

CA Foundation –June 2024

(New Syllabus)

Revisionary Notes

Indian Contract Act 1872

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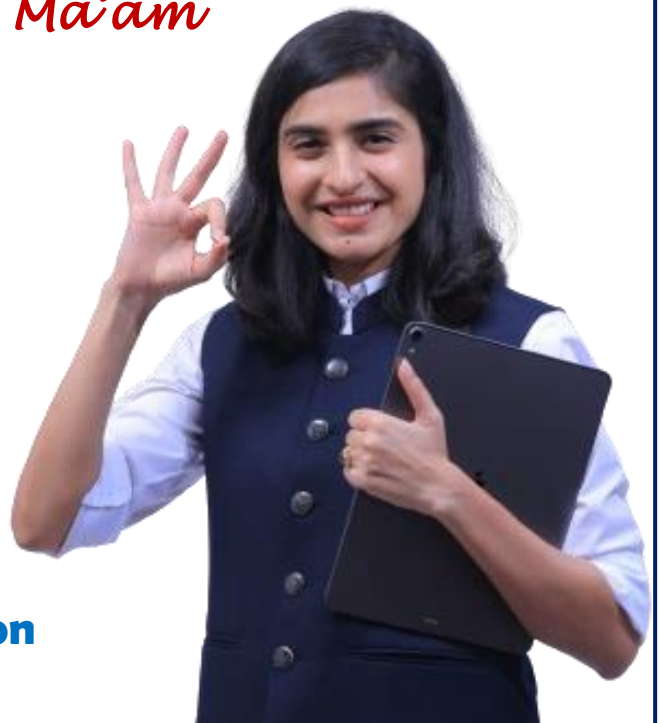
GIFT

By "Law Queen"
Deepika Ma'am

TEST SERIES



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I have compiled these "Indian Contract Act 1872" notes, organized into 9 units, are a concise and effective tool crafted for CA Foundation students. Designed for quick revision, these chart notes encapsulate the key principles, cases, and nuances of the Act. With a focus on clarity and simplicity, they serve as a valuable resource to enhance understanding and aid in exam preparation.

I hope that this notes serves the purpose of its readers.

Valuable suggestions and constructive feedback from learners is welcome and would be gratefully acknowledge please feel free to e-mail your feedback, problems or suggestions to us on drathi31@gmail.com.

Happy Learning and all the best !!

CA Deepika Rathi

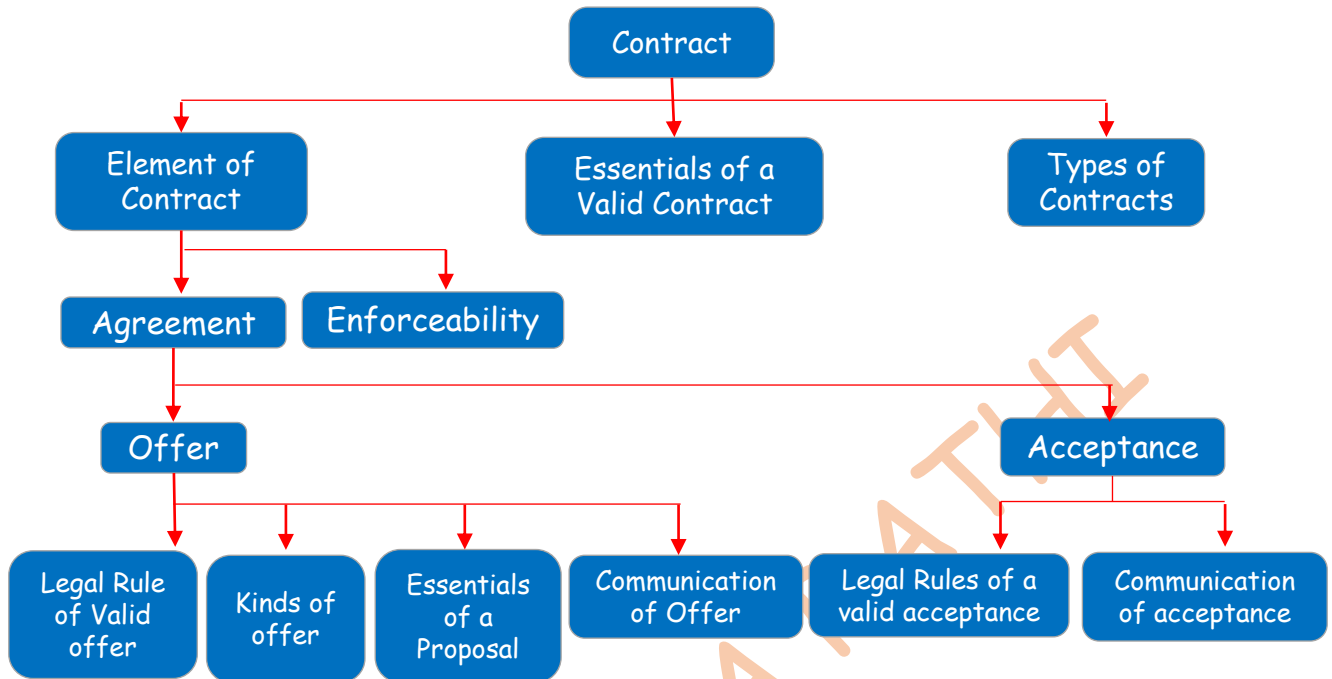


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Unit -1 : Nature Of Contracts



Governing Law, Enforcement & Applicability

- Law relating to contract is governed by the Indian Contract Act, 1872.
- Formed on : April 25, 1872
- Enforcement : September 01, 1872
- Applicability : Extends to the whole of India.
- Preamble : It is an Act to define and amend certain parts of the law relating to contract.

The Act is divisible into two parts

The First part (Section 1-75)

Deals with the General principles of the law of contract, and therefore applies to all contracts irrespective of their nature.

The Second part (Section 124-238)

Deals with Certain special kinds of contracts, e.g., Indemnity and guarantee, bailment, pledge, and agency.



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1. What is a Contract ?

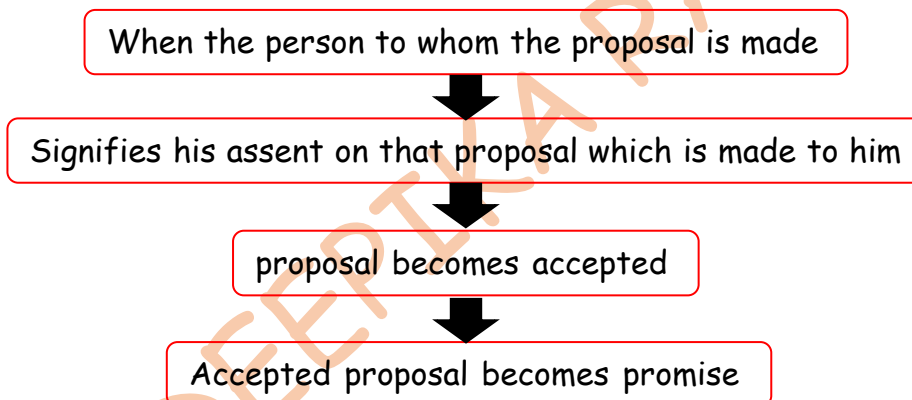
Definition as per **Section 2(h)** : "An agreement enforceable by law."

Contract = (i) Agreement + (ii) Enforceability by law

(i) Agreement

- ❖ **Definition as per Section 2(e)** : "Every promise and every set of promises, forming the consideration for each other".
- ❖ **Section 2 (b) defines promise 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 = (i) Offer/ Proposal + (ii) Acceptance



(ii) Enforceability by Law

- ❖ An agreement to become a contract must give rise to a legal obligation which means a duly enforceable by law.

Contract = Accepted proposal/Agreement + Enforceability by law

- ❖ Contract comprises of an agreement which is a promise or a set of reciprocal promises, that a promise is the acceptance of a proposal giving rise to a binding contract.
- ❖ **Section 2(h)** : An agreement capable of being enforceable by law before it is called 'contract'.
- ❖ Where parties have made a binding contract, they created rights and obligations between themselves.
- ❖ Domestic and Social obligations are out of scope of the Contract Act, as they are not legally enforceable.



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Difference between Agreement and Contract

Basis of differences	Agreement	Contract
Meaning	Every promise and every set of promises, forming the consideration for each other. (Promise + Consideration)	Agreement enforceable by law. (Agreement + Legal enforceability)
Scope	It's a wider term including both legal and social agreement.	It is used in a narrow sense with the specification that contract is only legally enforceable agreement.
Legal obligation	It may not create legal obligation. An agreement does not always grant rights to the parties	Necessarily creates a legal obligation. A contract always grants certain rights to every party.
Nature	All agreement are not contracts.	All contracts are agreements.

2. Essentials of valid contract

As given by Section 10 of Indian Contract Act, 1872		Not given by Section 10 but are also considered essential (General Essential)	
1	Agreement	1	Two parties
2	Free consent	2	Intention to create legal relationship
3	Competency of the parties	3	Fulfilments of legal formalities
4	Lawful consideration	4	Certainty of meaning
5	Legal object	5	Possibility of performance
6	Not expressly declared to be void [as per Section 24 to 30 and 56]		

Section 10 : "All agreements are contracts if they are made by the 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".

Both general essentials and elements given in Section 10 shall be present in a contract for it to be a valid contract.

General Essential

1. Two Parties

- A person cannot enter into a contract with himself, a contract involves at least two parties
- A contract can be made by either natural persons or other persons having legal existence.



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State of Gujarat vs. Ramanlal S & Co.

Fact : when on dissolution of a partnership, the assets of the firm were divided among the partners, the sales tax officer wanted to tax this transaction.

Held : It was held that it was not a sale. The partners being joint owner of those assets cannot be both buyer and seller.

2. Parties must intend to create legal obligations

- There must be an intention on the part of the parties to create legal relationship between them.
- Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.
- **Balfour v. Balfour**
 - ✓ **Fact :** A husband agreed to pay to his wife certain amount as maintenance every month while he was abroad. Husband failed to pay the promised amount. Wife sued him for the recovery of the amount.
 - ✓ **Held :** Wife could not recover the amount as it was a social agreement, and the parties did not intend to create any legal relations.

3. Other Formalities to be complied with in certain cases

- A contract may be written or spoken. But in the interest of the parties the contract must be written.
- In case of certain contracts some other formalities have to be complied with to make an agreement legally enforceable.

4. Certainty of meaning

- The agreement must be certain and not vague or indefinite.

5. Possibility of performance of an agreement

- The terms of agreement should be capable of performance.
- An agreement to do an act impossible in itself cannot be enforced.

Essential Elements Section 10

1. Offer and Acceptance or an Agreement

- An agreement is the first essential element of a valid contract.
- **Section 2(e) of the Indian Contract Act, 1872 :** "Every promise and every set of promises, forming consideration for each other, is an agreement"
- **Section 2(b) of the Indian Contract Act, 1872 :** "A proposal when accepted, becomes a promise"



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2. Free Consent

- Two or more persons are said to consent when they agree upon the same thing in the same sense.
- This can also be understood as identity of minds in understanding the terms viz *consensus ad idem*.
- Further such a consent must be free.
- Consent would be considered as free consent if it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.

3. Capacity of the Parties

- Capacity to contract means the legal ability of a person to enter into a valid contract.
- **Section 11** : A person is competent to contract if he satisfies all the given conditions :
 1. **He attained the age of majority** : → Must be of 18 years of age.
 2. **Is of Sound Mind** :
 - He should be in his senses so that he understands the implications of the contract at the time of entering into a contract.
 - A lunatic, an idiot, a drunken person or under the influence of some intoxicant is not supposed to be a person of sound mind.
 3. **Is not disqualified by law**
Disqualified by law unless they fulfil certain formalities
 - Alien enemy,
 - Foreign sovereigns
 - Convicts

4. Consideration

- A valuable consideration in the sense of law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.
- '*quid pro quo*' i.e. '**something in return**'.

5. Lawful Object

- The consideration and object of the agreement must be lawful.



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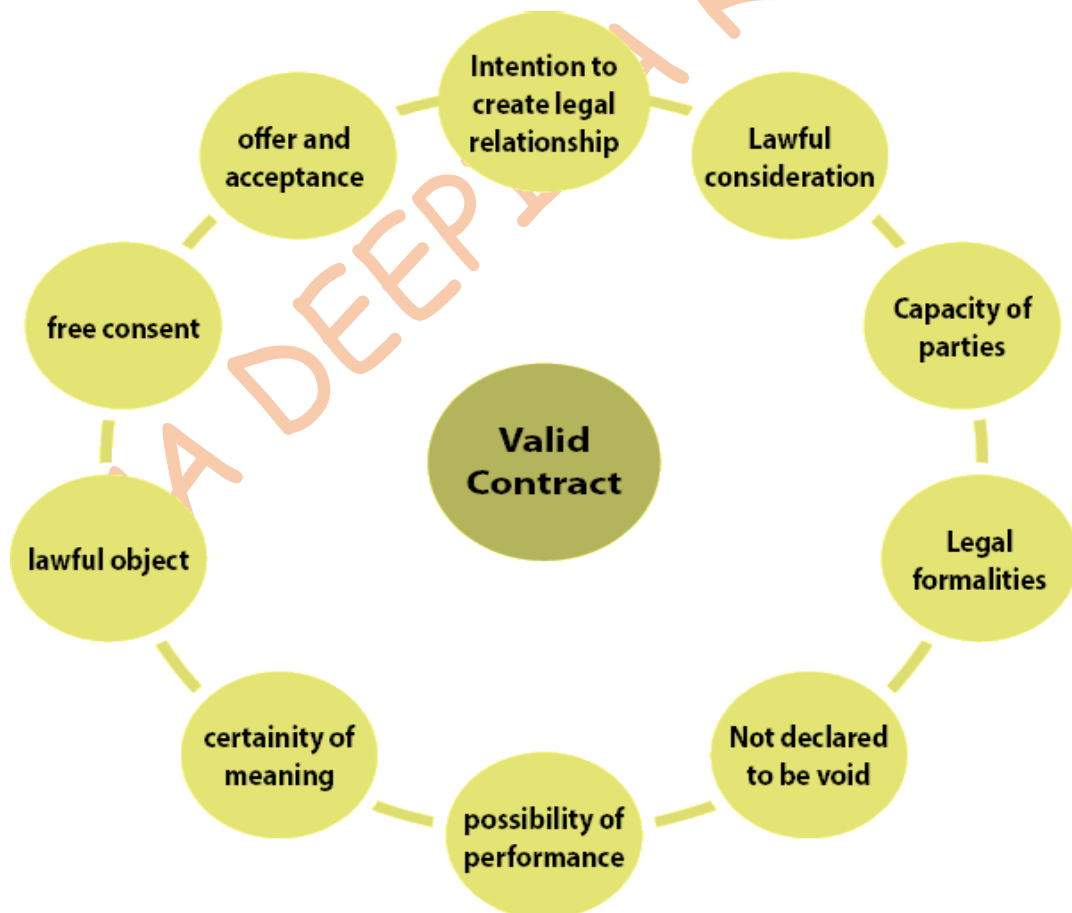


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- **Section 23 : Consideration or Object is not lawful if**
 - it is *prohibited by law*, or
 - it is such as would *defeat the provisions of law*,
 - if it is *fraudulent* or
 - *involves injury to the person or property of another* or *court* regards
 - it as *immoral* or *opposed to public policy*.

6. Not Expressly Declared to be void

- The agreement entered into must not be which the law declares to be either illegal or void.
- **An illegal agreement** : → is an agreement expressly or impliedly prohibited by law.
- **A void agreement** : → is one without any legal effects.





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3. Types of Contracts

Types of Contract

Validity or Enforceability

- Valid Contract
- Void Contract
- Voidable Contract
- Illegal Contract
- Unenforceable Contract

Formation

- Express Contract
- Implied Contract
- Quasi Contract
- E- Contracts

Performance

- Executed Contract
- Executory Contract
 - Unilateral
 - Bilateral

I. On the Basis of Validity or Enforceability

1. Valid Contract

- The Valid Contract is an agreement that is legally binding and enforceable.
- It must qualify all the essentials of a contract.

2. Void Contract

- **Section 2 (j)** : "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable".
- Thus a void contract is one which cannot be enforced by a court of law

3. Voidable Contract

- **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".
- Where one of the parties to the agreement is in a position or is legally entitled or authorized to avoid performing his part, then the agreement is treated and becomes voidable.
- Consent in a contract is obtained by -
 - Coercion,
 - Undue influence,
 - Fraud or
 - Misrepresentation



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Option Available to Aggrieved Party

Cancel the Contract

OR

Continue if Beneficial

Distinction between a void contract and a voidable contract

S. No.	Basis	Void Contract	Voidable Contract
1	Meaning	A Contract ceases to be enforceable by law.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
2	Enforceability	A void contract cannot be enforced at all.	It is enforceable only at the option of aggrieved party and not at the option of other party.
3	Cause	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.
4	Performance of Contract	A void contract cannot be performed.	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance of the contract.
5	Rights	A void contract does not grant any legal remedy to any party.	The party whose consent was not free has the right to rescind the contract within a reasonable time. If so rescinded it becomes a void contract. If it is not rescinded it becomes a valid contract.

4. Illegal Contract

- A contract which the law forbids to be made.
- Court will not enforce such a contract but also the connected contracts.
- All illegal agreements are void but all void agreements are not necessarily illegal. But both are void ab initio and cannot be enforced by law.



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- According to Section 2(g) of the Indian Contract Act, "**an agreement not enforceable by law is void**".

Distinction between a Void Agreement and a Illegal Agreement

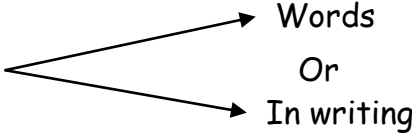
Basis of Difference	Void Agreement	Illegal Agreement
Scope	A void agreement is not necessarily illegal.	An illegal agreement is always void.
Nature	Not forbidden under law.	Are forbidden under law.
Punishment	Parties are not liable for any punishment under the law.	Parties to illegal agreements are liable for punishment
Collateral Agreement	<ul style="list-style-type: none"> • It's not necessary that agreements collateral to void agreements may also be void. • It may be valid also. 	Agreements collateral to illegal agreements are always void.

5. Unenforceable Contract

- Unenforceable contracts are rendered unenforceable by law due to some technical defect.
- Example : Absence in writing, Barred by limitation etc.

II. On the Basis of formation of Contract

1. Express Contracts

- ❖ The terms are expressed by 
 - Words
 - Or
 - In writing
- ❖ Section 9 : If a proposal or acceptance of any promise is made in words, the promise is said to be express.

2. Implied Contracts

- These contracts come into existence by implication.
- This implication is by action or conduct of parties or course of dealing.
- **Section 9** of the Act contemplates such implied contracts :→ when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.



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• Tacit Contracts :

- ✓ Tacit means silent.
- ✓ Tacit contracts :→ are those that are inferred through the conduct of parties without any words spoken or written.
- ✓ It is not a separate form of contract but falls within the scope of implied contracts.

3. Quasi Contract

- It is not an actual contract but it resembles a contract.
- Created by law under certain circumstances.

The law creates and enforces legal rights and obligations when no real contract exists.

Such obligations are known as quasi-contracts.

4. E-Contract

When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts.

III. On the Basis of performance of Contract

1. Executed-Contract

- When the act is done or executed or the forbearance is brought on record, then the contract is an executed contract.
- The consideration in Executed Contract could be an act or forbearance.

2. Executory-Contract

- In an executory contract the consideration is reciprocal promise or obligation.
- Such consideration is to be performed in future only and therefore these contracts are described as executory contracts.

A. Unilateral Contract

B. Bilateral Contract



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Unilateral Contract → is a *one sided contract* in which one party has performed his duty or obligation and the other party's obligation is outstanding.

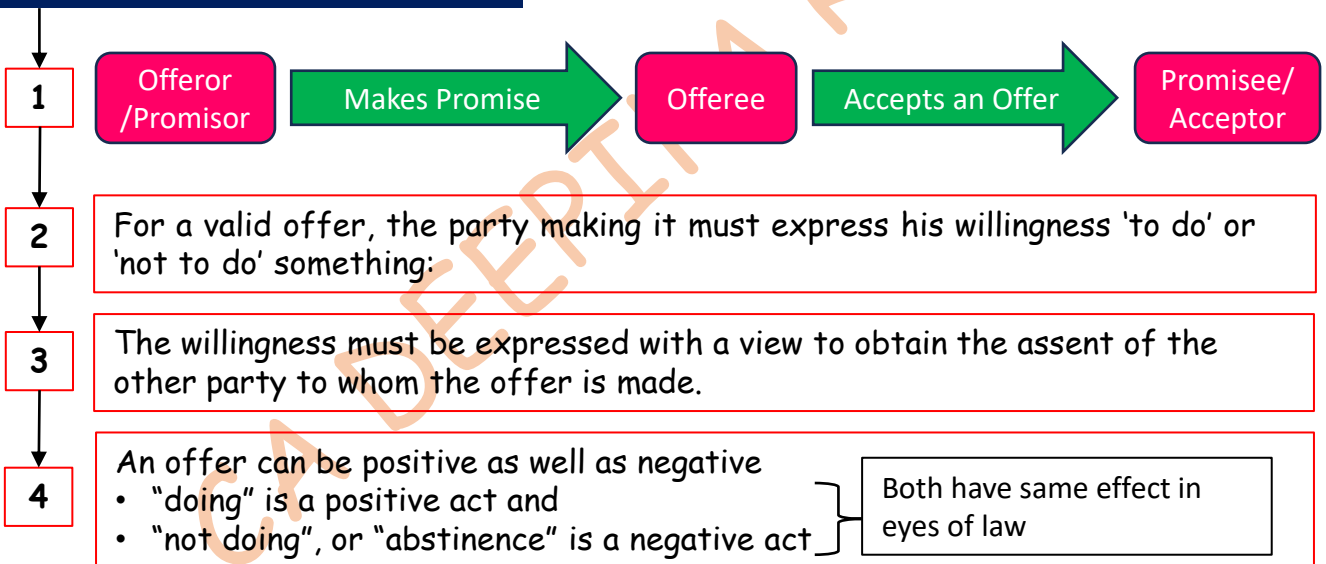
Bilateral Contract → is one where the obligation or promise is outstanding on the part of both the parties.

