parties.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

EXCEPTIONS where agent is presumed to have agreed to be personally bound:-

- Merchant Resident abroad / Foreign Principal
- Undisclosed name of Principal
- Non-existent or incompetent Principal
- Pretended agent
- When agent exceeds authority.

Rights of Third Parties

i) Rights of Parties to a contract made by undisclosed agent

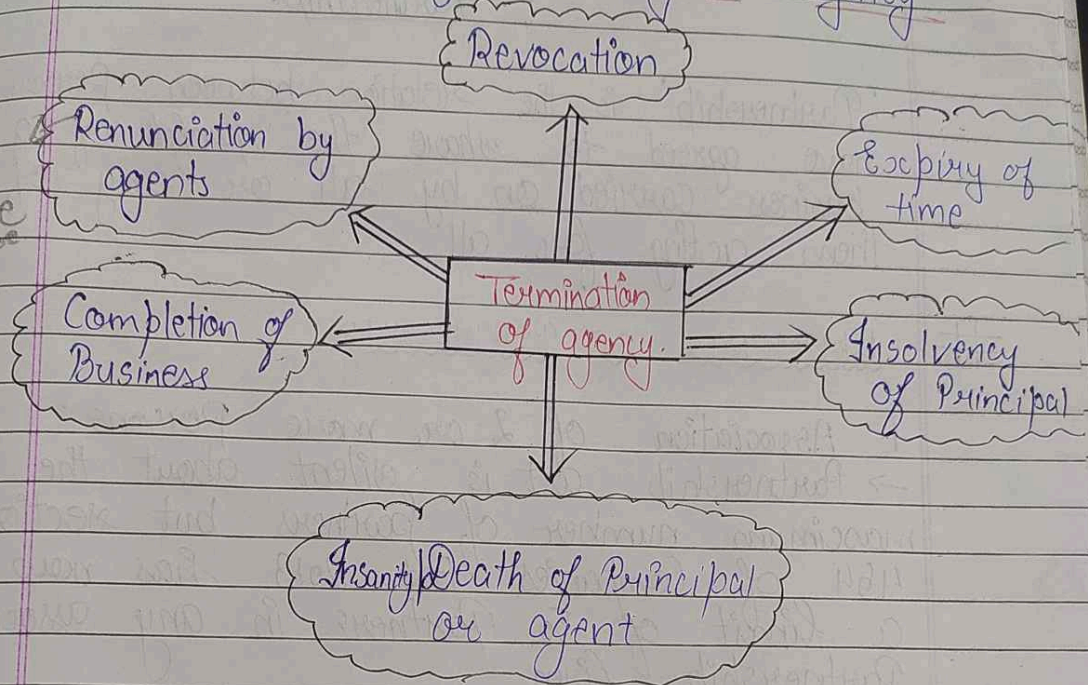
ii) Performance of contract with agent supposed to be Principal.

iii) Option to third person - sue the agent or Principal

Agar agent liable h toh Principal ya agent kisiko bhi sue kar sakte h Par agar agent ya Principal ko induce kie ki tu nahi vo liable hoga to koi bhi liable nahi rahenge.
Principal, agent - win Third Party - lose.

Termination of Authority & Agency

Agent
Kaam
choal de
kharabe



When agency is irrevocable?

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