4. PROPOSAL / OFFER [SECTION 2(a) OF THE INDIAN CONTRACT ACT, 1872]

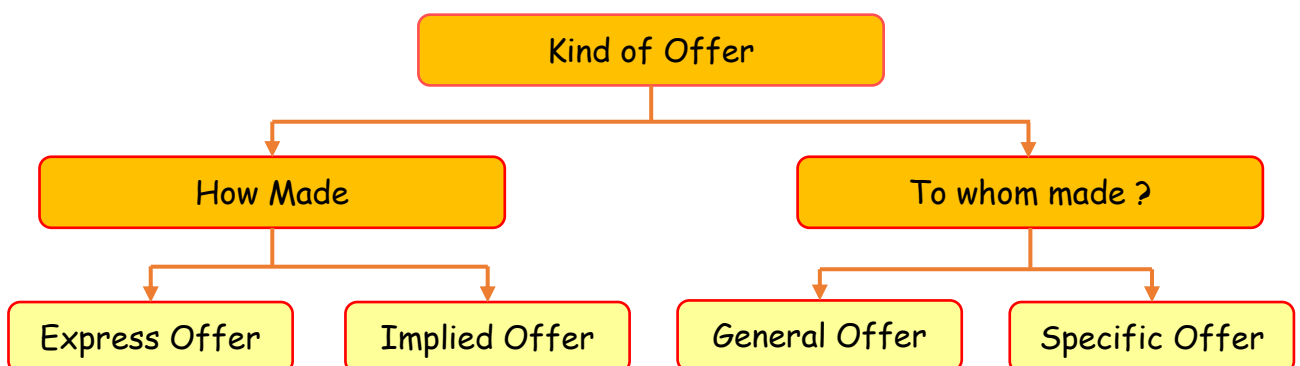
Definition of Offer/ Proposal [Section 2(a)]

• "When 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 a proposal/offer



Kind of Offer

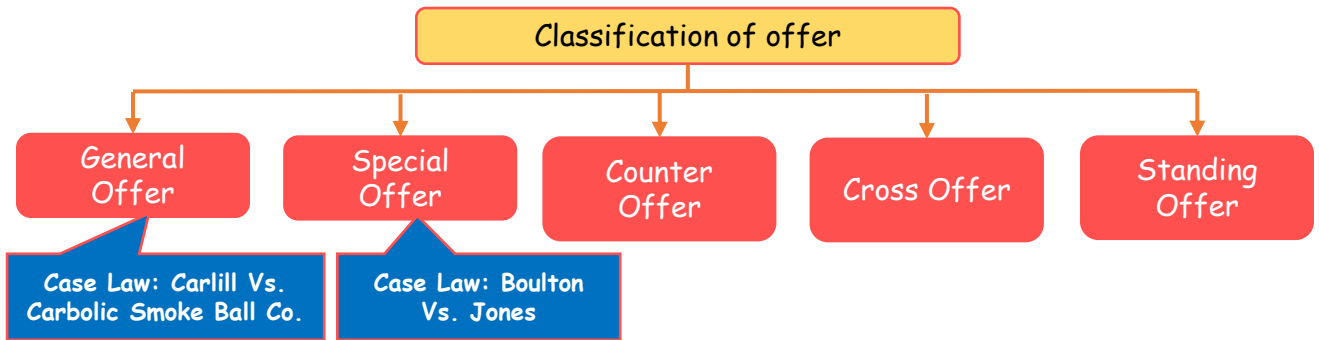




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a. General Offer

- A general Offer is an offer that is made to the **public at large**.
- **Section 8** : Anyone performing the conditions of the offer can be considered to have accepted the offer.
- Until the **general offer is retracted or withdrawn**, it can be accepted by anyone at any time as it is a continuing offer.

Case Law: Carlill Vs. Carbolic Smoke Ball Co. (1893)

- **Fact:** Carbolic smoke Ball Co. advertised in several newspapers that a reward of £100 would be given to any person who contracted influenza after using the smoke balls produced by the Carbolic Smoke Ball Co. according to printed directions. One lady, Mrs. Carlill, used the smoke balls as per the directions of company and even then, suffered from influenza.
- **Decision by Court:** It was held, she could recover the amount as by using the smoke balls she had accepted the offer.

b. Special/Specific Offer

- When the offer is made to a **specific** or **an ascertained person**, it is known as a specific offer.
- Specific offer can be accepted only by that specified person to whom the offer has been made. [**Boulton Vs. Jones**]

c. Cross Offer

- When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called cross offers.



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- There is no binding contract in such a case because offer made by a person cannot be construed as acceptance of the another's offer.

d. Counter Offer

- When the offeree offers a qualified acceptance of the offer subject to modifications and variations in terms of the original offer, he is said to have made a counter offer.
- Counter-offer amounts to rejection of the original offer.
- It is also called as Conditional Acceptance.

e. Standing/ Continuing/ Open Offer

- An offer which is allowed to remain open for acceptance over a period of time is known as standing or continuing or open offer.
- Tenders that are invited for supply of goods is a kind of standing offer.

Essentials of Valid Offer

1. It must be capable of creating legal relations

Offer must be capable of being accepted and giving rise to legal relationship

Offer which does not intend to give rise to legal consequences and creating legal relations, it is not considered as a valid offer in the eye of law.

A social invitation, even if it is accepted, does not create legal relations because it is not so intended.

2. It must be Certain, Definite, and not Vague

If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual 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, otherwise there can be no acceptance of it.

Unless an offer is communicated, there can be no acceptance by it.

Acceptance in ignorance of the proposal does not amount to acceptance



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Case Law: Lalman Shukla Vs. Gauri Dutt

- **Fact:** G (Gauridutt) sent his servant L (Lalman) to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. L traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it.
- **Decision by Court:** He was not entitled to the reward, as he did not know the offer.

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

- Must be made with a view to obtaining the assent of the other party.

5. May be Conditional

- An offer can be made subject to any terms and conditions by the offeror.

6. Offer should not contain a term the non-compliance of which would amount to acceptance:

- One cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.

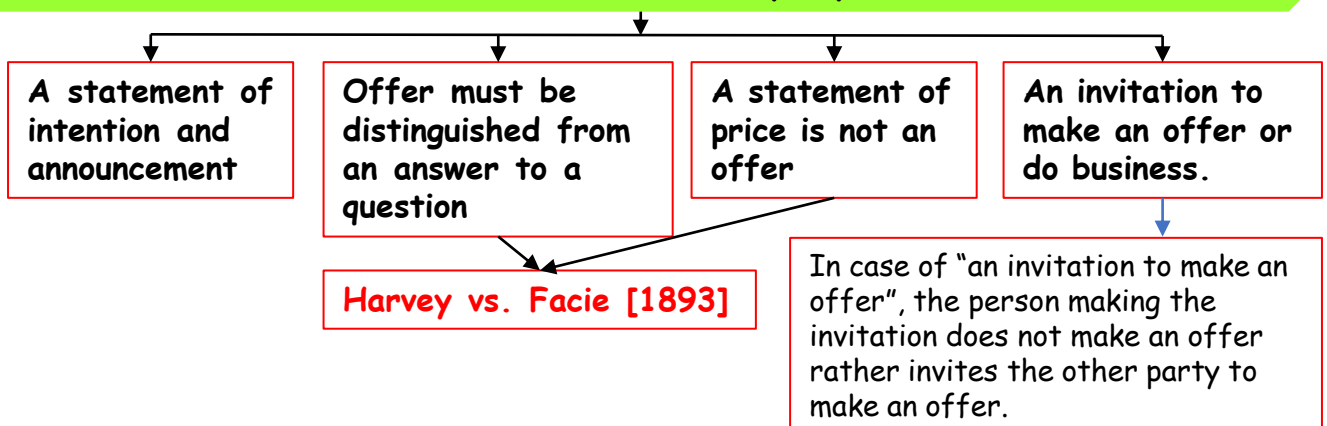
7. Offer may be General or Specific

- Any offer can be made to either public at large or to the any specific person.

8. Offer may be Express or Implied

- An offer may be made either by words or by conduct.

9. Offer is Different from a mere statement of intention, an invitation to offer, a mere communication of information, A prospectus and Advertisement.





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Case Law: Harvey vs. Facie [1893] AC 552 :

Fact : The plaintiffs through a telegram asked the defendants two questions namely,

- i. Will you sell us Bumper Hall Pen? And
- ii. Telegraph lowest cash price.

The defendants replied through telegram that the "lowest price for Bumper Hall Pen is £ 900".

The plaintiffs sent another telegram stating, "we agree to buy Bumper Hall Pen at £ 900".

However, the defendants refused to sell the property at the price. The plaintiffs sued the defendants contending that they had made an offer to sell the property at £ 900 and therefore they are bound by the offer.

Judgement: While plaintiffs had asked two questions, the defendant replied only to the second question by quoting the price but reserved their answer with regard to their willingness to sell.

The mere statement of the lowest price at which the vendor would sell contained no implied contract to sell to the person who had enquired about the price.

When goods are sold through auction :

The auctioneer does not contract with anyone who attends the sale.

The auction is only an advertisement to sell but the items are not put for sale though persons who have come to the auction may have the intention to purchase.

Prospectus issued by a company :→ is only an invitation to the public to make an offer to subscribe to the securities of the company.

10. A Statement of Price is not an Offer

Question: What is invitation to offer ?

Answer: An offer should be distinguished from an invitation to offer :

- An offer is definite and capable of converting an intention into a contract.
- Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer.
- An invitation to offer is an act precedent to making an offer.
- Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.



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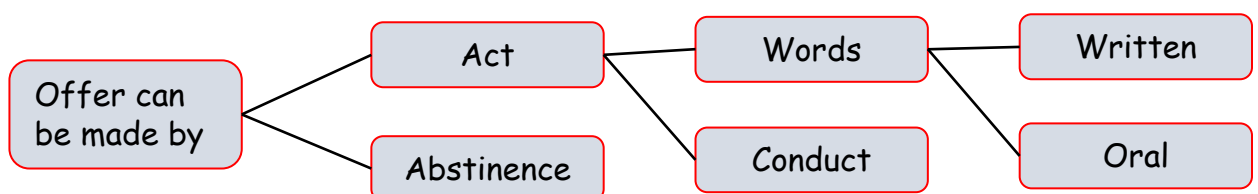


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Difference between offer and invitation to make an Offer

- **Offer** :→ Section 2(a) : An offer is the final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it.
- **Invitation to Offer** :→ Offers made with the intention to negotiate or offers to receive offers are known as invitation to offer.
- Where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms.
- **Instances of invitation to offer to buy or sell :**
 - i. A Prospectus by a company to the public to subscribe for its shares.
 - ii. Display of goods for sale in shop windows.
 - iii. Advertising auction sales
 - iv. Quotation of prices sent in reply to a query regarding price.

Basis	Offer	Invitation to Offer
Meaning	Section 2(a) : An offer is the final expression of willingness by the offer or to be bound by the offer should the other party chooses to accept it.	Where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms.
Intention of Parties	If a person who makes the statement has the intention to be bound by it as soon as the other accepts, he is making an offer.	If a person has the intention of negotiating on terms it is called invitation to offer.
Sequence	An offer cannot be an act precedent to invitation to offer.	An invitation to offer is always an act precedent to offer.





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5. Acceptance

- ❖ **Section 2 (b)** : "When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise"
- ❖ **According to Sir William Anson "Acceptance is to offer what a lighted match is to a train of gunpowder"**
 - What acceptance triggers cannot be recalled or undone.
 - But offer can be withdrawn just before it is accepted.
 - Acceptance converts the offer into a promise and then it is too late to revoke it.
 - An offer in itself cannot create any legal relationship but it is the acceptance by the offeree which creates a legal relationship.

Legal Rules regarding a valid acceptance

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

- In the case of a specific proposal or offer, it can only be accepted by the person it was made to. No third person without the knowledge of the offeree can accept the offer. **Case Law : Boulton vs. Jones (1857)**
- When the proposal is a general offer, then anyone with knowledge of the offer can accept it.

2. Acceptance must be Absolute and Unqualified

- ❖ **Section 7** : Acceptance is valid only when it is
 - Absolute and
 - Unqualified and
 - Expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted.
- ❖ If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.
- **Case Law: Neale vs. Merret**
- **Case Law: Union of India vs. Bahulal**

3. Acceptance must be Communicated

- ❖ To conclude a contract between the parties, the acceptance must be communicated in some perceptible form.
- ❖ Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance.



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- ❖ Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract.
- ❖ Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him.
- ❖ **Case Law : Brogden vs. Metropolitan Railway Co. (1877)**

4. Acceptance must be in prescribed mode

- ❖ Acceptance of the offer must be in the prescribed manner that is demanded by the offeror.
- ❖ If no such manner is prescribed, it must be in a reasonable manner that would be employed in the normal course of business.

5. Time

- ❖ Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses.
- ❖ What is reasonable time is nowhere defined in the law and thus would depend on facts and circumstances of the particular case.

6. Mere silence is not acceptance

- ❖ The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.
- ❖ **Case Law : Felthouse vs. Bindley**

7. Acceptance by Conduct/ Implied Acceptance

- ❖ Section 8 of the Indian Contract Act 1872, provides that acceptance by conduct or actions of the promisee is acceptable.
- ❖ So, if a person performs certain actions that communicate that he has accepted the offer, such implied acceptance is permissible.



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6. Communication of Offer & Acceptance

- When the contracting parties are face-to-face, there is no problem of communication because there is instantaneous communication of offer and acceptance. In such a case the question of revocation does not arise since the offer and its acceptance are made instantly.
- The difficulty arises when the contracting parties are at a distance from one another and they utilise the services of the post office or telephone or email (internet). In such cases, it is very much relevant for us to know the exact time when the offer or acceptance is made or complete.
- The Indian Contract Act, 1872 gives a lot of importance to "time" element in deciding when the offer and acceptance is complete.

Communication of Offer

- **Section 4** : "The communication of offer is complete when it comes to the knowledge of the person to whom it is made"
- When a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.
- Mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

Communication of Acceptance

There are two issues for discussion and understanding they are :

The modes of acceptance

When is acceptance complete ?

Mode of Acceptance

Section 3 : In general terms two modes of communication namely,

a. By any act

b. By omission, intending thereby, to communicate to the other or which has the effect of communicating it to the other.



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a. Communication by Act/Conduct would include

Any expression of words whether written or oral.

- Written words : → Include letters, telegrams, faxes, emails and even advertisements
- Oral words : → Include Telephone messages

Any conduct intended to communicate like positive acts or signs so that the other person understands what the person 'acting' or 'making signs' means to say or convey.

Example : when a person boards a bus, he is accepting to pay the bus fare via his conduct.

b. Communication of Acceptance by omission to do Something

Such omission is conveyed

By conduct

OR

By forbearance

- on the part of one person to convey his willingness or assent.
- However, silence would not be treated as communication by 'omission'.
- **Example** : A offers Rs.50,000 to B if he does not arrive before the court of law as an evidence to the case. B does not arrive on the date of hearing to the court. Here omission of doing an act amounts to acceptance.

When is acceptance complete ?

As per Section 4 of the Act, it is complete

A. As against the proposer

When it is put in the course of transmission to him so as to be out of the power of the acceptor to withdraw the same

B. As against the Acceptor

When it comes to the knowledge of the proposer

Where a proposal is accepted by a letter sent by the post

Communication of acceptance will be complete

- As against the proposer :→ when the letter of acceptance is posted and
- As against the acceptor :→ when the letter reaches the proposer.



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Acceptance over telephone or telex or fax or e-mail

When an offer is made of instantaneous communication like telex, telephone, fax or through e-mail, **the contract is only complete**

- when the acceptance is received by the offeree, and the contract is made at the place where the acceptance is received (*Entores Ltd. v. Miles Far East Corporation*).
- However, in case of a call drops and disturbances in the line, there may not be a valid contract.

Communication of Special Conditions

- Sometimes there are situations where there are contracts with special conditions.
- These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it.
- **Example** : Where a passenger undertakes a travel, the conditions of travel are printed at the back of the tickets, sometimes these special conditions are brought to the notice of the passenger, sometimes not. In any event, the passenger is treated as having accepted the special condition the moment he bought his ticket.
- Case Laws
 1. Mukul Datta Vs. Indian Airlines
 2. Lilly White Vs. R. Mannuswamy

7. Communication of Performance

From the viewpoint of proposer

When the acceptance is put into a course of transmission, when it would be out of the power of acceptor.

From the viewpoint of acceptor

It would be complete when it comes to the knowledge of the proposer.

Some times the offeree may be required to communicate the performance (or act) by way of acceptance.

- In this case it is not enough if the offeree merely performs the act but he should also communicate his performance unless the offer includes a term that a mere performance will constitute acceptance.



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Case : *Carlill Vs Carbolic & Smokeball Co.*

Fact of the Case : The defendant a sole proprietary concern manufacturing a medicine which was a carbolic ball whose smoke could be inhaled through the nose to cure influenza, cold and other connected ailments issued an advertisement for sale of this medicine. The advertisement also included a reward of \$100 to any person who contracted influenza, after using the medicine (which was described as 'carbolic smoke ball'). Mrs. Carlill bought these smoke balls and used them as directed but contracted influenza.

Judgment of the Court : It was held that Mrs. Carlill was entitled to a reward of \$100 as she had performed the condition for acceptance.

- As the **advertisement did not require any communication of compliance of the condition**, it was not necessary to communicate the same.
- The court thus in the process laid down the following three important principles:

i. An offer, to be capable of acceptance,
- must contain a definite promise by the offer **or**
- that he would be bound provided the terms specified by him are accepted.

ii. An offer may be made either to
- a particular person
or
- to the public at large

iii. if an offer is made in the form of a promise in return for an act, the performance of that act, even without any communication thereof, is to be treated as an acceptance of the offer.

8. Revocation of Offer & Acceptance

In term of **Section 4**, communication of revocation (of the proposal or its acceptance) is complete.

1. As against the person who makes it when it is put into a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it

OR

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

As per Section 5 of the Act

Offer can be revoked at any time before communication of acceptance is completed as against the offeror.

Acceptance can be revoked at any time before the communication of acceptance is complete against the acceptor.



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Contract over Telephone-

- A contract can be made over telephone.
- The rules regarding offer and acceptance as well as their communication by telephone or telex are the same as for the contract made by the mutual meeting of the parties.
- The contract is formed as soon as the offer is accepted but the offeree must make it sure that his acceptance is received by the offeror, otherwise there will be no contract, as communication of acceptance is not complete.
- If telephone unexpectedly goes dead during conversation, the acceptor must confirm again that the words of acceptance were duly heard by the offeror.

Revocation of proposal otherwise than by communication:

- When a proposal is made, the proposer *may not wait indefinitely for its acceptance.*
- The *offer can be revoked otherwise than by communication or sometimes by lapse.*

Modes of Revocation of Offer:

1. **Notice of revocation**
2. **Lapse of Time:** The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time
3. **Non-fulfilment of condition:** Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked. **(Section -6)**
4. **Death or insanity:** Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.
5. **Counter Offer**
6. **Non-acceptance of the offer according to the prescribed or usual mode**
7. **Subsequent illegality**



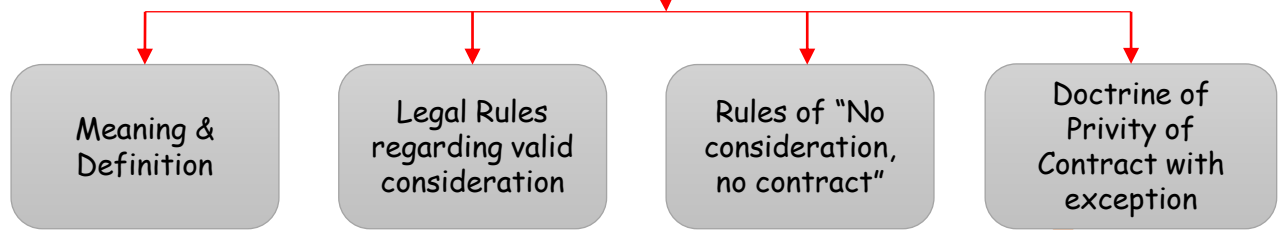
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Unit -2 : Consideration

CONSIDERATION



1. What is Consideration ?

- ❖ Consideration is *the price agreed to be paid by the promisee for the obligation of the promisor.*
- ❖ The word consideration was described in a very popular English case of *Misa v. Currie* as:

A valuable consideration in the sense of law may consist either

In some right, interest, profit or benefit accruing to one party (i.e. promisor)

OR

forbearance, detriment, loss or responsibility given, suffered or undertaken by the other (i.e. the promisee)."

- ❖ Section 2(d) of Indian Contract Act 1872

When at the desire of the Promisor

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

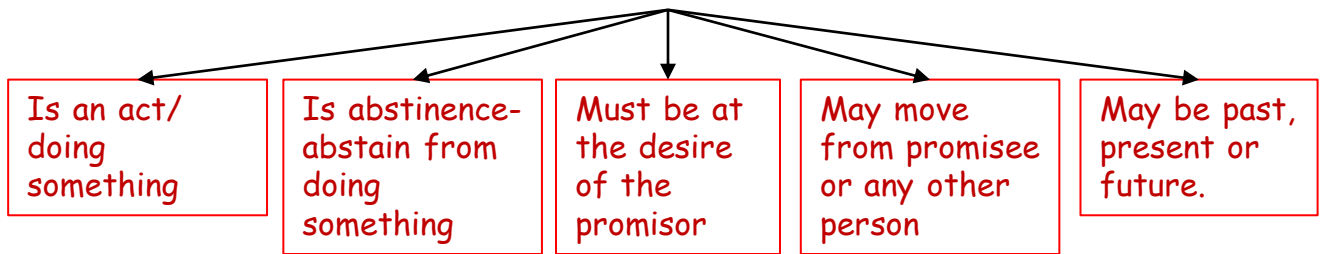


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Consideration



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

Form of consideration = Some benefit, right or profit to one party / some detriment, loss, or forbearance to the other.

2. Legal Rules Regarding Consideration

1. Consideration must move at the desire of the promisor

- Consideration must be offered by the promisee or the third party at the desire or request of the promisor.
- Contract of marriage in consideration of promise of settlement is enforceable.
- An act done at the desire of a third party is not a consideration.

Case Law : Durga Prasad v. Baldeo

- D (defendant) promised to pay to P (plaintiff) a certain commission on articles which would be sold through their agency in a market.
- Market was constructed by P at the desire of the C (Collector), and not at the desire of the D.
- D was not bound to pay as it was without consideration and hence void.

2. Consideration may move from promisee or any other person

- Consideration may move from the promisee or any other person who is not the party to the contract to the contract.
- There can be a stranger to consideration.

✓ **Case Law : Chinnayya Vs. Ramayya**

- An old lady made a gift of her property to her daughter with a direction to pay a certain sum of money to the maternal uncle by way of annuity.
- On the same day, the daughter executed a writing in favour of the brother agreeing to pay annuity.
- The daughter did not, however, pay the annuity and the uncle sued to recover it.
- **Held** : There was sufficient consideration for the uncle to recover the money from the daughter.



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3. Executed and Executory Consideration

- A consideration which consists in the performance of an act is said to be executed.
- When it consists in a promise, it is said to be executory.

4. Consideration may be past, present or future

- **Past Consideration** : → If the promise or act is performed before the contract was made.
- **Present consideration** : → When one of the parties in the contract has performed his part of the promise, which constitutes the consideration to be performed by other party.
- **Future consideration** : → When a party makes a promise in exchange for the promise from the other party and the performance of the consideration is to be done after making the contract; then it is a

5. It need not be adequate

- It is not mandatory for the consideration to be equivalent to the promise.
- Parties are free to determine the appropriate consideration at the time of negotiating the terms of contract.
- While the law allows the parties to decide an 'adequate' consideration for them, it must be real and have value in the eyes of law.
- While the Court will not consider inadequacy, it will look at it to determine if the consent was given by the party with free-will or not.

6. Performance of what one is legally bound to perform

- If the promisor is already obligated either by his promise or law to perform or abstain from a certain act, then it is not a good consideration for a promise.
- Such a contract is void for want of consideration.
- **Example** : A promise to pay money to a witness is void, for it is without consideration
- **Example** : An agreement by a client to pay to his counsel after the latter has been engaged, a certain sum over and above the fee, in the event of success of the case would be void, since it is without consideration.
- But where a person promises to do more that he is legally bound to do, such a promise provided it is not opposed to public policy, is a good consideration. It should not be vague or uncertain.



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7. Consideration must be real and not illusory

- Consideration has to be certain, definitive and competent.
- It cannot be vague, uncertain or impossible.
- It must be something real and not something imaginary

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

- Only presence of consideration is not sufficient it must be lawful.
- Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

3. Suit by a Third Party to a Contract

- Consideration for an agreement may proceed from a third party, **the third party cannot sue on contract.**
- Only a person who is party to a contract can sue on it.
- As per the 'Doctrines of Privity of Contract' a stranger to a contract cannot sue.

However in certain contract a stranger may enforce a claim these are following

1. In the case of Trust

- A beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.

2. In the case of Family Settlement

- If the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.

3. In the case of certain marriage contracts / arrangements

- 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.

4. In the case of assignment of a contract

- When the benefit under a contract has been assigned, the assignee can enforce the contract but such assignment should not involve any personal skill.

5. Acknowledgement or Estoppel

- Where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.



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6. In the 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 successor of the seller.

7. Contracts entered into through an agent

The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

4. Validity of an Agreement without Consideration

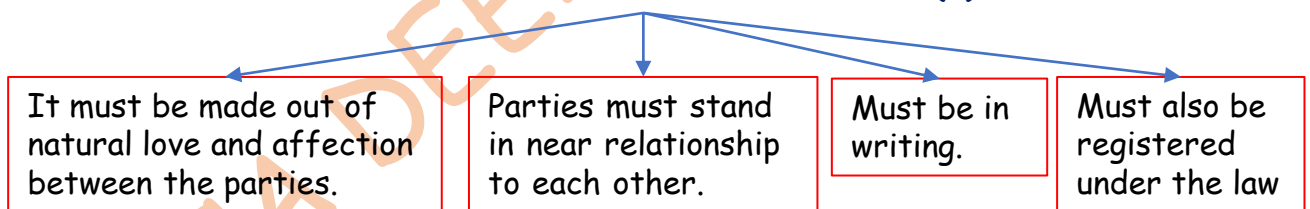
- ❖ **Section 25** : General Rule is that an agreement made without consideration is void.
- ❖ In every valid contract, consideration is very important.
- ❖ A contract may only be enforceable when consideration is there.



Exceptions to this rule.

1. Natural Love and affection [Section 25(1)]

Conditions to be fulfilled under **section 25(1)**



A written and registered agreement *based on natural love and affection* between the parties standing in near relation (e.g., husband and wife) to each other is *enforceable even without consideration*.

2. Compensation for past voluntary services [Section 25(2)]

- ❖ A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable.



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❖ In order that a promise to pay for the past voluntary services be binding, the following essential factors must exist:

Services should have been rendered voluntarily.

Services must have been rendered for the promisor

Promisor must be in existence at the time when services were rendered.

Promisor must have intended to compensate the promisee.

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

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

4. Agency [Section 185]

No consideration is necessary to create an agency.

5. Completed Gift

- **Explanation (1) to Section 25 :** "nothing in this section shall affect the validity as between the donor and donee, of any gift actually made."
- Thus, gifts do not require any consideration.

6. Bailment [Section 148]

No consideration is required to affect the contract of bailment.

7. Charity

If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid. (*Kadarnath v. Gorie Mohammad*)



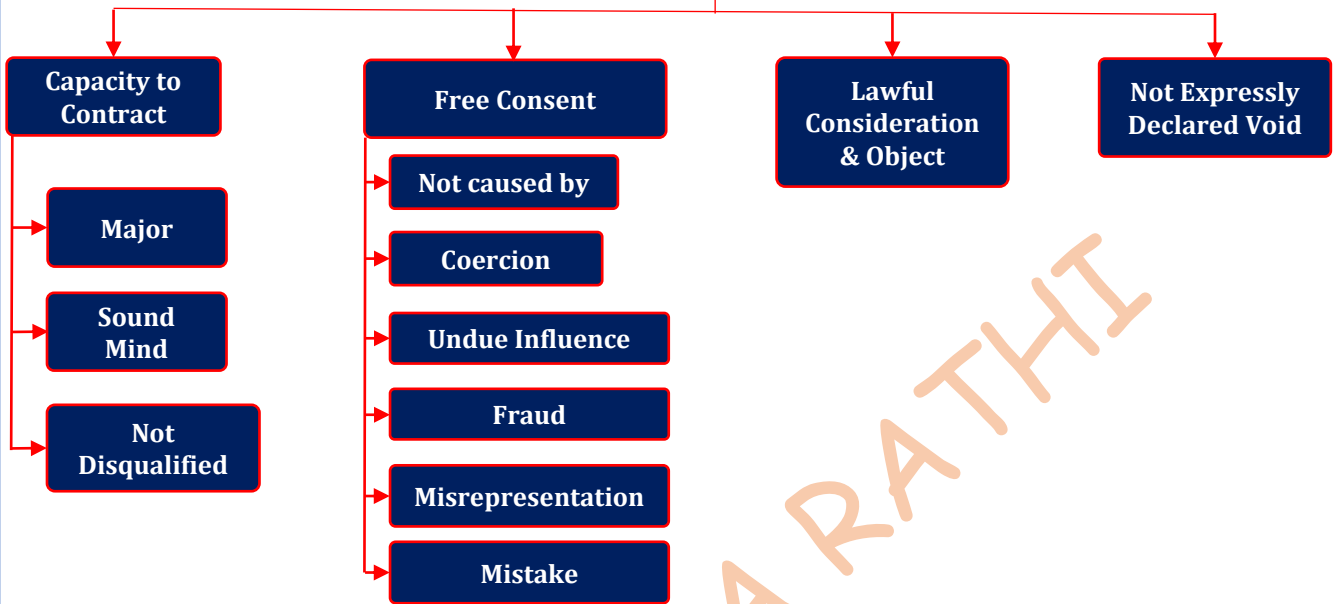
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Unit -3 : Other Essential Elements Of A Contract

Essential Elements of a Valid Contract

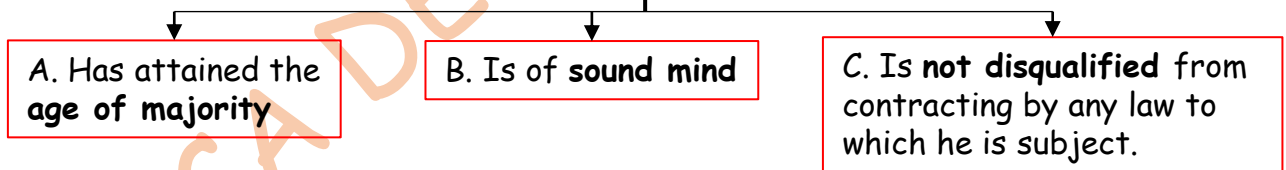


1. Capacity to Contract

❖ **Meaning** : Capacity refers to the **competence of the parties to make a contract.**

❖ **Who is competent to contract (Section 11) :**

Every person is competent to contract who



A. Age of Majority

Age of majority is regulated by the Indian Majority Act, 1875.

Every person domiciled in India shall attain the age of majority on the completion of 18 years of age and not before.

The age of majority being 18 years, a person less than that age even by a day would be minor for the purpose of contracting.



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Law relating to minor's agreement

1. A contract made with or by a minor is void ab-initio

- ❖ A minor is not competent to contract and any agreement with or by a minor is void from the very beginning.

Case Law: *Mohori Bibi vs. Dharmo Das Ghose (1903)*

Facts: A, a minor had borrowed some money from B (a money lender) by mortgaging his house. He became a major a few months later. The moneylender moved to take possession of the minor's house when he defaulted payment.

Judgement: A mortgage by a minor was void and B was not entitled to repayment of money.

2. No ratification after attaining majority

- ❖ A 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

- ❖ Though a minor is not competent to contract, he can be a beneficiary to the contract.

4. A minor can always plead minority

- ❖ A minor can always 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.
- ❖ It means he can be allowed to plea his minority in defence.

5. Liability for Necessaries

- ❖ A claim for necessaries supplied to a minor is enforceable by law.
- ❖ But a minor is not liable for any price that he may promise and never for more than the value of the necessaries.
- ❖ There is no personal liability of the minor, but only his property is liable.



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To render minor's estate liable for necessaries two conditions must be satisfied.

i. The contract must be for the **goods reasonably necessary for his support in the station in life.**

ii. The minor must **not have already a sufficient supply of these necessaries.**

Note :→ Necessaries mean those things that are essentially needed by a minor. They do not include luxuries or costly or unnecessary articles.

6. Contract by Guardian - how far enforceable

- ❖ Where the guardian enters into a contract for the minor, which is within his competence and for the benefit of the minor, such a contract will be valid and enforceable by the minor.

7. No Specific Performance

- ❖ A minor's agreement being absolutely void, there can be no question of the specific performance of such an agreement.

8. No insolvency

- ❖ A minor **cannot be declared insolvent**

9. Partnership

A minor being incompetent to contract **cannot be a partner in a partnership firm.**

But as per Section 30 of the Indian Partnership Act, **Minor can be admitted to the benefits of partnership.**

10. Minor can be an Agent

- ❖ A minor can act as an agent.
- ❖ But he will not be liable to his principal for his acts.
- ❖ A minor can draw, deliver and endorse negotiable instruments without himself being liable.

11. Minor cannot bind parent or guardian

- ❖ A minor is not capable of binding his parent or guardian, even for necessaries.
- ❖ They will be held liable only when the minor acts as their agent.



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12. Joint contract by Minor and Adult

- ❖ The adult will be liable on the contract and not the minor.

13. Surety (Guarantor) for a Minor

- ❖ When an adult gives a guarantee on behalf of a minor, then the adult is liable to the third party as if there is direct contract between the surety and the third party.

14. Minor as Shareholder

A Minor cannot be a shareholder of the company.

If by mistake he becomes a member, the company can rescind the transaction and remove his name from register

But a minor may, acting through his lawful guardian become a shareholder by transfer or transmission of fully paid shares to him.

15. Liability for Torts

- ❖ A tort is a civil wrong.
- ❖ A minor is liable for tort, unless the tort in reality is a breach of contract.

B. Person of Sound Mind

Section 12 : A person is said to be of sound mind for the purposes of making a contract if

at the time when he makes it is capable of understanding it

And

of forming a rational judgement as to its effect upon his interests.

- ❖ A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.
- ❖ A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Position of unsound mind person making a contract



A contract made by a person of unsound mind is void.



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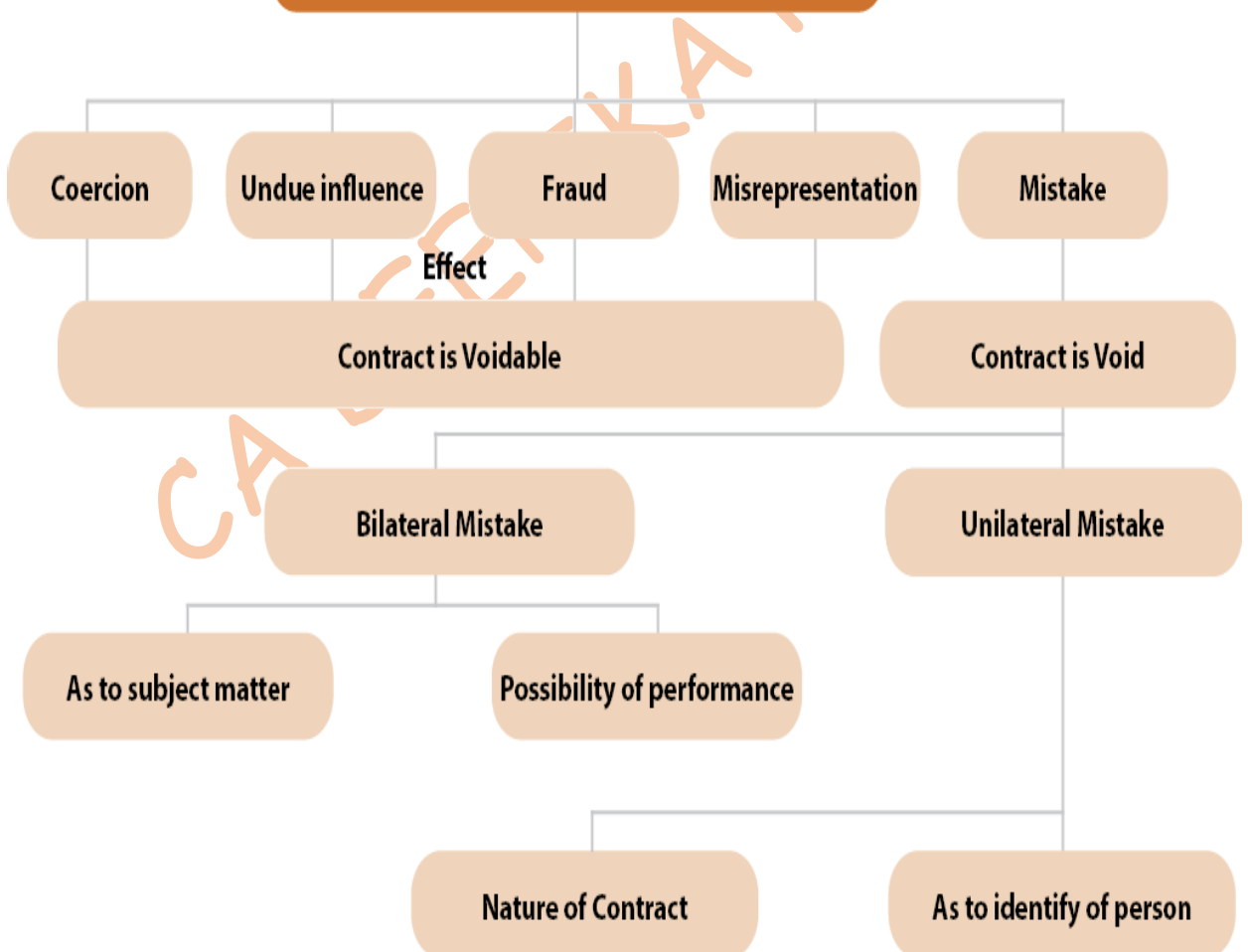
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C. Contract by Disqualified Persons

- ❖ There are also other persons who are disqualified from contracting, partially or wholly, so that the contracts by such person are void.
- ❖ Incompetency to contract may arise from political status, corporate status, legal status, etc.
- ❖ The following persons fall in this category:
 - ✓ Foreign Sovereigns and Ambassadors
 - ✓ Alien enemy
 - ✓ Corporations
 - ✓ Convicts
 - ✓ Insolvent etc.

2. Free Consent

Consent is not free when it is caused by





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Consent (Section -13) : → Two or more persons are said to consent when they agree upon the same thing in the same sense.

Same thing' must be understood as the whole content of the agreement.

if the parties to the contract do not agree in the same sense, there cannot be consent.

A contract cannot arise in the absence of consent.

Consent may be free or not free

Only free consent is necessary for the validity of a contract.

Free Consent (Section -14) :→ Consent is said to be free when it is not caused by

Coercion

Undue Influence

Fraud

Misrepresentation

Mistake

When consent to an agreement is caused by these

The agreement is a contract **voidable** at the option of the party whose consent was so caused

Contract becomes **void**

3.Elements Vitiating Free Consent

I. Coercion (Section 15)

Coercion is

Committing or threatening to commit any act forbidden by the India Penal Code

OR

the unlawful detaining or threatening to detain any property to the prejudice of any person whatever

OR

with the intention of causing any person to enter into an agreement."

In case of Coercion, it is not necessary that it should proceed from a party to a contract neither it is necessary that coercion must be done on the other party.

Effects of coercion under section 19 of Indian Contract Act, 1872

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 . (Section 72)



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Threat to commit suicide - Whether is it coercion ?

- ❖ A threat to commit suicide will be regarded as coercion.

II. Undue Influence (Section 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

The essential ingredients under this provision are

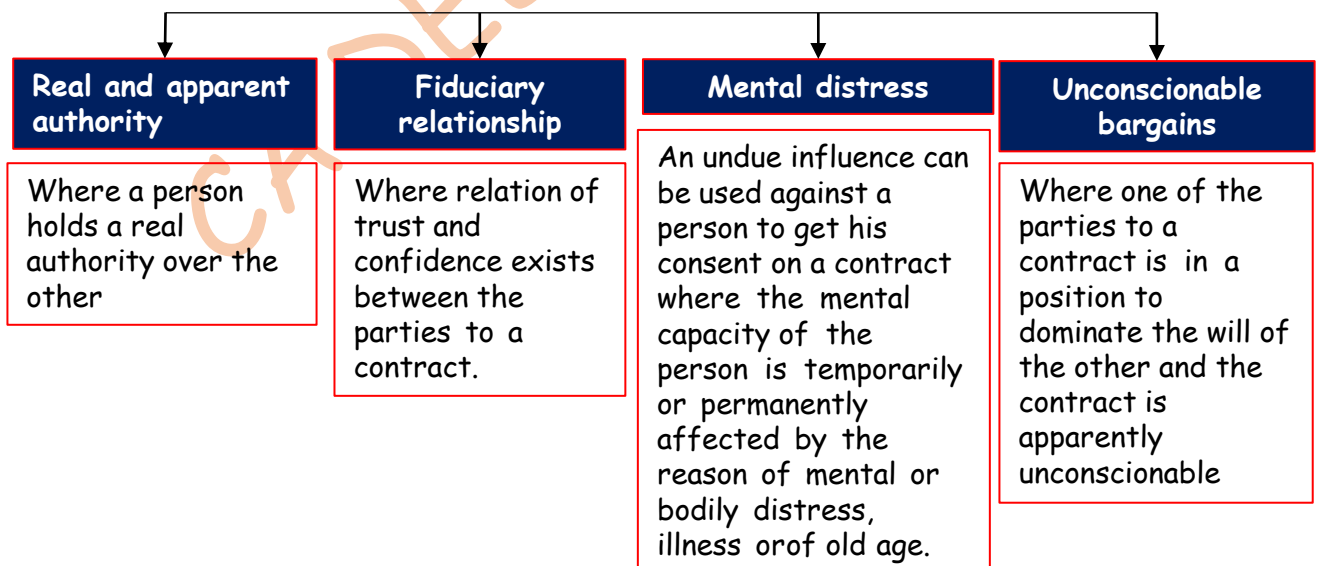
1. Relation between the parties

- ❖ A person can be influenced by the other when a near relation between the two exists.

2. Position to dominate the will

- ❖ Relation between the parties exist 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 such position in the following circumstances:





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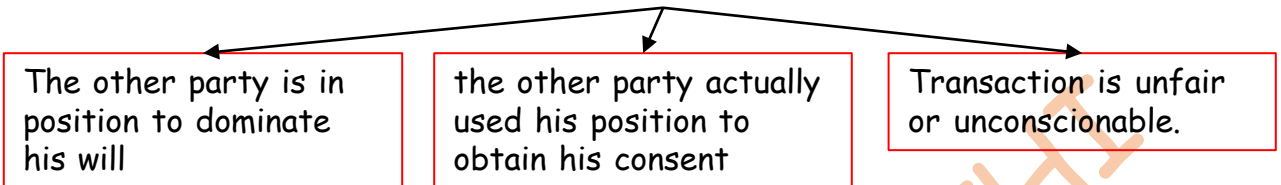
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3. The object must be to take undue advantage

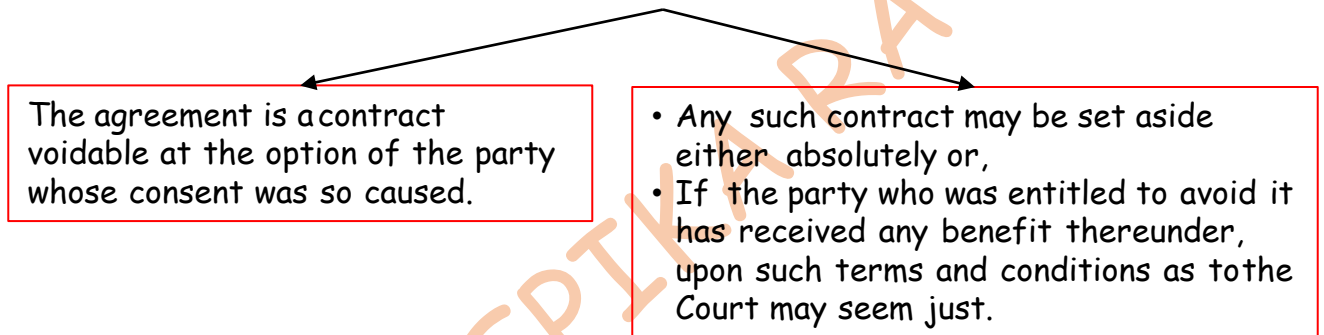
- ❖ Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.

4. Burden of proof

When a party to contract decides to avoid the contract on the ground of undue influence, he has to prove that :-



Effect of undue influence- (Section 19A)



III. Fraud (Section 17)

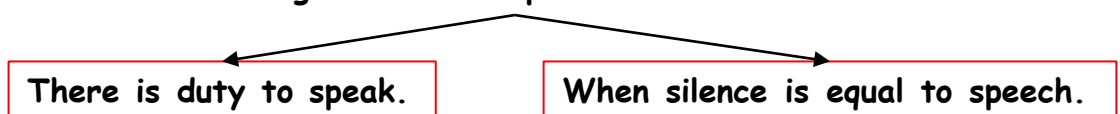
Fraud means any of the following acts done with an intention to deceive the will of the other

- False Suggestion
- Active Concealment of facts
- Promise without intention of performing
- Other act fitted to deceive
- Act or omission which law specially declares to be fraudulent

Essential elements of the fraud

- There must be a representation or assertion and it must be false.

Silence is fraud in following situations explanation of section 17

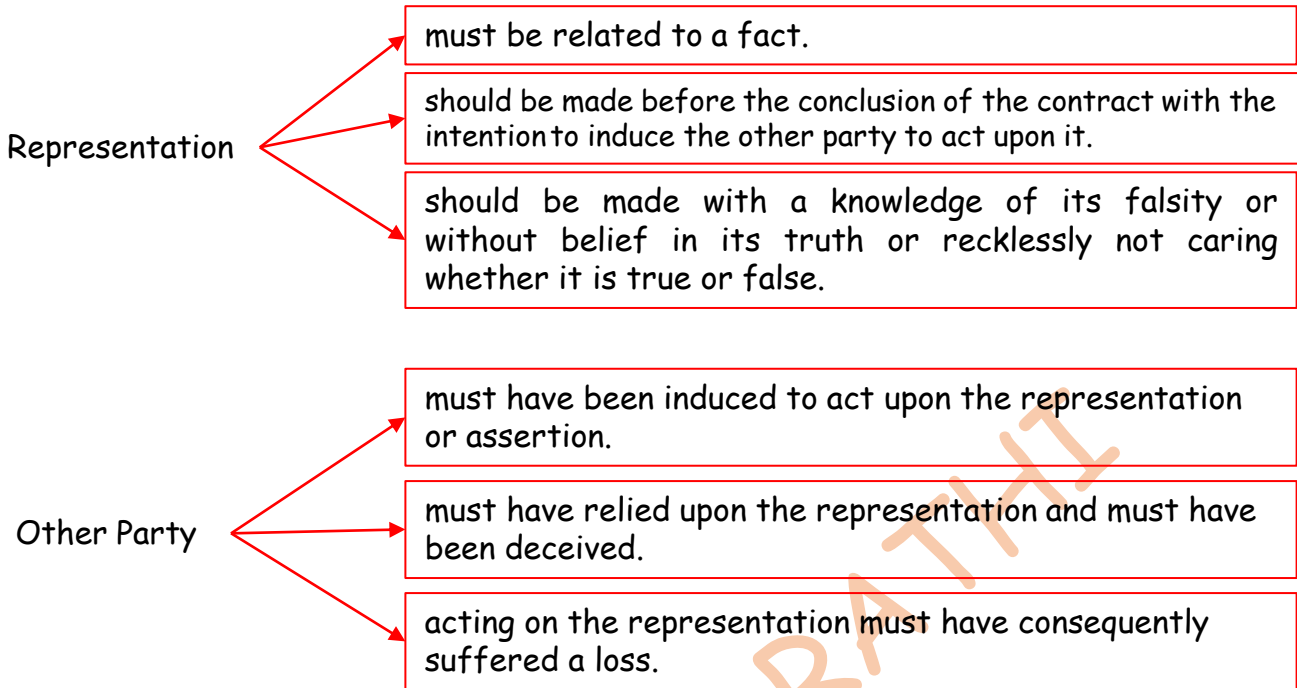




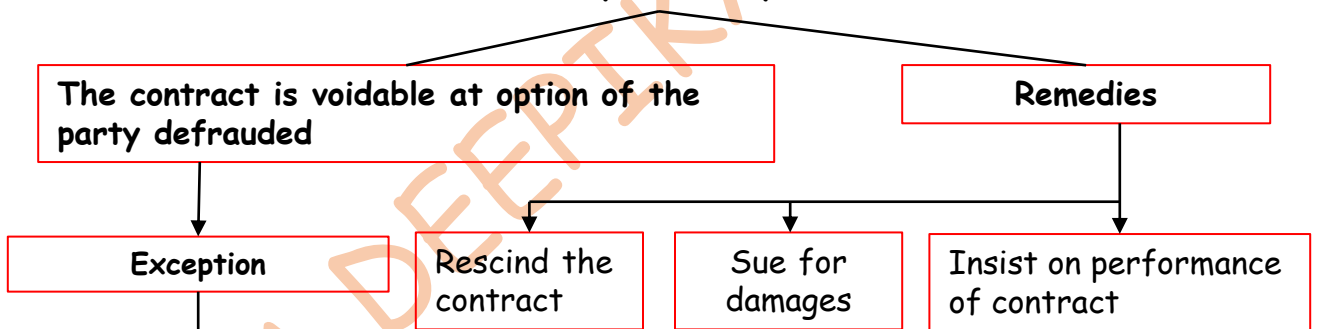
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Effect of Fraud upon validity of a Contract



In the following cases, contract is not voidable

- i. If the party whose consent was caused by silence which amounting to fraud, had the means of discovering the truth with ordinary diligence
- ii. A fraud which did not cause the consent of the party to agreement.



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IV. Misrepresentation (Section 18)

Statement of fact, which of false, would constitute misrepresentation

If the maker believes it to be true but which is not justified by the information he possesses

When there is a breach of duty by a person without any intention to deceive which brings an advantage to him

When a party causes, even though done innocently, the other party to the agreement to make a mistake as to the subject matter

Difference between Coercion and Undue Influence

Basis of Difference	Coercion	Undue Influence
Nature of action	<ul style="list-style-type: none"> It involves the physical force or threat. The aggrieved party is compelled to make the contract against its will. 	It involves moral or mental pressure
Involvement of criminal action	It involves committing or threatening to commit and act forbidden by Indian Penal Code or detaining or threatening to detain property unlawfully.	No such illegal act is committed or a threat is given.
Relationship between parties	It is not necessary that there must be some sort of relationship between the parties.	Some sort of relationship between the parties is absolutely necessary.
Exercised by whom	Coercion need not proceed from the promisor nor need it be the directed against the promisor. It can be used even by a stranger to the contract.	Undue influence is always exercised between parties to the contract.
Enforceability	The contract is voidable at the option of the party whose consent has been obtained by the coercion.	Where the consent is induced by undue influence, the contract is either voidable or the court may set it aside or enforce it in a modified form.
Position of benefits received	In case of coercion where the contract is rescinded by the aggrieved party, as per Section 64, any benefit received has to be restored back to the other party.	The court has the discretion to direct the aggrieved party to return the benefit in whole or in part or not to give any such directions.



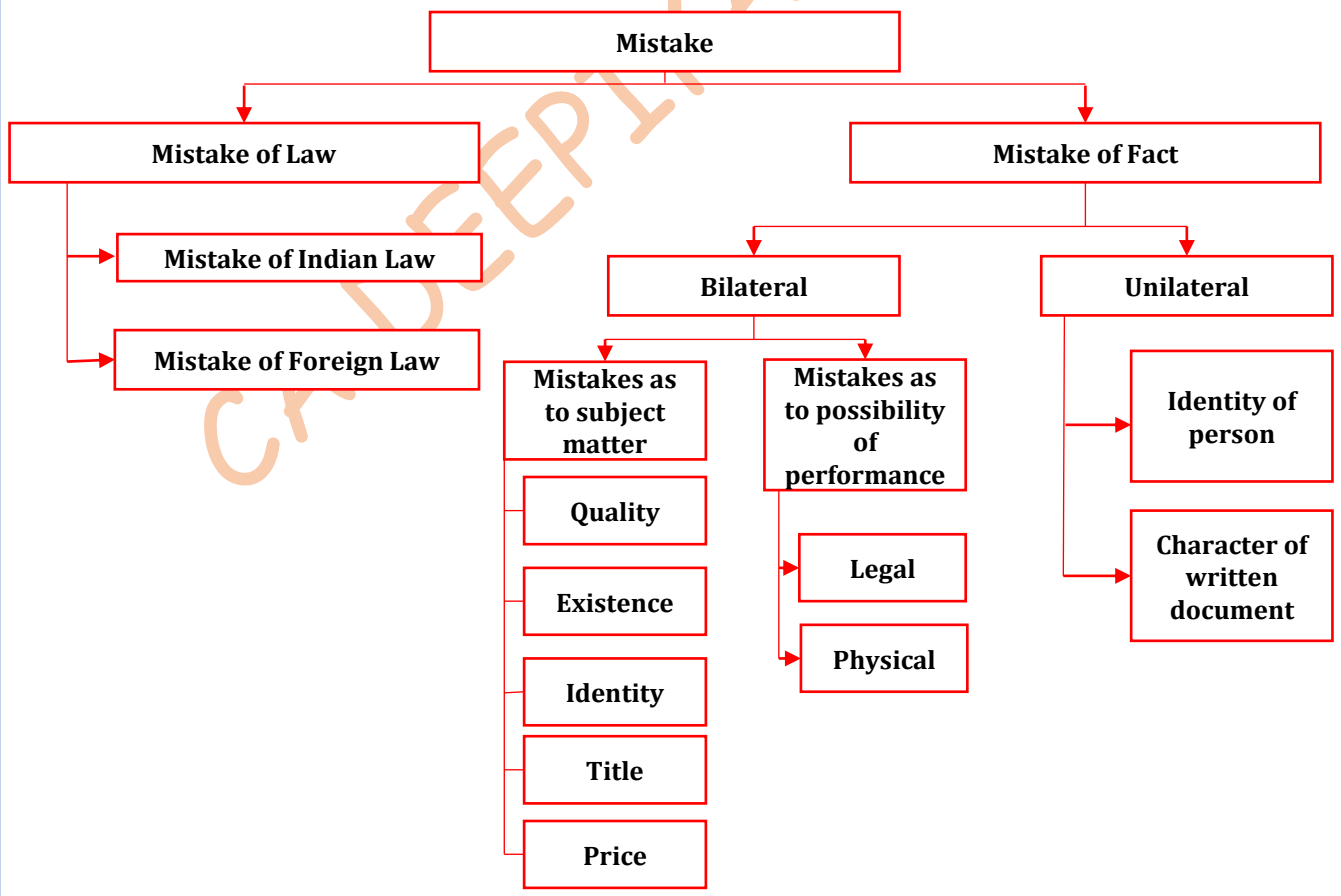
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Distinction between fraud and misrepresentation

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
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.
Rescission of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
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.





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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

Mistake of fact

Mistake of Indian Law

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

Mistake of Foreign Law

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

Bilateral Mistake

- 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.
- The agreement is void (Section 20).

Unilateral Mistake

Section 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.

Cases of Bilateral Mistakes

- (i) Mistake as to the quality of the subject-matter.
- (ii) Mistake as to the existence of the subject-matter.
- (iii) Mistake as to the identity of the subject-matter.
- (iv) Mistake as to the title of the subject-matter.
- (v) Mistake as to the price of the subject-matter.
- (vi) Mistake as to the quantity of the subject-matter.



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4. Legality of Object and Consideration

Which considerations and objects are lawful, and those which are not (Section 23):

As per Section 23 in following cases the consideration or object of an agreement is said to be unlawful

1. When consideration or object is forbidden by law

Acts forbidden by law are those which are

- punishable under any statute as well as
- prohibited by regulations or orders

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

If the consideration or the object of an agreement is of such a nature that not directly but indirectly, it would defeat the provisions of the law

Agreement is void

3. When it is fraudulent

Agreements which are entered into to promote fraud

Void

4. Injury

- ❖ The general term "injury" means criminal or wrongful harm.
- ❖ The object or consideration is unlawful as it involves injury to the person or property of another.

5. When Consideration is Immoral

6. When Consideration is opposed to public policy (for the good for the community)

Some of the agreements which are held to be opposed to public policy are-

1. Trading with the Enemy

Entering into an agreement with a person from a country with whom India is at war → Void



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2. Stifling Prosecution

- ❖ This is a pervasion of the natural course of law, and such contracts are → **Void**
- ❖ The principle is that one should not make a trade of felony.
- ❖ The **compromise of any public offence is generally → Illegal.**
- ❖ However, a statutory list of **compoundable offences** and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is **not opposed to public policy.**
- ❖ In case of an uncompoundable offence, it is → **Void.**

3. Maintenance and Champerty

1. **Maintenance agreement:** → is when a person promises to **maintain a suit** in which he has **no real interest.**
2. **Champerty:** → is when a person agrees to **assist another party in litigation** for a **portion of the damages or proceeds.**

The agreement for supplying funds by way of Maintenance or Champerty is **valid** unless

It is unreasonable so as to be unjust to other party

- It is made by a malicious motive and
- Not with the *bonafide* object of assisting a claim believed to be just.

4. Trafficking relating to Public Offices and Titles

- An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public.
- Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested.
- **Examples of agreements that are void**
 - An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is → **Void.**
 - An agreement to procure a public recognition like Padma Vibhushan for reward is → **Void.**



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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 brokerage marriage for rewards is → **Void**.

7. Interference with the course of Justice

An agreement whose object is to induce a judicial or state officials to act corruptly and interfere with legal proceedings.

8. Interest Against Obligation

Agreements which tend to create interest against obligation are → **Void**.

9. Consideration Unlawful in Part

Section 24 : If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is → **Void**.

5. Void Agreements

Expressly declared Void Agreements

1	Made by incompetent parties (Section 11)	6	Agreement in restraint of marriage (Section 26)
2	Agreements made under Bilateral mistake of fact (Section 20)	7	Agreements in restraint of trade (Section 27)
3	Agreements the consideration or object of which is unlawful (Section 23)	8	Agreement in restraint of legal proceedings (Section 28)
4	Agreement the consideration or object of which is unlawful in parts (Section 24)	9	Agreement the meaning of which is uncertain (Section 29)
5	Agreements made without consideration (Section 25)	10	Wagering Agreement (Section 30)
		11	Agreements to do impossible Acts (Section 56)



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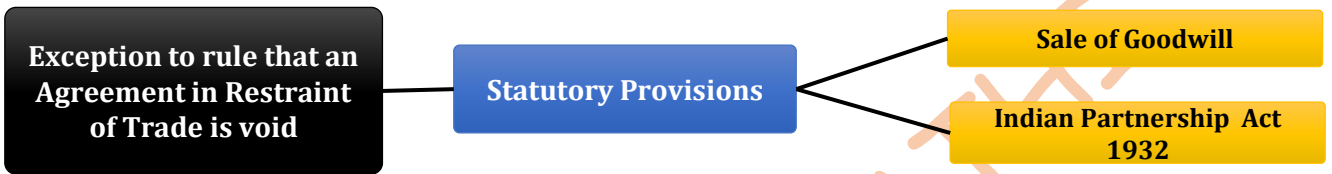
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I. Agreement in restraint of Marriage (Section 26)

- Every agreement in restraint of marriage of any person other than a minor, is void.

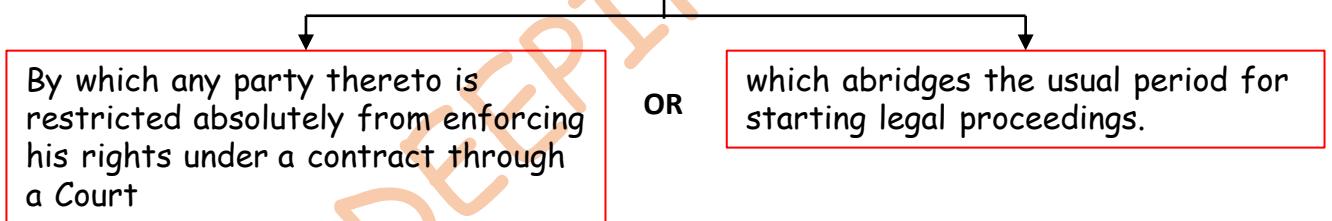
II. Agreement in restraint of Trade (Section 27)

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

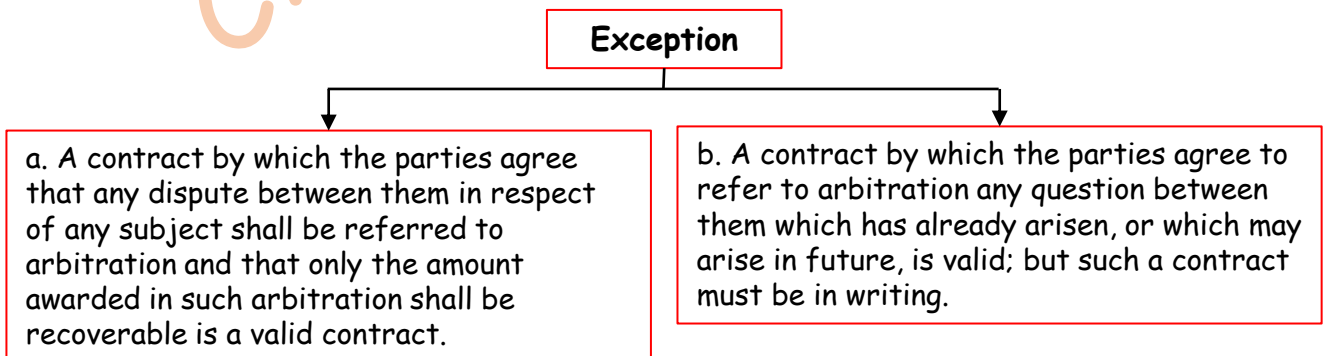


III. Agreement in restraint of Legal Proceedings (Section 28)

❖ An agreement in restraint of legal proceeding means an agreement



❖ A contract of this nature is void





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IV. Agreement the meaning of which is uncertain (Section 29)

- An agreement, the meaning of which is not certain, is → **Void**.
- But, where the meaning thereof is capable of being made certain, the agreement is → **Valid**

V. Wagering Agreement (Section 30)

- Wagering agreement is an agreement involving payment of a sum of money upon the determination of an uncertain event.
- An agreement by way of a wager is → **Void**.
- But if one of the parties has control over the event, agreement is not a wager.

Essentials of a Wager

Promise to pay money or money's worth

Promise must Conditional on an event happening or not happening

Uncertainty of event

Two parties- each must stand to win or lose

Common intention to bet at the time of making the agreement

No interest in the event except for stake

Transactions Similar to Wager (Gambling)

Lottery Transactions

- A game of chance and not of skill or knowledge.
- Prime motive of participant is gambling, the transaction amounts to a wager.
- The person responsible for running the lottery will not be punished under the Indian Penal Code
- **Section 294A of IPC** :-> Lotteries are illegal and even collateral transactions to it are tainted with illegality

Crossword Puzzles and Competitions

- **Crossword puzzles** → in which prizes depend upon the correspondence of the competitor's solution with a previously prepared solution kept with the editor of a newspaper is a lottery and therefore, a wagering transaction.
- Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competitions are valid.



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Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competitions are valid. According to the Prize Competition Act, 1955 prize competitions in games of skill are not wagers provided the prize money does not exceed Rs.1,000.

Crossword Puzzles and Competitions

Case Law: State of Bombay vs. R.M.D. Chamarbangwala AIR (1957)

Facts of the Case : A crossword puzzle was given in magazine. A solved his crossword puzzle and his solution corresponded with previously prepared solution kept with the editor.

Held : This was a game of chance and therefore a lottery (wagering transaction).

Speculative Transactions

An agreement or a share market transaction where

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

Horse Race Transactions

A horse race competition where prize payable to the bet winner is less than Rs.500 is a wager.

Transactions resembling with wagering transactions but are not void

Chit Fund

- Chit fund does not come within the scope of wager u/s 30.
- In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.

Commercial transactions or share market transactions

In these transactions in which

→ delivery of goods or shares is intended to be given or taken, do not amount to wagers.



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Games of Skill and Athletic Competition

- Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competition are valid.
- According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed ₹1,000.

Contract of Insurance

A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.

Distinction between Contract of Insurance and Wagering Agreement

	Basis	Contracts of Insurance	Wagering Agreement
1	Meaning	It is a contract to indemnify the loss.	It is a promise to pay money or money's worth on the happening or non-happening of an uncertain event.
2	Consideration	The crux of insurance contract is the mutual consideration (premium and compensation amount).	There is no consideration between the two parties. There is just gambling for money.
3	Insurable Interest	Insured party has insurable interest in the life or property sought to be insured.	There is no property in case of wagering agreement. There is betting on other's life and properties.
4	Contract of Indemnity	Except life insurance, the contract of insurance indemnifies the insured person against loss.	Loser has to pay the fixed amount on the happening of uncertain event.
5	Enforceability	It is valid and enforceable	It is void and unenforceable agreement.
6	Premium	Calculation of premium is based on scientific and actuarial calculation of risks.	No such logical calculations are required in case of wagering agreement.
7	Public Welfare	They are beneficial to the Society	They have been regarded as against the public welfare.

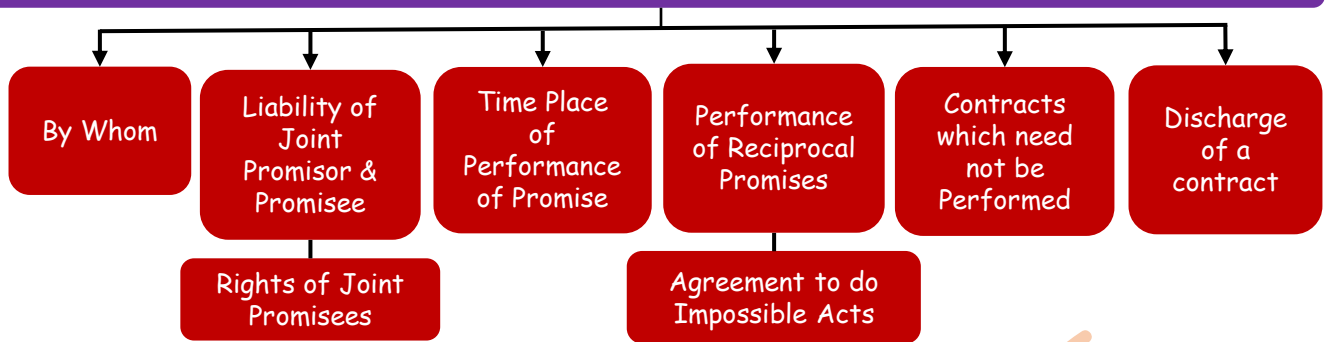


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Unit -4 : Performance of Contract



1. Performance of Contract

❖ **Meaning** : Fulfilment of obligations to the contract

❖ **Section 37** : The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law.

Types: As per Section 37, "Performance of Contract" may be :-

A. Actual Performance

Where a party to a contract has

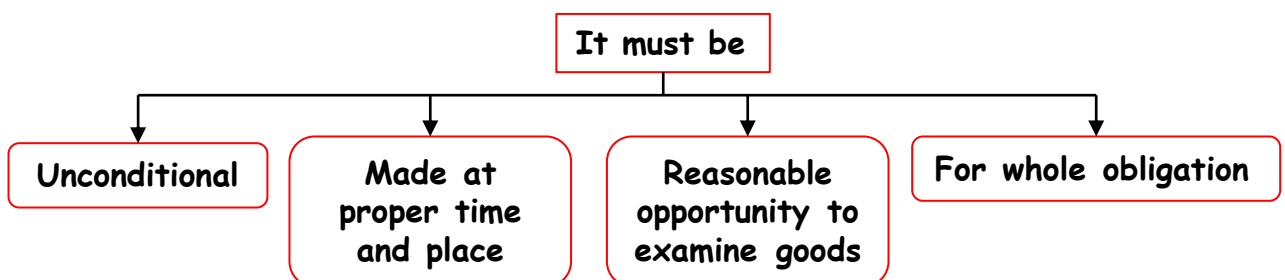
- done what he had undertaken to do or
- Either of the parties have fulfilled their obligations
- under the contract within the time and in the manner prescribed.

B. Offer to perform or attempted performance or tender of performance

When the performance becomes due,

- the promisor offers to perform his obligation but
- the promisee refuses to accept the performance.

2. Conditions to be Satisfied for a Valid Tender or Attempted Performance



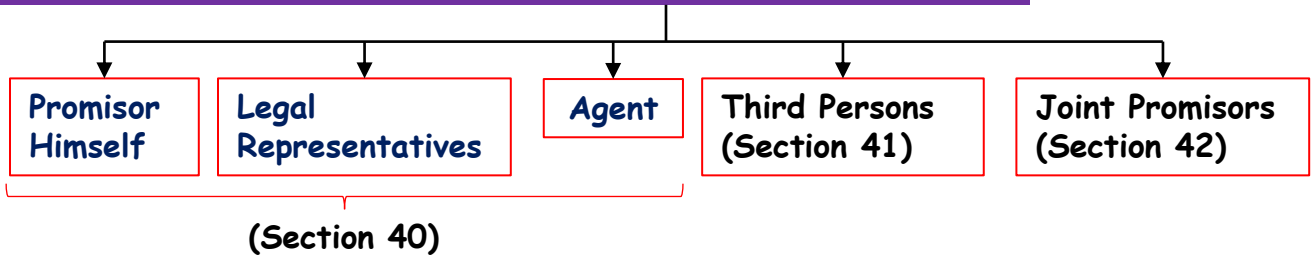


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3. By Whom a Contract may be Performed (Section -40,41,42)



1. Promisor Himself

If there is something in the contract to show that
- it was the intention of the parties that the promise should be performed by the promisor himself,

Then such promise must be performed by the → Promisor

Contracts which involve the exercise of
- personal skill or
- diligence, or
- which are founded on personal confidence between the parties

Must be performed by the promisor himself

2. Agent

❖ Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.

3. Legal Representatives

❖ A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor.

❖ As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract **(Section 37, para 2).**

❖ But their liability under a contract is limited to the value of the property they inherit from the deceased.



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4. Third Persons : Effect of accepting performance from third person Section 41

- ❖ 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 the third party.
- ❖ **Example :** A received certain goods from B promising to pay Rs. 100,000/-. Later on, A expressed his inability to make payment. C, who is known to A, pays Rs. 60,000/- to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of Rs.100,000/-. Therefore, in the present instance, B can sue only for the balance amount i.e., Rs.40,000/- and not for the whole amount.

5. Joint promisors (Section 42)

- ❖ When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise.
- ❖ **If any of them dies** → his legal representatives must, jointly with the surviving promisors, fulfil the promise.
- ❖ **If all of them die** → the legal representatives of all of them must fulfil the promise jointly.

4. Distinction between Succession and Assignment

Succession

- In case of succession both the burden and benefits attaching to the contract are succeeded by process of law.
- However, the successor's liability is limited to the extent to the property inherited by him.

Assignment

- In case of assignment, the benefit of the contract can only be assigned but not the liabilities.
- Benefit is coupled with a liability OR when a personal consideration is involved, then benefit cannot be assigned.



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5. Liability of Joint Promisor & Promisee

Devolution of Joint Liabilities (Section 42)

- ❖ If two or more persons have made a joint promise, ordinarily all of them during their life-time must jointly fulfil the promise.
- ❖ **After death of any one of them**; → his legal representative jointly with the survivor or survivors should do so.
- ❖ **After the death of the last survivor** : → the legal representatives of all the original co-promisors must fulfil the promise.

Section 42 deals with voluntary discharge of obligations by joint promisors.

Any one of Joint promisors may be compelled to perform (Section 43)

- ❖ When two or more persons make a joint promise,
 - the promisee may, in the absence of express agreement to the contrary, compel
 - any one or more of such joint promisors to perform the whole of the promise.
- ❖ **Each promisor may compel contribution** - Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.
(if one of the joint promisors is made to perform the whole contract, he can call for a contribution from others)
- ❖ **Sharing of loss by default in contribution** : - If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Effect of release of one joint promisor (Section 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 or joint promisors,

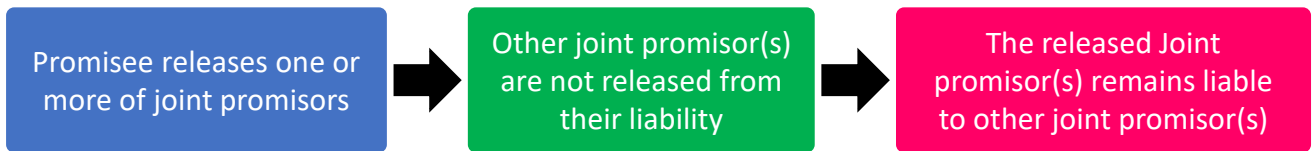
Neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.



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Right of Joint Promisees (Section 43)

"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 the last survivor, with the representatives of all jointly"

Summary

If a person make a promise to two or more persons jointly (i.e., joint promisees), ordinarily all of them during their life-time have joint right to claim the performance.

After death of any one of them, :
His legal representative jointly with the survivor or survivors have joint right to do so.

After the death of the last survivor
The legal representatives of all the original joint promisees have the right to claim the performance.

6. Time of Place for Performance of the Promise

Section 46 : Where no application is to be made by the promisee and no time is specified

Performance should be within a reasonable time (it differs from case to case, based on facts and circumstances).

Section 47 : Where time is specified and no application to be made by the promisee

Perform at any time during the usual hours of business, on such day and place at such time as specified.



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Section 48 : Application for performance to be made on a certain day

The promisee should apply for performance at a proper place within usual business hours

Section 49 : Where no application to be made and no place fixed for performance

The promisor should apply to the promisee to appoint a reasonable place for performance.

Section 50 : Performance in manner or at a time prescribed or sanctioned by promisee

To be performed in such manner or at such time as promisee prescribes or sanctions.

7. Performance of Reciprocal Promise

(i) Promisor not bound to perform, unless reciprocal promisee ready and willing to perform- Section 51

When a contract consists of reciprocal promises to be simultaneously performed,

no promisor needs to perform his promise

unless the promisee is ready and willing to perform his reciprocal promise.

(ii) Order of performance of reciprocal promises- Section 52

Order of performance is expressly fixed by the contract

Perform in that order

Order is not expressly fixed -

Perform in that order which the nature of the transaction requires.

(iii) Liability of party preventing event on which the contract is to take effect- Section 53

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise

Contract becomes voidable at the option of the party so prevented

And

He is entitled to compensation from the other party for any loss he may sustain in consequence of the non-performance of the contract



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

- ❖ Section 54 applies when the promises are reciprocal and dependent.
- ❖ If the promisor who has to perform his promise before the performance of the other's promise fails to perform it, he cannot claim performance of the other's promise, and is also liable for compensation for his non-performance.

(v) Effects of failure to Perform at a Time Fixed in a Contract in which Time is Essential - Section 55

When a party to a contract promises to do certain thing at or before the specified time, and fails to do any such thing at or before the specified time,



the contract, or so much of it as has not been performed, **becomes voidable at the option of the promisee**, if the intention of the parties was that time should be of essence of the contract.

Effect of Such Failure when time is not essential

The contract does not become voidable by the failure to do such thing at or before the specified time,

but

The promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than agreed upon

The promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless,
- at the time of acceptance, he gives notice to the promisor of his intention to do so.

(vi) Agreement to do Impossible Act - Section 56

The impossibility of performance may be of the two types, namely

a. Initial impossibility

b. Subsequent impossibility



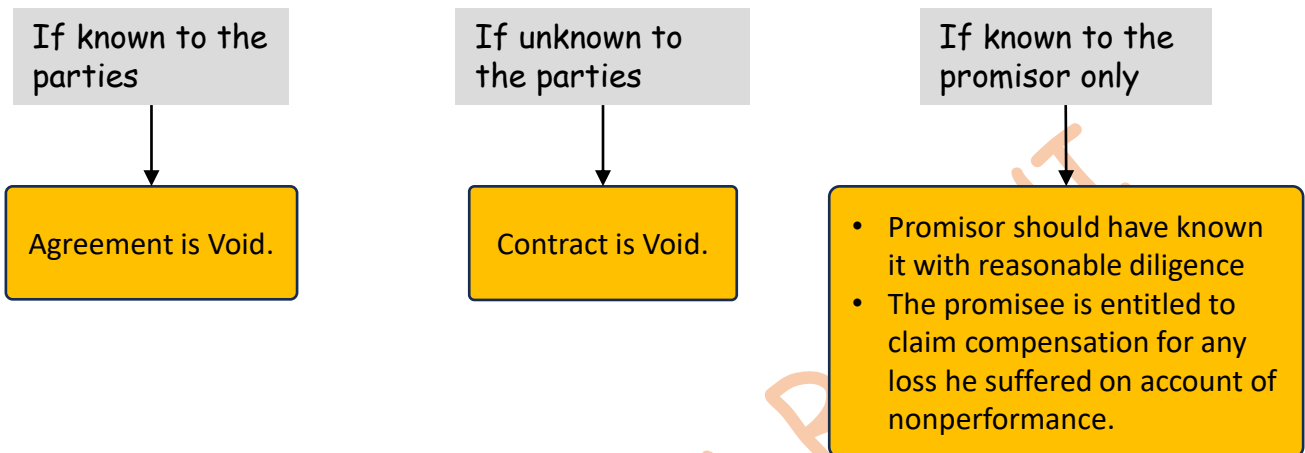
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a. Initial impossibility (Impossibility existing at the time of Contract)

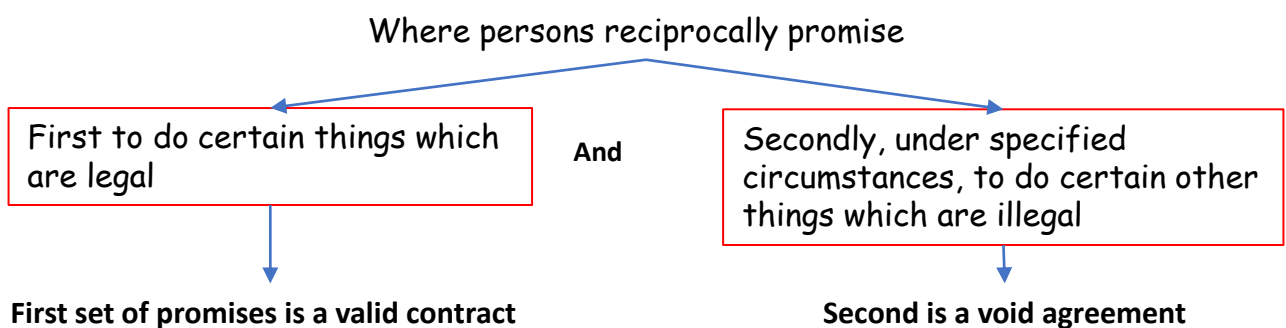
- ❖ When the parties agree upon doing of something which is obviously impossible in itself the agreement would be → void.
- ❖ Impossible in itself means impossible in the nature of things.
- ❖ The fact of impossibility may be and may not be known to the parties.



b. Subsequent or Supervening impossibility (Becomes impossible after entering into contract)

- When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes → Void.
- The performance of a contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful.
- **Such impossibility is called the subsequent or supervening.**
- **It is also called the post-contractual impossibility**

(vii) Reciprocal promise to do certain things that are legal and also some other things that are illegal - Section 57





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(viii) "Alternative promise" One branch being illegal - Section 58

"In the case of the alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced"

8. Appropriation of Payments

- Sometimes, a debtor owes several debts to the same creditor and makes payment, which is not sufficient to discharge all the debts.
- In such cases, the payment is appropriated (i.e. adjusted against the debts) as per **Section 59 to 61** of the Indian Contract Act.

If debt to be discharged is indicated (Section 59)

Payment should be applied to that debt indicated either by express intimation or under circumstances implying a particular debt.

If debt to be discharged is not indicated (Section 60)

- Creditor may apply it at his discretion to any lawful debt actually due and payable, where its recovery is or is not barred by law.
- However, the creditor shall not apply the payment to the disputed debt.

If neither part appropriates (Section 61)

- The payment shall be applied in discharge of the debts in the order of time, whether they are or are not barred by law.
- If all the debts are equal, payment shall be applied proportionately.

9. Contracts, Which need not be Performed with the consent of both the parties

i. Effect of Novation (Section 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

- Parties to a contract may **substitute a new contract** for the old one.
- **Old contract is discharged** and **need not be performed**
- parties to the contract may be same or different
- It can take place only by mutual agreement between parties



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b. Effect of Rescission

- When the parties to a contract agree to rescind it, the contract need not be performed.
- only the old contract is cancelled and no new contract comes to exist in its place.
- It is needless to point out that novation also involves rescission
- The contract is discharge by mutual agreement

c. Effect of Alteration

- A contract is also discharged by alteration.
- The terms of contract may be so altered by mutual agreement that the alteration may have the effect of substituting a new contract for the old one.

Difference between Novation and Alteration

Novation	Alteration
1. There may be a change in the contracting parties in case of novation.	1. The contract is altered by mutual agreement, but the parties to the contract remain the same.
2. The old contract is substituted with a new one in case of novation.	2. In alteration, there may be some change in the terms and conditions of original contract.

ii. Promisee may waive or remit performance of promise (Section 63)

Every promisee may

- dispense with or remit, wholly or in part, the performance of the promise made to him, or
- may extend the time for such performance or
- may accept instead of it any satisfaction which he thinks fit".

A contract may be discharged by remission.

iii. Restoration of benefit under a voidable contract (Section 64)

- When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor
- If the party rescinding the contract has received any benefit under the contract, he must restore such benefit to the person from whom he has received it.



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iv. Obligation of Person who has Received Advantage under Void Agreement or contract that becomes void (Section 65)

- When an agreement is discovered to be void or when a contract becomes void, any **person who has received any advantage** under such agreement or contract is **bound to restore it, or to make compensation for it** to the person from whom he received it.

v. - Communication of Rescission (Section 66)

- 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.

vi. - Effects of neglect of promise to afford promisor reasonable facilities for performance (Section 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 thereby.

10. Discharge of Contract

- A contract is discharged when the obligations created by it come to an end.
- A contract may be discharged in any one of the following ways:

i. Discharge by Performance

When the parties to a contract fulfil the obligations arising under the contract within the time and manner prescribed, then the **Contract** is discharged by performance.

Actual Performance

when each of the parties has done what he had agreed to do under the agreement.

Attempted Performance

When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.



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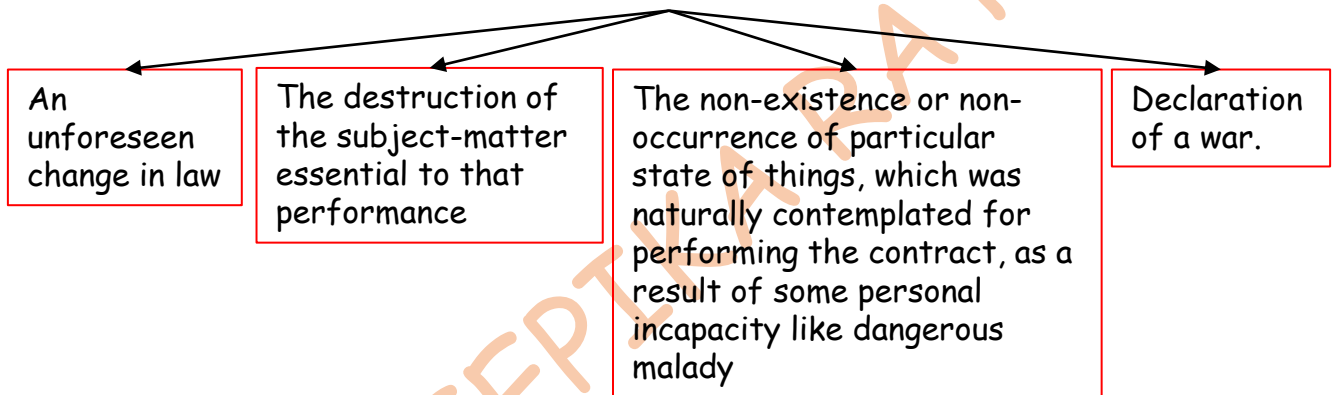
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ii. Discharge by Mutual Agreement (Section 62)

If all parties to a contract mutually agree to replace the contract with a new one or annul or remit or alter it, then it leads to a discharge of the original contract due to a mutual agreement.

iii. Discharge by impossibility of performance

- The impossibility may exist from the very start. In that case, it would be impossibility ab initio.
- Alternatively, impossibility may supervene. Supervening impossibility may take place owing to :



iv. Discharge by lapse of time

- The Limitation Act, 1963 prescribes a specified period for performance of a contract.
- If the promisor fails to perform and the promisee fails to take action within this specified period, then the latter cannot seek remedy through law.
- It discharges the contract due to the lapse of time.

v. Discharge by operation of Law

A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc.



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vi. Discharge by breach of contract

- If a party to a contract fails to perform his obligation according to the time and place specified, then he is said to have committed a breach of contract.
- Breach can be of two types

1. Actual breach

2. Anticipatory breach

In both cases, the breach discharges the contract.

vii. Promisee may waive or remit performance of promise

- A promisee can waive or remit the performance of promise of a contract, wholly or in part.
- He can also extend the time agreed for the performance of the same.
- A contract may be discharged by remission. (Section 63)

viii. Effects of neglect of promisee to afford promisor reasonable facilities for performance

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 nonperformance caused thereby [Section 67].

ix. Merger of Rights

- In some situations, it is possible that inferior and superior right coincides in the same person.
- In such cases, both the rights combine leading to a discharge of the contract governing the inferior rights.

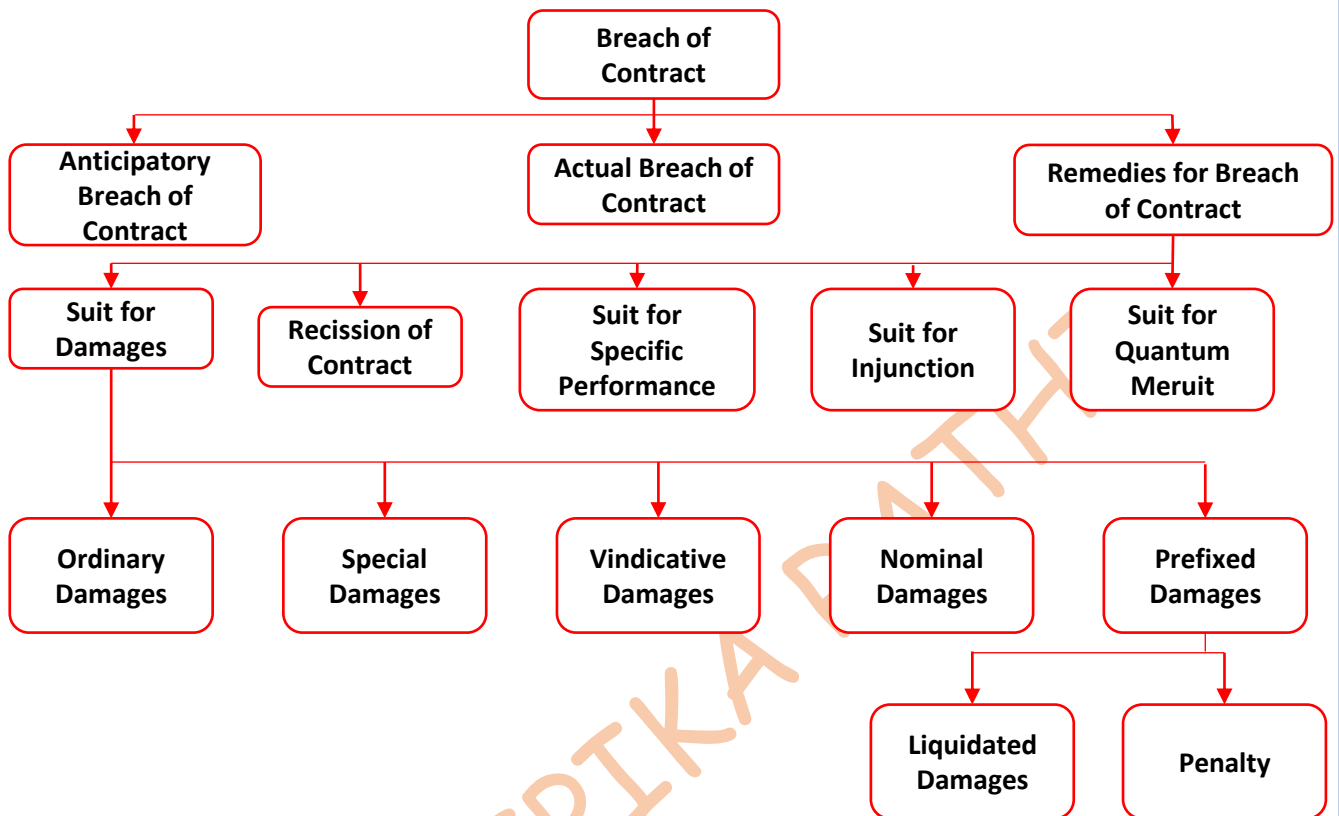


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Unit -5 : Breach Of Contract And Its Remedies



Meaning of Breach

- **Breach** means failure of a party to perform his or her obligation under a contract.
- Breach of contract may arise in two ways:
 1. Actual breach of contract
 2. Anticipatory breach of contract

1. Anticipatory Breach of Contract

- An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived.
- 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.



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Anticipatory breach of a contract may take either of the following two ways :

A. Expressly by words spoken or written

B. Impliedly by the conduct of one of the parties

Effect of Anticipatory Breach

As per Section 39 of the Indian Contract Act, 1872 -

"When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

- The promisee is excused from performance or further performance of the contract.

He further has the following options

He can

- Rescind the contract **and**
- sue the other party for damages immediately without waiting till the due date of performance.

He may decide

- Not to rescind the contract **and**
- treat it as still operative and wait till the time of performance and then hold the other party responsible.

2. Actual Breach of Contract

- While an anticipatory breach is before the time of performance, an actual breach of contract is on the scheduled time of performance of the contract.

An actual breach of contract can be committed either

A. At the time when the performance of the contract is due

B. During the performance of the contract

Actual breach of contract also occurs when during the performance of the contract, one party fails or refuses to perform his obligation under it by express or implied act.



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Remedies Available

Suit for Damages

Rescission of Contract

Suit for specific performance

Suit for Injunction

Suit upon quantum meruit

3. Suit for Damages

Compensation for loss or damage caused by breach of contract (Section 73)

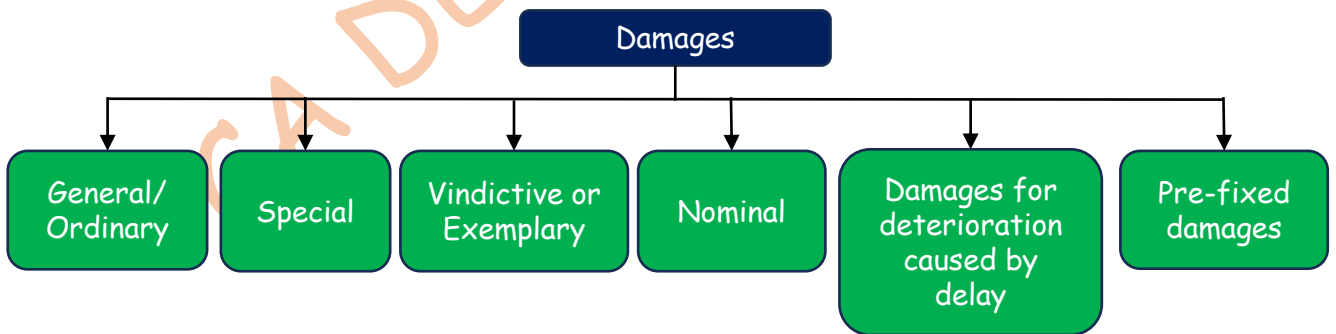
• On the breach of the contract, the party who suffers from such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him by breach.

• Compensation can be claimed for

Any loss or damage which naturally arises in the usual course of events

Any loss or damage which the party knew when they entered into the contract, as likely to result from the breach

- Special damages, if any, can be claimed only if the suffering party has given notice about it earlier.
- But the party suffering from the breach is bound to take reasonable steps to minimise the loss.
- No compensation is payable for any remote or indirect loss.



i. General / Ordinary Damages

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 cause to him thereby, which naturally arose in the usual course of things from such breach, or which the parties know, when they made the contract, to be likely to result from the breach of it.



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- Such compensation is not to be given for any remote and indirect loss or damage sustained by reasons of the breach. (**Section 73 of the Contract Act and the rule in Hadley vs. Baxendale**).

Case Law: Hadley vs. Baxendale

Facts: The crankshaft of P's flour mill had broken. He gives it to D, a common carrier who promised to deliver it to the foundry in 2 days where the new shaft was to be made. The mill stopped working, D delayed the delivery of the crankshaft, so the mill remained idle for another 5 days. P received the repaired crankshaft 7 days later than he would have otherwise received. Consequently, P sued D for damages not only for the delay in the delivering the broken part but also for loss of profits suffered by the mill for not having been worked.

Judgement: The court held that P was entitled only to ordinary damages and D was not liable for the loss of profits because the only information given by P to D was that the article to be carried was the broken shaft of a mill and it was not made known to them that the delay would result in loss of profits.

ii. Special Damages

Where 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 or Exemplary Damages

These damages may be awarded only in two cases

i. For breach of promise to marry

ii. For wrongful dishonour by a banker of his customer's cheque (*Gibbons v West Minister Bank*).

iv. Nominal Damages

- Nominal damages are awarded where the 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 to decree for the breach of contract.
- The amount may be a rupee or even 10 paise.



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v. Damages for deterioration caused by delay

- In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice.
- The word 'deterioration' not only implies physical damages to the goods, but it may also mean loss of special opportunity for sale.

vi. Pre-Fixed Damages

- Sometimes, parties to a contract stipulate at the time of its formation that on a breach of contract by any of them, a certain amount will be payable as damage.
- It may amount to either or

liquidated damages (i.e., a reasonable estimate of the likely loss in case of breach)

OR

A penalty (i.e., an amount arbitrarily fixed as the damages payable).

Section 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.

3. Penalty and Liquidated Damages (Section 74)

- ❖ English Law makes distinction between liquidated damages and penalty, whereas Indian Law does not make any distinction between the two.
- ❖ If the sum fixed in the contract represents a genuine pre-estimate by the parties of the loss, which would be caused by a future breach of the contract it is liquidated damages.
- ❖ **Penalty** : → Where the sum fixed in the contract is unreasonable and is used to force the other party to perform the contract, it is penalty.
- ❖ **Section 74** : → If the parties have fixed what the damages will be, the courts will never allow more. Thus, a person complaining of breach of contract is entitled to get reasonable compensation and is not entitled to realise anything by way of penalty.
- ❖ **Exception**: If a party enters into a contract with the State or Central government for the performance of an act in the interest of the general public, then a breach of such a contract makes the party liable to pay the entire amount mentioned in the contract.



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Distinction between liquidated damages and penalty

- If the sum payable is far in excess of the probable damage on breach of the contract, then it is a penalty.
- If a contract mentions an amount payable at a certain date and an additional amount if a default happens, then the additional sum is a penalty.
- Even if the contract specifies a sum as 'penalty' or 'damages', the Court needs to discern this from the facts of the case.
- In penalty, the payment intended to threaten (i.e., as a *terrorem* to) the offending party, whereas Liquidated damages is a genuine pre-estimate of the damage.
- The Indian Courts focus on awarding a reasonable compensation not exceeding the amount fixed in the contract and does not distinguish between the two.

Other remedies available for the breach of Contract, besides claiming damages

Rescission
of contract

Quantum
Meruit

Suit for specific
performance

Suit for
injunction

(i) Rescission of Contract

- When a contract is broken by one party, the other party may treat the contract as rescinded.
- In such a case he is free from all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.

(ii) Quantum Meruit

- Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay.
- *Quantum Meruit* i.e. as much as the party doing the service has deserved.
- It covers a case where the party injured by the breach had at time of breach done part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done.



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For the application of this doctrine, two conditions must be fulfilled:

It is only available if the original contract has been discharged

The claim must be brought by a party not in default

- Damages are compensatory in nature while quantum meruit is restitutory (i.e., seeking to restore the person to the position which he was in earlier).

The claim for quantum meruit arises in the following cases

- Agreement discovered to be void or when contract becomes void.
- Something done without intention of doing so gratuitously.
- Express or implied contract to render services but no agreement as to remuneration.
- Party refuses or abandons to perform contract.
- Divisible contract and party not in default has enjoyed benefit of part performance.
- When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

(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 promise according to the terms of the contract.

(iv) Suit for injunction

- Where a party to a contract is negating the terms of a contract, the court may by issuing an 'injunction orders', restrain him from doing what he promised not to do.

Party rightfully rescinding contract, entitled to compensation (Section 75)

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



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Unit-6 : Contingent and Quasi Contracts

Contingent Contracts

Rules Relating to
Enforcement of
Contingent Contracts

Difference between
Contingent & Wagering
Contract

Quasi- Contracts

Cases deemed as
Quasi-Contracts

1. Contingent Contracts

Definition of 'Contingent Contract' (Section 31)

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

Contracts of Insurance, indemnity and guarantee fall under this category.

Meaning of collateral Event

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".

Essential of a Contingent Contract

(a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.

(b) The event referred to as collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.

(c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.

(d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.



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2. Rules Relating to Enforcement

The rules relating to enforcement of a contingent contract are laid down in sections 32, 33, 34, 35 and 36 of the Act.

(a) Enforcement of Contracts contingent on an event happening (Section 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 contingent on an event not happening (Section 33)

- Where a contingent contract is made to do or not 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. (Section 34)

- If a contract is contingent upon as to how a person will act at an unspecified time, the event shall be considered to have become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies.

Case Law: Frost V. Knight

Facts: The defendant promised to marry the plaintiff on the death of his father. While the father was still alive, he married another woman.

Judgement: It had become impossible that he should marry the plaintiff and she was entitled to sue him for the breach of the contract.

(d) Contingent on happening of specified event within the fixed time (Section 35)



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Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if

At the expiration of time fixed, such event has not happened

Or

If, before the time fixed, such event becomes impossible.

(e) Contingent on specified event not happening within fixed time: (Section 35)

Section 35 also says that -

"Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when

- The time fixed has expired, and such event has not happened or
- Before the time fixed has expired, if it becomes certain that such event will not happen".

(f) Contingent on an impossible event (Section 36)

Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Difference between a contingent contract and a wagering contract

Basis of difference	Contingent contract	Wagering contract
Meaning	A contingent contract is a contract to do or not to do something with reference to a collateralevent happening or not happening.	A wagering agreement is a promise to give moneyor money's worth with reference to an uncertainevent happening or not happening.
Reciprocal promises	Contingent contract maynot contain reciprocal promises.	A wagering agreement consists of reciprocalpromises.
Uncertain event	In a contingent contract, the event is collateral.	In a wagering contract, the uncertain event is the core factor.



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Nature of contract	Contingent contract maynot be wagering in nature.	A wagering agreement is essentially contingent in nature.
Interest of contracting parties	Contracting parties have interest in the subjectmatter in contingent contract.	The contracting parties have no interest in thesubject matter.
Doctrine of mutuality of lose and gain	Contingent contract is not based on doctrine of mutuality of lose and gain.	A wagering contract is a game, losing and gainingalone matters.
Effect of contract	Contingent contract is valid.	A wagering agreement isvoid.

3. Quasi Contracts

- Even in the 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 as they create same obligations as in the case of regular contract.
- Such cases are not contract in the strict sense, but the Court recognises them as relations resembling those of contracts and enforces them as if they were contracts. Hence the term Quasi contracts (i.e. resembling a contract).
- Quasi contracts are based on principles of equity, justice and good conscience.
- A quasi or constructive contract rest upon the maxims, → **"No man must grow rich out of another person's loss"**

Example: T, a tradesman, leaves goods at C's house by mistake. C treats the goods as his own. C is bound to pay for the goods.

Example: A pays some money to B by mistake. It is really due to C. B must refund the money to A.

- These relations are called as quasi-contractual obligations.
- In India it is also called as 'certain relation resembling those created by contracts.



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Salient features of quasi contracts:

a. Such a right is always a right to money and generally, though not always, to a liquidated sum of money.

b. It does not arise from any agreement of the parties concerned, but is imposed by the law

c. It is a right which is 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 -Contracts

Claims for necessaries supplied [Section 68]

Payment by an interested person [Section 69]

Obligation of a person enjoying benefit of non gratuitous act [Section 70]

Responsibility of finder of goods [Section 71]

Money paid by mistake or under coercion [Section 72]

A. Claim for necessaries supplied to persons incapable of contracting (Section 68)

- If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
- To establish his claim, the supplier must prove that

The goods were supplied to the person who was minor or a lunatic

And

Also, that they were suitable to his actual requirements at the time of the sale and delivery

B. Payment by an interested person (Section 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 the other.



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C. Obligation of person enjoying benefits of non-gratuitous act (Section 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.
- For a suit to succeed in this case, the plaintiff must prove:
 - That he had done the act or had delivered the thing lawfully
 - That he did not do so gratuitously and
 - That the other person enjoyed the benefit

Case Law: Shyam Lal vs. State of U.P.

Facts: 'K' a government servant was compulsorily retired by the government. He filed a writ petition and obtained an injunction against the order. He was reinstated and was paid salary but was given no work and in the meantime government went on appeal.

Judgement: Appeal was decided in favour of government and 'K' was directed to return the salary paid to him during period of reinstatement.

D. Responsibility of Finder of Goods (Section 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, a finder of lost goods has:

To take proper care of the property as man of ordinary prudence would take

No right to appropriate the goods

To restore the goods if the owner is found

Case Law: Hollins vs. Howler L. R. & H. L.

Facts: 'H' picked up a diamond on the floor of 'F's shop and handed over the same to 'F' to keep till the owner was found. In spite of the best efforts, the true owner could not be traced. After the lapse of some weeks, 'H' tendered to 'F' the lawful expenses incurred by him and requested to return the diamond to him. 'F' refused to do so.

Judgement: 'F' must return the diamond to 'H' as he was entitled to retain the goods found against everybody except the true owner.



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E. Money paid by mistake or under coercion (Section 72)

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

- **Shivprasad Vs Sirish Chandra** - Every kind of payment of money or delivery of goods for every type of 'mistake' is recoverable.
- **Sales tax officer vs. Kanhaiyalal** - A payment of municipal tax made under mistaken belief or because of mis-understanding of the terms of lease can be recovered from municipal authorities.
- **Seth Khanjalek vs National Bank of India** - Any money paid by coercion is also recoverable. The word coercion is not necessarily governed by section 15 of the Act, rather, it is interpreted to mean and include oppression, extortion, or such other means.

Case Law: *Trikamdas vs. Bombay Municipal Corporation*

Facts: 'T' was traveling without ticket in a tram car and on checking he was asked to pay ₹5/- as penalty to compound transaction. T filed a suit against the corporation for recovery on the ground that it was extorted from him.

Judgement: The suit was decreed in T's favour.

Difference between quasi contracts and contracts

Basis of distinction	Quasi- Contract	Contract
Essential for the valid contract	The essentials for the formation of a valid contract are absent	The essentials for the formation of a valid contract are present
Obligation	Imposed by law	Created by the consent of the parties.



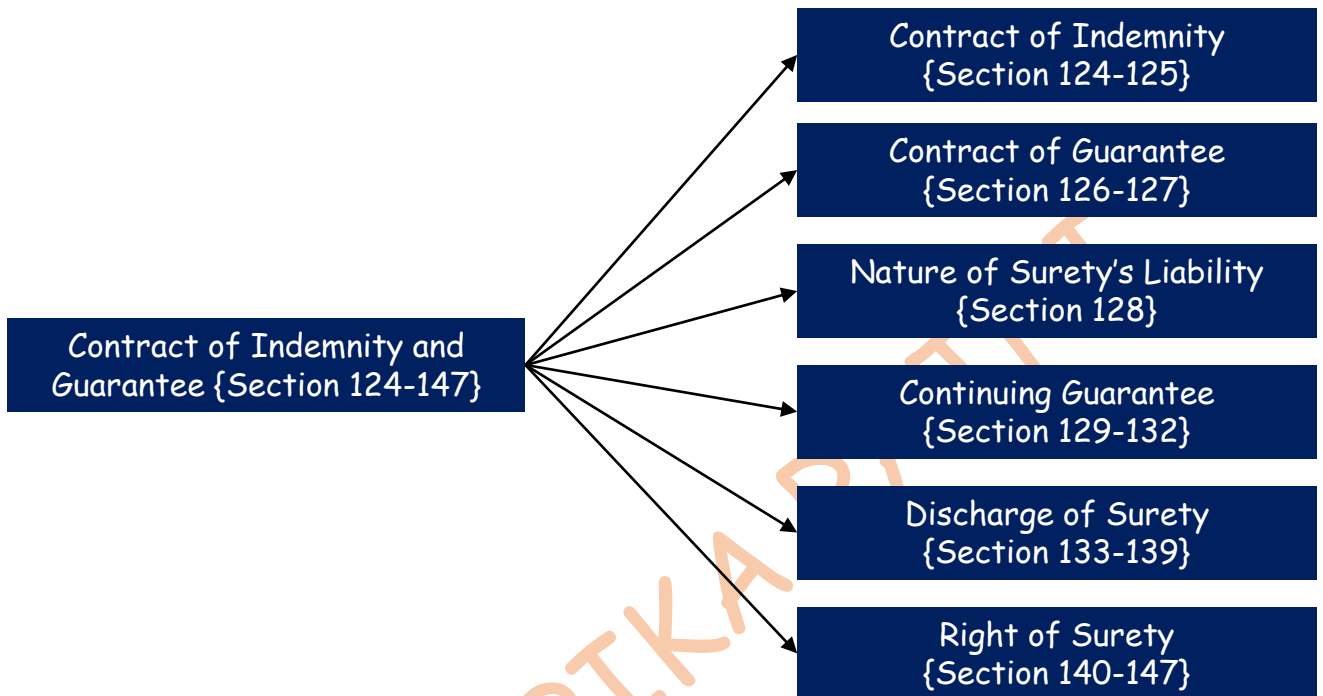
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Unit-7 : Contract of Indemnity and Guarantee

Overview



Introduction

- Contract of Indemnity and
- Guarantee

Are specific types of contracts

Provided under section 124 to 127 of the Indian Contract Act 1872.

- In addition to the specific provisions u/s Section 124 to Section 147 of the Indian Contract Act, 1872
- General principles of contracts are also applicable to such contracts which are

- Offer and Acceptance
- Intention to create legal obligation
- Consideration
- Competency to contract
- Free consent
- Lawful object
- The agreement must not be expressly declared to be void
- The terms of the agreement must not be vague or uncertain
- The agreement must be capable of performance
- Legal formalities.



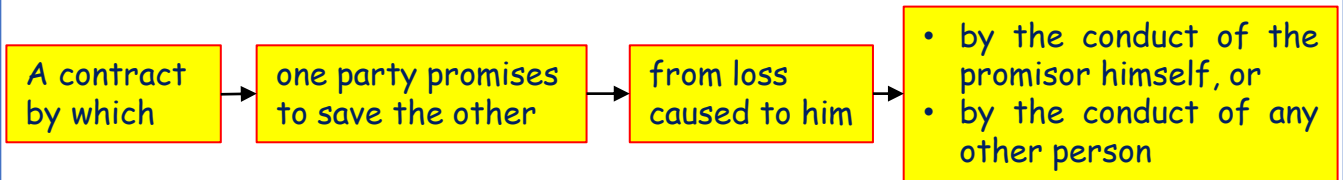
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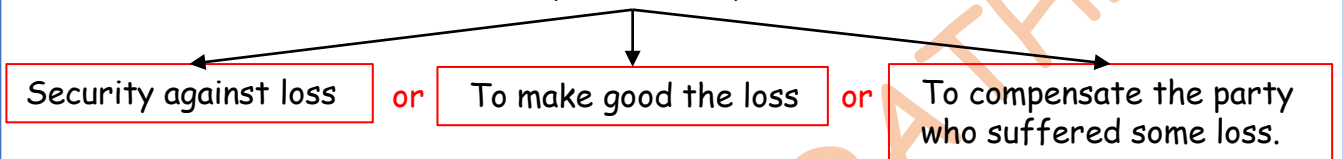
Contract of Indemnity

Definition u/s 124 of Indian Contract Act 1872



Meaning

Indemnity/ Indemnify means



As per English Law {Gajanan Moreshwar v/s Moreshwar Madan (1942)}

- Indemnity means → Promise to save another harmless from the loss.
- It covers every loss whether due to negligence of promisee or by natural calamity or by accident.

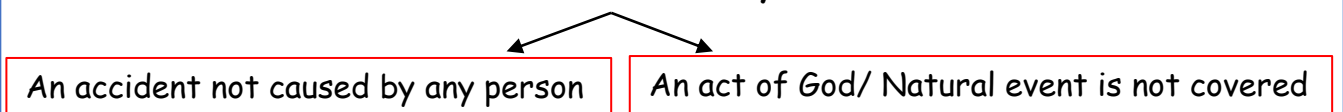
Basic Condition

- ❖ **Existence of loss** is essential
- ❖ Unless the promisee has suffered a loss he cannot be liable on the contract of indemnity.
- ❖ Such loss is caused by

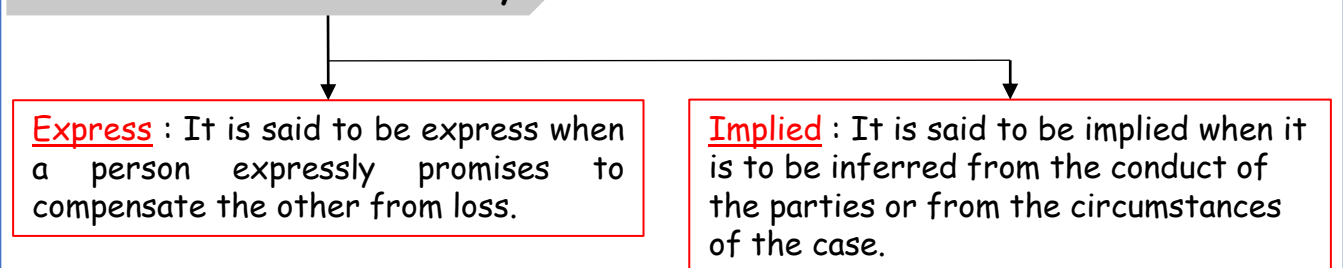
Conduct of the promisor himself

Conduct of any other person

❖ **Loss occasioned by**



Mode of Contract of Indemnity





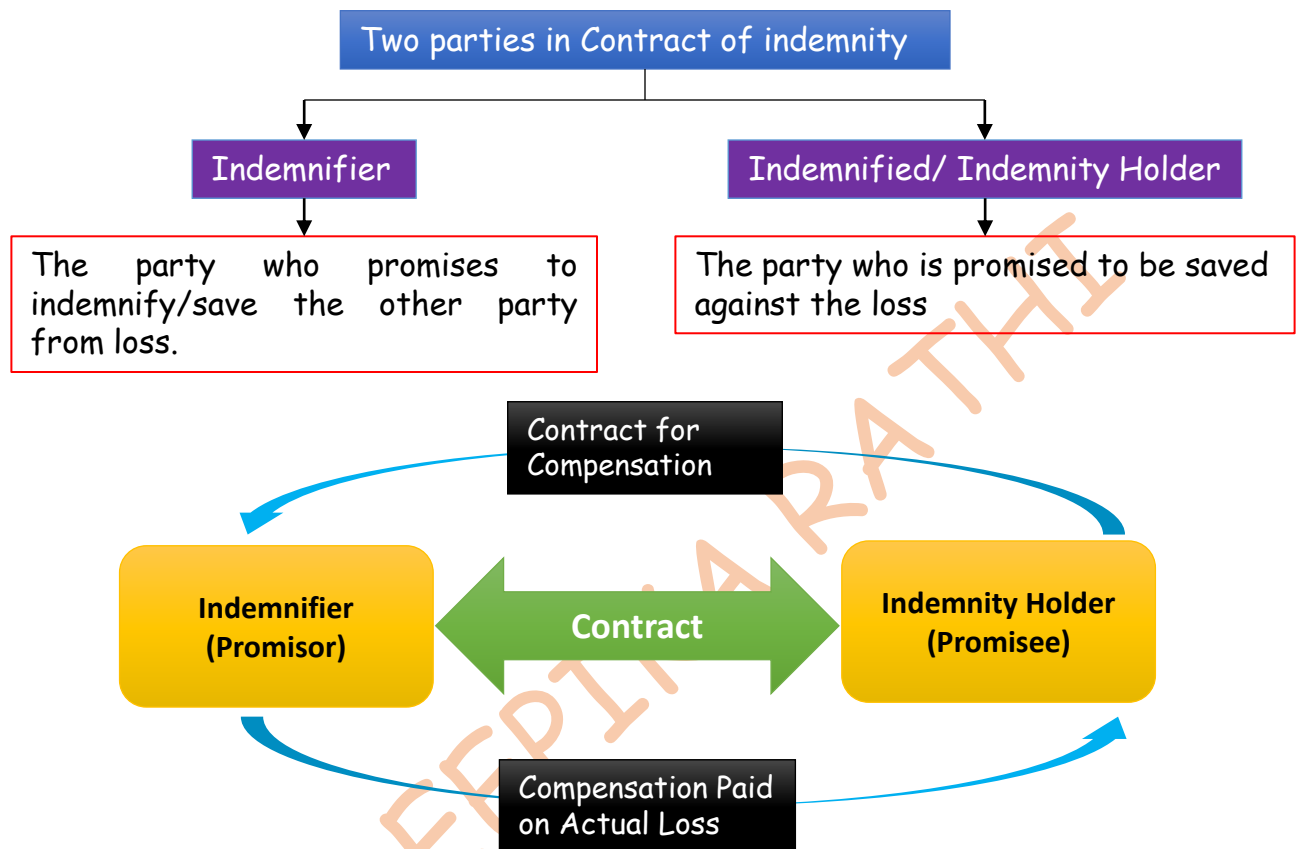
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Insurance Contracts

- Fire Insurance or Marine insurance → **Contract of Indemnity**
- Life Insurance → **Not a Contract of indemnity**



Right of Indemnity Holder (Section 125)

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

(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/ defending the suit

(c) **All sums** which he may have paid under the terms of any compromise of suit



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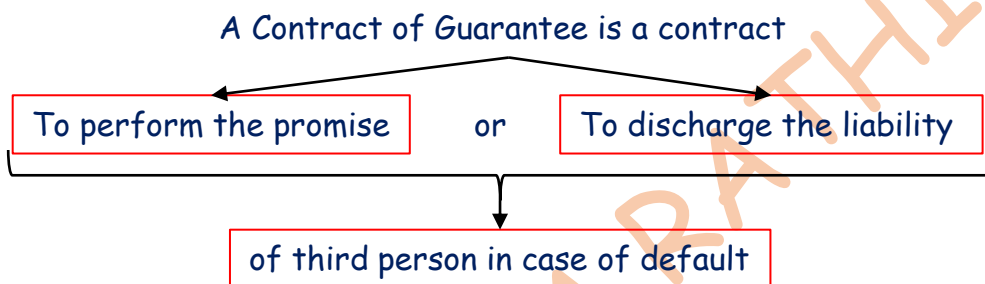
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When does the liability of an Indemnifier Commence?

- ❖ The Indian Contract Act, 1872, → is silent on the time of commencement of liability of indemnifier,
- ❖ As per judicial pronouncements → The liability of an indemnifier commences as soon as the liability of the indemnity-holder becomes absolute and certain.

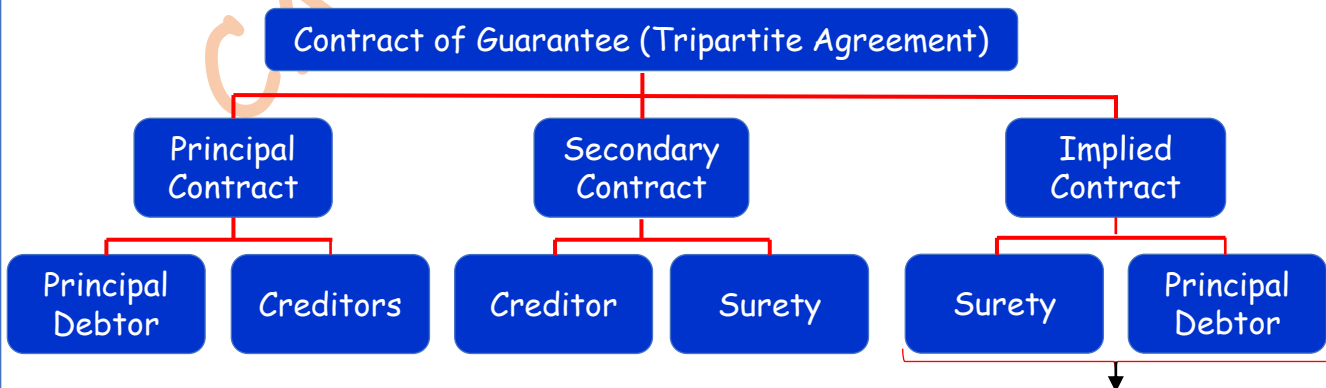
Contract of Guarantee

"Contract of guarantee", "surety", "principal debtor" and "creditor"[Section 126]



Three parties are involved in a contract of guarantee

- **Surety** :- Person who gives the guarantee
 - **Principal Debtor** :- Person in respect of whose default the guarantee is given
 - **Creditor** :- Person to whom the guarantee is given
- Guarantee is a promise to pay a debt owed by a third person in case the latter does not pay.
 - Guarantee: An Express contract → Given may be oral or written



Principal debtor is under an obligation to indemnify the surety if the surety is made to pay or perform.

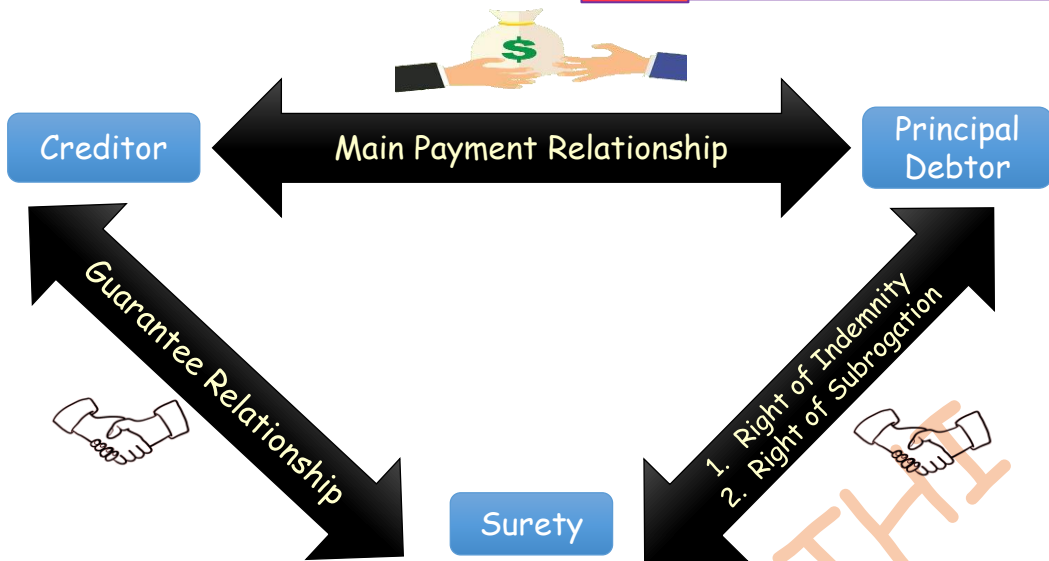
Note :-> The right of surety is not affected by the fact that the creditor has refused to sue the principal debtor or that he has not demanded the sum due from him.



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ESSENTIAL FEATURES OF A GUARANTEE

Purpose

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.

Consideration

Should be supported by some consideration

There is no need for a direct consideration between the surety and the creditor.

Section 127: Consideration received by the principal debtor is sufficient consideration to surety for giving the guarantee.

- **Principal Debtor incompetent to contract** :→ Guarantee is valid
- **Surety incompetent to contract** :→ Guarantee Void (Surety must be competent to contract)

Existence of a liability

There must be an existing liability or a promise whose performance is guaranteed.

Such liability or promise must be enforceable by law.

The liability must be legally enforceable and not time barred.



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No misrepresentation or Concealment (Section 142 and 143)

Section 142

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**

Section 143

Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is → **Invalid**

Writing not necessary

Section 126: → Guarantee may be either oral or written

Joining of the other co-sureties (Section 144)

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

A. Specific Guarantee

- A guarantee which extends to a single debt/ specific transaction is called a specific guarantee.
- The surety's liability comes to an end when the guaranteed debt is duly discharged or the promise is duly performed.

B. Continuing Guarantee [Section 129]

- A guarantee which extends to a series of transaction is called a continuing guarantee.
- A surety's liability continues until the revocation of the guarantee.
- The essence of continuing guarantee is that it applies not to a specific number of transactions but to any number of transactions and makes the surety liable for the unpaid balance at the end of the guarantee.



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DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND A CONTRACT OF GUARANTEE

Point of Distinction	Contract of Indemnity	Contract of Guarantee
Number of party/parties to the contract	There are only two parties namely the indemnifier [promisor] and the indemnified [promisee]	There are three parties - creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non-performance of an existing promise or non-payment of an existing debt.
Time to 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 security of the creditor
Competency to contract	All parties must be competent to contract	In the case of a contract of guarantee, where a minor is a principal debtor the contract is still valid.

Nature and extent of surety's liability [section -128]

- **Section 128** :→The **liability of the surety is co-extensive** with that of the **principal debtor** unless it is otherwise provided by the contract.
- **Liability of surety is of secondary nature** as he is liable only on default of principal debtor.
- 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 the contrary.



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Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default

Section 132 :-

- Where two persons contract with a third person to undertake a certain liability and
- also contract with each other
- that one of them shall be liable only on the default of the other,
- the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract,
- although such third person may have been aware of its existence.

Discharge of a Surety

- ❖ A surety is said to be discharged when his liability as surety comes to an end.
- ❖ The various modes of discharge of surety are -

By Revocation of the contract of guarantee	By Conduct of the Creditor	By the invalidation of the contract of guarantee
a.Revocation of continuing guarantee by notice (Section 130) b.Revocation of continuing guarantee by surety's death (Section 131) c.By Novation (Section 62)	a.By variance in terms of contract (Section 133) Exception : Variation which is not substantial or material or which is beneficial to surety will not discharge him of his liability b.By release or discharge of principal debtor (Section 134) c.Discharge of Surety when creditor compounds with, gives time to, or agree not to sue principal debtor (Section 135) <ol style="list-style-type: none"> i. Composition ii. Promise to give time iii. Promise not to sue Exception: (i) Surety not discharge when agreement made with third person to give time to principal debtor (Section- 136) (ii) Creditor's forbearance to sue does not discharge surety (Section- 137) d. Discharge of surety by creditor's act or omission impairing surety's eventual remedy (Section 139)	a. Guarantee obtained by misrepresentation invalid (Section 142) b. Guarantee obtained by concealment invalid (Section 143) c. Guarantee on contract that creditor shall not act on it until Co-Surety joins (Section 144)



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By Revocation of the contract of guarantee

(a) Revocation of continuing guarantee by Notice (Section 130)

The **continuing guarantee** may at any time be revoked by the surety as to future transactions by notice to the creditors.

Once the guarantee is revoked, the surety is not liable for any future transaction however he is liable for all the transactions that happened before the notice was given.

A **specific guarantee** can be revoked only if liability to principal debtor has not accrued.

(b) Revocation of continuing guarantee by surety's death (Section 131)

In the absence of any contract to the contrary, the **death of surety operates** as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety.

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

(c) By Novation (Section 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.

By Conduct of the Creditor

(a) By variance in terms of Contract (Section 133)

Where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent,

it would discharge the surety in respect of all transactions taking place subsequent to such variance.

(b) By release or discharge of principal debtor (Section 134)

The surety is discharged if the creditor

(i) Enters into a fresh/ new contract with principal debtor; by which the principal debtor is released

(ii) Does any act or omission, the legal consequence of which is the discharge of the principal debtor.



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

A contract between the creditor and the principal debtor, by which the creditor makes

- A composition with, or
- Promises to give time to, or
- Promises not to sue, the principal debt or,
- Discharges the surety,



unless the surety assents to such contract.

(i) Composition

If the creditor makes a composition with the principal debtor, without consulting the surety, → **The latter is discharged (Surety)**

Composition inevitably involves variation of the original contract, and, therefore, → **The surety is discharged.**

(ii) Promise to give time

- When the time for the payment of the guaranteed debt comes, the surety has the right to require the principal debtor to pay off the debt.
- Accordingly, it is one of the duties of the creditor towards the surety → **not to allow the principal debtor more time for payment.**

(iii) Promise not to Sue

- If the creditor under an agreement with the principal debtor promises not to sue him, the → **surety is discharged.**

Cases where surety not discharged

Surety not discharged when agreement made with third person to give time to principal debtor [Section 136]:

Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, → **The surety is not discharged.**

Creditor's forbearance to sue does not discharge surety [Section 137]

Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not in the absence of any provision in the guarantee to the contrary, discharge the surety.



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(d) Discharge of surety by creditor's act or omission impairing surety's eventual remedy (Section 139)

If the creditor does any act/omits to do an act, which is inconsistent with the rights of the surety, then → **The surety is discharged.**

State bank of Saurashtra V Chitranjan Rangnath Raja (1980)

In a case before the Supreme Court of India,

"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 the 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."

By invalidation of the contract of guarantee

A. Guarantee obtained by misrepresentation invalid (Section 142)

Any guarantee

- which has been obtained by means of misrepresentation made by the creditor
- or
- with his knowledge and assent, concerning a material part of the transaction

Invalid

B. Guarantee obtained by concealment invalid (Section 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 it until co-surety joins (Section 144)

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



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Right of a Surety

Right against the principal debtor

Rights of subrogation [Section 140]

Surety, upon payment of all that he is liable for, is invested with all the rights which the creditor has against the principal debtor i.e., the surety steps into the shoes of the creditor

Right of indemnity [Section 145]

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

Right against the Creditor

(a) Surety's right to benefit of creditor's securities [Section 141]

A surety is entitled to the benefit of every security which the creditor has against the principal debtor 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.

(b) Right to set off :

If the creditor sues the surety, for payment of principal debtor's liability, the surety may have the benefit of the set off, if any, that the principal debtor had against the creditor.

(c) Right to share reduction

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

Right against the Co-Sureties

"When the same debt or duty is guaranteed by two or more persons, such persons are called co-sureties"



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(a) Co-sureties liable to contribute equally (Section 146):

Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.

(b) Liability of co-sureties bound in different sums (Section 147):

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

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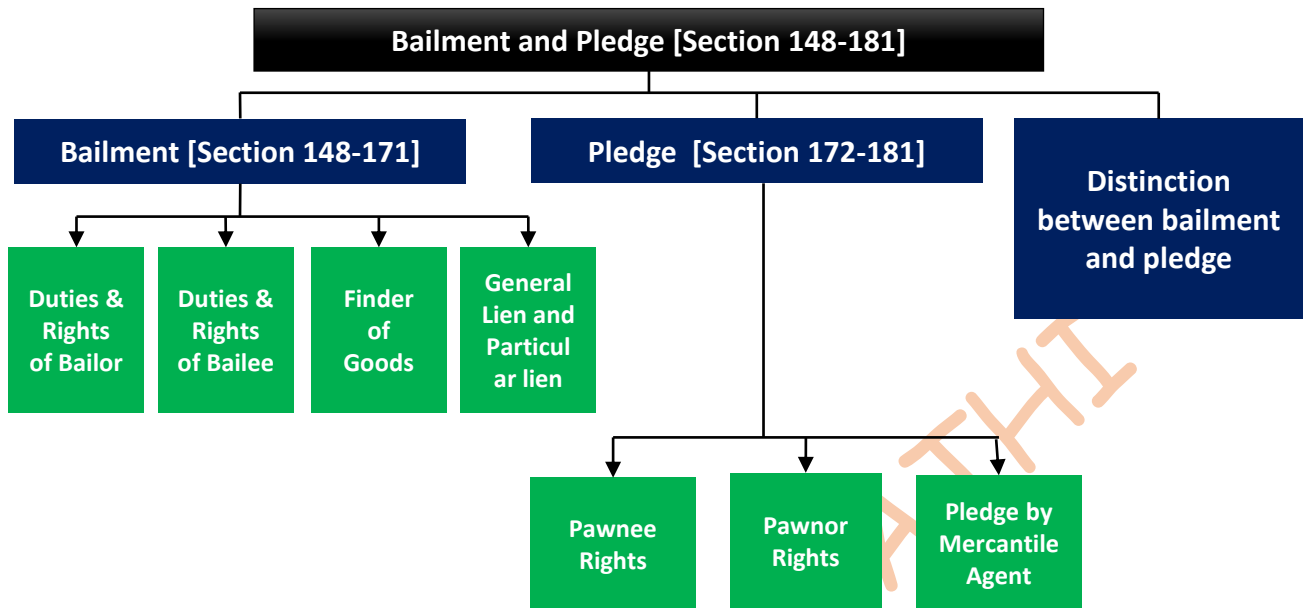


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Unit-8 : Bailment and Pledge



➤ **Question** : What is Bailment ?

➤ **Answer** :

- The word "**Bailment**" has been derived from the **French word "ballier"** which means "**to deliver**".
- Bailment etymologically means '**handing over**' or '**change of possession**'.
- As per **section 148** of the Act,
 - 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 the direction of the person delivering them.

➤ **Parties to bailment**

- a. **Bailor** : The person delivering the goods.
- b. **Bailee** : The person to whom the goods are delivered.

Essential Elements of a Contract of Bailment

a. **Contract** :

- Bailment is based upon a contract.
- The contract may be express or implied.
- **No consideration is necessary to create a valid contract of bailment.**



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b. Delivery of goods:

- It involves the delivery of goods from one person to another for some purposes.
- Bailment is only for moveable goods and never for immovable goods or money.

The delivery of the possession of goods is of the following kinds

Actual Delivery

Constructive Delivery

- When goods are physically handed over to the bailee by the bailor.
- E.g: Delivery of a car for repair to workshop.

- Where delivery is made by doing anything that has the effect of putting goods in the possession of the bailee or of any person authorized to hold them on his behalf.
- Eg: Delivery of the key of car to a workshop dealer for repair of the car.

c. Purpose :

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

d. Possession :

- In bailment, possession of goods changes.
- Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of bailee.
- The change of possession does not lead to change of ownership.
- In bailment bailor continues to be the owner of goods.
- Where a person is in custody without possession he does not become a bailee.

e. Return of goods :

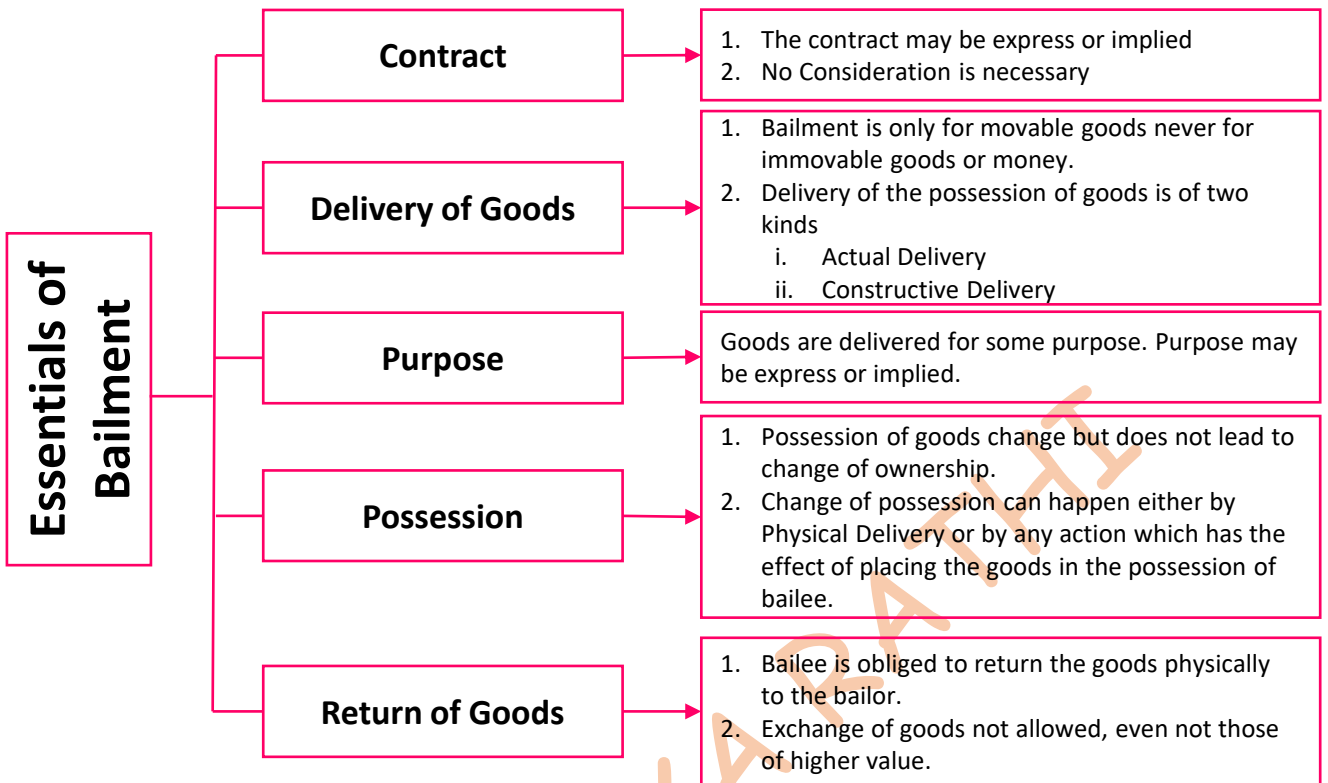
- Bailee is obliged to return the goods physically to the bailor.
- The goods should be returned in the same form as given or may be altered as per bailor's direction.
- It should be noted that exchange of goods should not be allowed.
- The bailee cannot deliver some other goods even not those of higher value.
- Deposit of money in a bank is not bailment since the money returned by the bank would not be identical currency notes.



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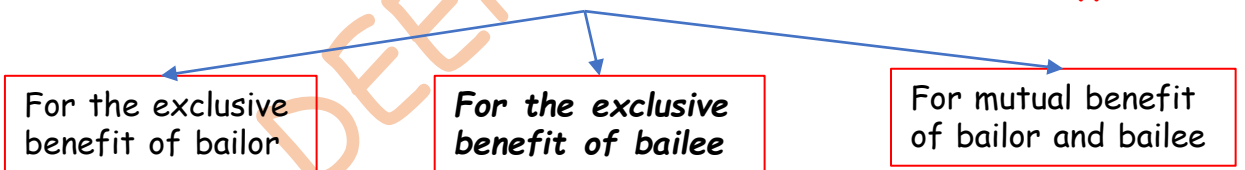


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Types of Bailment

1. On the basis of benefit, bailment can be classified into three types



2. On the basis of reward, bailment can be classified into two types

Gratuitous Bailment

Non- Gratuitous Bailment

- The word gratuitous means free of charge.
- So, a gratuitous bailment is one when the provider of service does it gratuitously i.e. free of charge.
- Such bailment would be either for the exclusive benefits of bailor or bailee

Non gratuitous bailment means where both the parties get some benefit i.e. bailment for the benefit of both bailor & bailee.

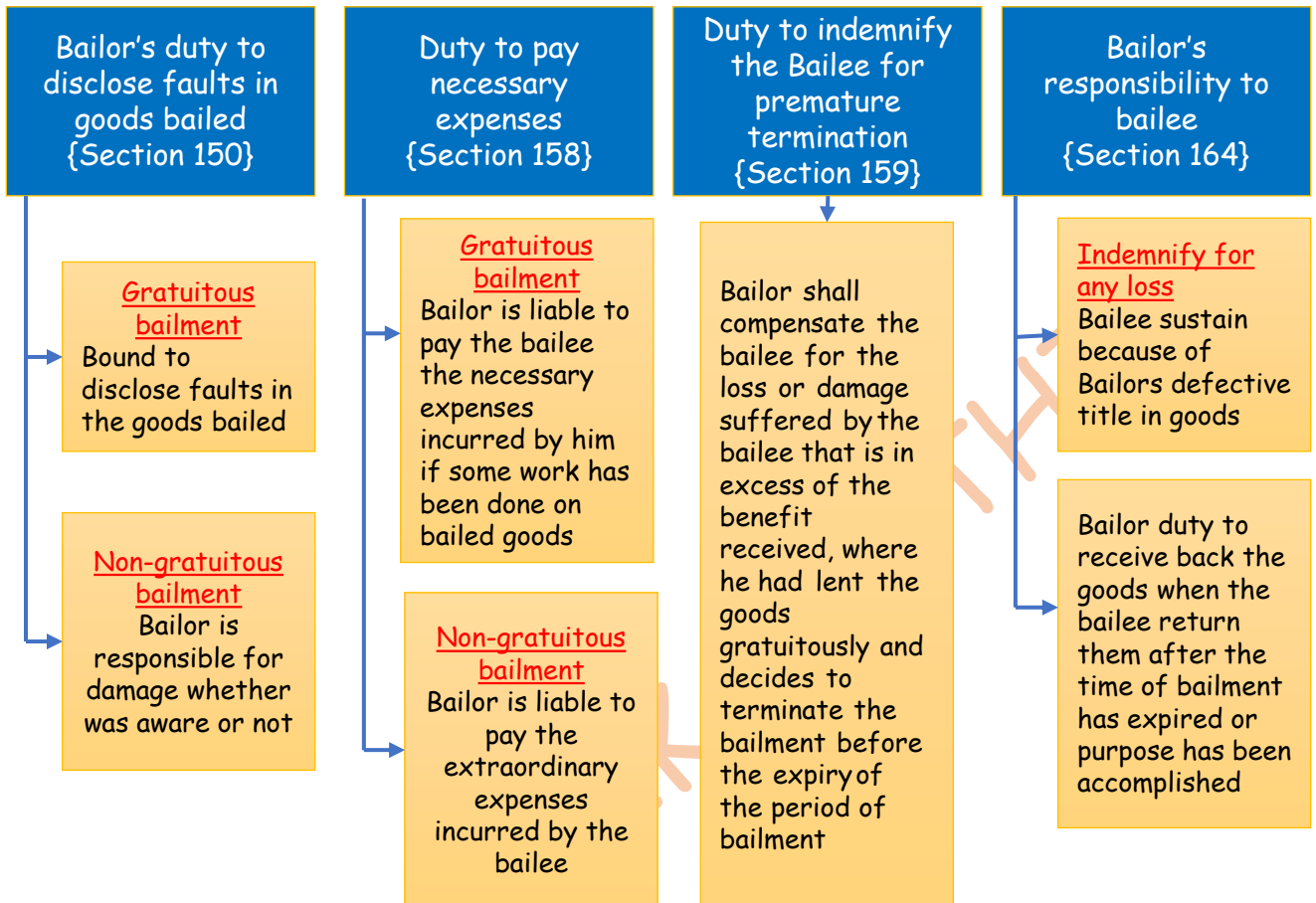


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Duties of a Bailor



i. Bailor's duty to disclose faults in goods bailed [Section 150]

a. In case of gratuitous bailment

- The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks **and**
- If he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

b. In case of non-gratuitous bailment

- If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.



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ii. Duty to pay necessary expenses [Section 158]

✓ In case of gratuitous bailment

- Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration (gratuitous bailment),
- **The bailor shall repay → to the bailee**
 - Necessary expenses incurred by him and
 - Any extraordinary expenses incurred by him for the purpose of the bailment.

✓ In case of non-gratuitous bailment

- The bailor is liable to pay the → **extraordinary expenses** incurred by the bailee.

iii. Duty to indemnify the Bailee for premature termination [Section 159]

- ✓ The bailor must compensate the bailee
 - for the loss or damage suffered by the bailee that is in excess of the benefit received, where he had lent the goods gratuitously and decides to terminate the bailment before the expiry of the period of bailment.

iv. Bailor's responsibility to bailee [Section 164]

The bailor is responsible to the bailee for following :

- Indemnify for any loss** which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them (**defective title in goods**).
- It is the duty of the bailor **to receive back the goods** when the bailee returns them after the time of bailment has expired or the purpose of bailment has been accomplished.

If the bailor refuses to take delivery of goods when it is offered at the proper time the bailee can claim compensation for all necessary expenses incurred for the safe custody.



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Duties of a Bailee

Take Reasonable
Care of the goods
(Section 151 & 152)

No Unauthorized
use of goods
(Section 153 & 154)

No mixing of bailor's
goods with his own
(Section 155, 156 & 154)

Return the good
(Section 160 & 161)

To Return any extra profit accruing from goods bailed
(Section 163)

Not to setup Adverse Title

i. Take reasonable care of the goods [Section 151 & 152]

- In all cases of bailment, the bailee is bound to take as much care of the goods bailed to him 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.
- **Exception: Bailee when not liable for loss, etc., of thing bailed [Section 152]:** The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken reasonable care as required under section 151.

ii. Not to make inconsistent use of goods [section 153 & 154]

- **Section 154 :** If the bailee makes any use of the goods bailed, which is not according to the terms and conditions of the bailment, he is liable to compensate the bailor for any loss or destruction of goods.
- **Section 153 :** A contract of bailment is voidable at the option of the bailor, if the bailee does not use the goods according to the terms and conditions of bailment.

iii. Not to mix the goods [Section 155, 156 & 157]

- Goods mix with consent of the bailor (Section 155) :** If the Bailee, mixes the goods bailed with his own goods, with the consent of the bailor, both the parties shall have an interest in proportion to their respective shares in the mixture thus produced.
- Goods mix without consent of the bailor & can be separated (Section 156) :** If the bailee, without the consent of the bailor, mixes the goods bailed with his own goods and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division and any damage arising from the mixture.
- Goods mix without consent of the bailor & cannot be separated (Section 157) :** If the bailee, without the consent of the bailor mixes the goods of the bailor with his own goods in such a manner that it is impossible to separate the goods bailed from the other goods and to deliver them back, the bailor is entitled to be compensated by the bailee for loss of the goods.



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iv. Return the goods [Section 160 & 161]

- a. **Duty of bailee to return or delivery according to bailor's direction (Section 160)** : It is the duty of bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed, has expired, or the purpose for which they were bailed has been accomplished.
- b. **Bailee responsible for any loss because of his default (Section 161)** : If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, → *he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.*

v. Return an accretion from the Goods [Section 163]

In the 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.

vi. Not to setup 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 a Bailor

i. Right to terminate the bailment [Section 153]

- A contract of bailment is **voidable at the option of the bailor**,
- if the **bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.**

ii. Right to demand back the goods [section 159]

- When the goods are lent gratuitously, the bailor can demand back the goods at any time even before the expiry of the time fixed or the achievement of the object.
- However, due to the premature return of the goods, if the bailee suffers any loss, which is more than the benefit actually obtained by him from the use of the goods bailed, the bailor has to compensate the bailee.

iii. Right to file a suit against a wrong doer [Section 180 & 181]

iv. Right to sue the bailee

- The bailor has a right to sue the bailee for enforcing all the liabilities and duties of him.



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v. Right to compensation

- If any damage is caused to the goods bailed because of the unauthorized use of the goods or unauthorized mixing of the goods, the bailor has a right to claim compensation for the same.

Rights of a Bailee

i. Right to Deliver the Goods to any one of the joint bailors [Section 165]

- If several joint owners bailed the goods, the bailee has a right to deliver them to any one of the joint owners unless there was a contract to the contrary.

ii. Right to indemnity [section 166]

- Bailee is entitled to be indemnified by the bailor for any loss arising to him by reasons that the bailor was not entitled to make the bailment or to receive back the goods or to give directions in respect to them.
- If the bailor has no title to the goods, and the bailee in good faith, delivers them back to, or according to the directions of the bailor, the bailee shall not be responsible to the owner in respect of such delivery. **Bailee can also claim all the necessary expenses incurred by him for the purpose of gratuitous bailment.**

iii. Right to claim compensation in case of faulty goods [Section 150]

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

iv. Right to claim necessary expenses [Section 158]

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

v. Right to Apply to court to decide the title to the goods [Section 167]

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

vi. Right to particular lien for payment of services [Section 170]

vii. Right to general lien [Section 171]



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RIGHTS OF A BAILOR AND BAILEE AGAINST ANY WRONG DOER (THIRD PARTY)

Suit by bailor & bailee against wrong doers [Section 180]

If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury-

- The bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and
- either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits [Section 181]

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

TERMINATION OF BAILMENT

Expiry of fixed period

Fulfilment of the purpose

By death of bailor or bailee

Inconsistent use of goods

Destruction/ modification of the subject matter

A contract of bailment shall terminated in the following circumstances:

1. **On expiry of stipulated period** : If the goods were given for a stipulated period, the contract of bailment shall terminate → after the expiry of such period.
2. **On fulfillment of the purpose** : If the goods were delivered for a specific purpose, a bailment shall terminate → on the fulfillment of that purpose.
3. **By Notice** :

Where the bailee acts in a manner which is inconsistent with the terms of the bailment, the bailor can always terminate the contract of bailment by giving a notice to the bailee.

- A gratuitous bailment can be terminated by the bailor at any time by giving a notice to the bailee.
- However, the termination should not cause loss to the bailee in excess of the benefit derived by him.



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4. **By Death** : A gratuitous bailment terminates upon the death of either the bailor or the bailee.
5. **Destruction of the subject matter** : A bailment is terminated if
- the subject matter of the bailment is destroyed or
 - there is a change in the nature of goods which makes it impossible to be used for the purpose of bailment.

Finder of Lost Goods

Right of finder of lost goods may sue for specific reward offered [Section 168]:

- The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner.
- but he may retain the goods against the owner until he receives such compensation
- and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

When finder of thing commonly on sale may sell it [Section 169]:

When a thing which is commonly the subject of sale if lost, if the 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 the → lawful charges of the finder in respect of the thing found amount to two-thirds of its value

Right of Lien

Lien is the right of a person

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

Types of Lien: Lien may be of two types

Particular Lien

General Lien



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Particular Lien [Section 170]

It is a right to retain only the particular goods in respect of which the claim is due.

Section 170 provides,

- Where the bailee has, in accordance with the purpose of the bailment, **rendered any service involving the exercise of labour or skill in respect of the goods bailed.**
- He has, **in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.**

General Lien [Section 171]

- It is a right to retain the goods not only for demands arising out of the goods retained but for a general balance of account in favour of certain persons (in the absence of a contract to the contrary).
- Section 171 provides this right is available to Bankers, factors, wharfingers, policy brokers and attorneys of law.

Difference between Bailee's General and Particular Lien

General Lien	Particular Lien
Section 171 of the Indian Contract Act, 1872 confer on Bailee the right of General Lien.	Section 170 of the Indian Contract Act, 1872 confers on the Bailee, the right of particular lien.
General lien alludes to the right to keep possession of goods belonging to other against general balance of account.	Particular lien implies a right of the bailee to retain specific goods bailed for non-payment of amount.
A general lien is not automatic but is recognized through on agreement. It is exercised by the bailee only by name	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 has been expended on the goods, resulting in an increase in value of goods.
Only such persons as are specified under section 171 , e.g., Bankers, factors, wharfingers, policy brokers etc. are entitled to general lien.	Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc. are entitled to particular lien.



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Pledge

"Pledge", "Pawnor" and "Pawnee" defined [Section 172]:

- **Meaning:** The bailment of goods as security for payment of a debt or performance of a promise is called "pledge".
- The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

Section 172 to 182 of the Indian Contract Act, 1872 deal with the contract of pledge.

Essential of Contract of Pledge

Since pledge is a special kind of bailment, therefore all the essentials of bailment are also the essentials of the pledge.

There shall be a bailment for security against payment or performance of the promise,

The subject matter of pledge is goods,

Goods pledged for shall be in existence,

There shall be the delivery of goods from pledger to pledgee

Rights of a Pawnee/Pledgee

a. Right to retain the pledged goods [Section 173] :

The Pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

b. Right to retention of subsequent debts [Section 174] :

- ✓ The Pawnee can retain the goods pledged for any debt or 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. i.e. a right to retain goods for subsequent debts can be exercised only when it has been provided for in a contract to this effect.

c. Pawnee's right to extraordinary expenses incurred [Section 175] :

- ✓ The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.
- ✓ For such expenses, however, he does not have the right to retain the goods, but he can sue the pawnor for such expenses.



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d. Pawnee's right where pawnor makes default [Section 176] :

- ✓ If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee has the following rights :
 - i. the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security or
 - ii. he may sell the thing pledged on giving the pawnor reasonable notice of the sale .
- ✓ If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance.
- ✓ If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Right of a Pawnor [Section 172]:

As the bailor of goods, pawnor has all the rights of the bailor. Along with that he also has the right of redemption to the pledged goods which is enumerated under section 177 of the Act.

Right to redeem [Section 177]:

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

Duties of the Pawnee

- a. Duty to take reasonable care of the pledged goods.
- b. Duty not to make unauthorized use of pledged goods.
- c. Duty to return the goods when the debt has been repaid or the promise has been performed.
- d. Duty not to mix his own goods with goods pledged.
- e. Duty not to do any act which is inconsistent with the terms of the pledge.
- f. Duty to return accretion to the goods, if any.

Duties of the Pawnor

- a. The pawnor is liable to pay the debt or perform the promise as the case may be.
- b. It is the duty of the pawnor to compensate the pawnee for any extraordinary expenses incurred by him for preserving the goods pawned.
- c. It is the duty of the pawnor to disclose all the faults which may put the pawnee under extraordinary risks.



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- d. If loss occurs to the pawnee due to defect in pawnor's title to the goods, the pawnor must indemnify the pawnee.
- e. If the pawnee sells the good due to default by the pawnor, the pawnor must pay the deficit.

Pledge by Non -Owners

a. Pledge by mercantile agent [Section 178]:

- A mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent.
- **Such Pledge shall be valid** as if were made with the authority of the owner of goods.
- Provided, Pawnee acted in good faith and had no notice that Pawnor has no authority to pledge.

b. Pledge by person in possession under voidable contract [Section 178A]:

- When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A (contracts where consent has been obtained by fraud, coercion, misrepresentation, undue influence),
- but the 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.

c. Pledge where Pawnor has only a limited interested [Section 179]:

Where a person pledges goods in which he has only a limited interest i.e. pawnor is not the absolute owner of goods, the pledge is valid to the extent of that interest.

d. Pledge where Pawnor has only a limited interested:

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

e. Pledge by seller or buyer in possession:

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



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DISTINCTION BETWEEN BAILMENT AND PLEDGE

Basis of Distinction	Bailment	Pledge
Meaning	Transfer of goods by one person to another for some specific purpose is known as bailment.	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
Terms Applicable	<ul style="list-style-type: none"> The person delivering the Goods under a contract of bailment is called as "Bailor" The person to whom the goods are delivered under a contract of bailment is called as "Bailee" 	<ul style="list-style-type: none"> The person who delivers the good as security is called the "Pawnor". The person to whom the goods are delivered as security is called the "pawnee"
Purpose	Bailment may be made for any purpose (as specified in the contract of bailment, eg: for safe custody, for repairs, for processing of goods).	Pledge is made for the purpose of delivering the goods as security for payment of a debt, or performance of a promise.
Consideration	The bailment may be made for consideration or without consideration.	Pledge is always made for a consideration.
Right to sell the goods	<ul style="list-style-type: none"> The bailee has no right to sell the goods even if the charges of bailment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed. 	The pawnee has right to sell the goods if the pawnor fails to redeem the goods.
Right to use of goods	Bailee can use the goods only for a purpose specified in the contract of bailment and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.

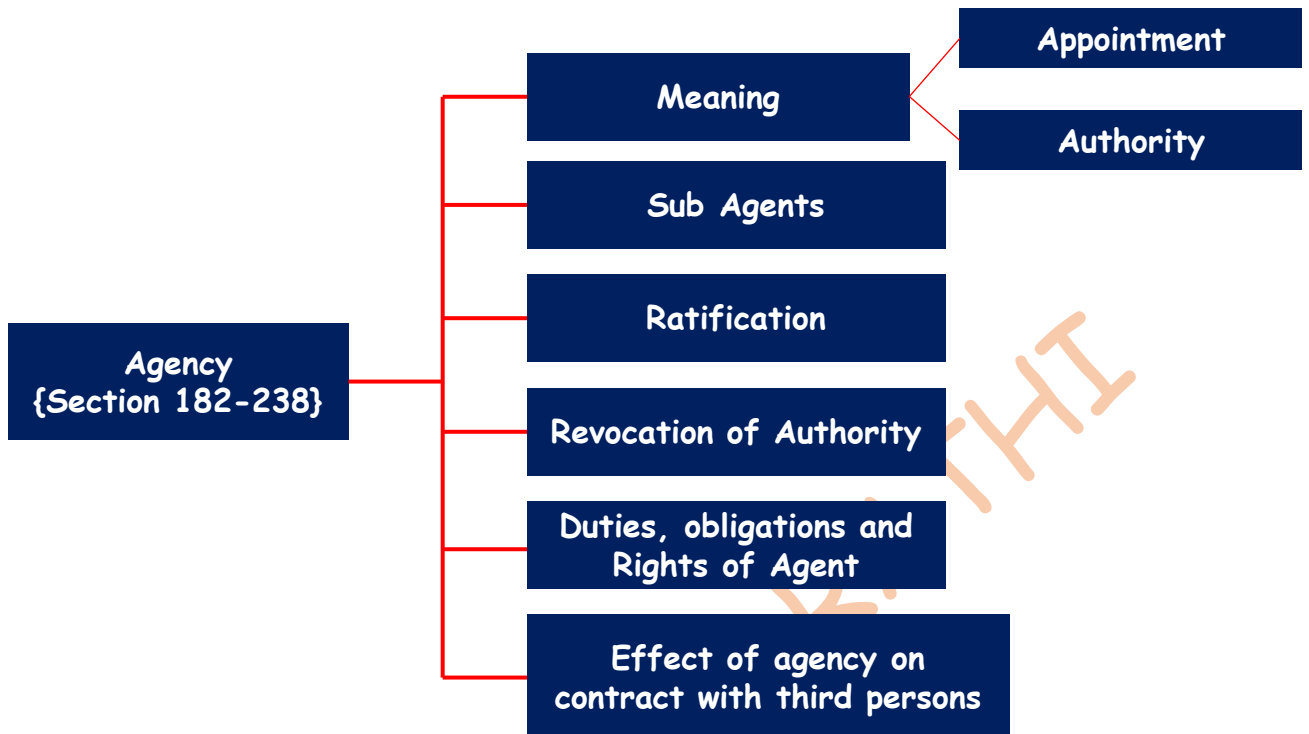


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Unit -9 : Agency



What is Agency ?

➤ **Question** : What is Agency ?

➤ **Answer** :

- ✓ The Indian Contract Act, 1872 does not define the word '**Agency**'.
- ✓ However, section 182 of the Indian Contract Act, 1872 defines Agent and Principal as :
 - **Agent**: means a person employed to do any act for another or to represent another in dealing with the third persons **and**
 - **The principal**: means a person for whom such act is done or who is so represented.

➤ **Test of Agency**

Question (a) : Whether the person has the capacity to bind the principal and make him answerable to the third party ?

Question (b) : Whether he can establish privity of contract between the principal and third parties ?

Answer : If the answer to these questions is in affirmative (Yes), then there is a relationship of agency.

❖ '**Agency**' is a comprehensive word used to describe the relationship between one person and another, where the first mentioned person brings the second mentioned person into legal relation with others.



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- ❖ Thus, 'Agency' is a comprehensive word used to describe the relationship between one person and another,
 - where the first mentioned person brings the
 - second mentioned person into legal relation with others.
- ❖ The 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 and Authority of Agents

Who may employ an agent ? [Section 183]

- A person who has attained majority according to the law (+18).
- Has sound mind.

Who may be an agent ? [Section 184]

- A person who has attained majority according to the law (+18) [to be responsible to his principal]
- Has sound mind.

Whether the consideration is necessary?

✓ As per Section 185

- No consideration is necessary to create an agency?
- Acceptance of the office of an agent is sufficient consideration.

Creation of Agency

In the words of Desai J, of the Supreme Court of India : → "The relation of agency arises whenever one person called the agent has the authority to act on behalf of another called the principal and consents to act. The relationship has genesis in a contract"

The relationship of the principal and the agent may be created in any of the following ways

The authority may be express or implied [Section 186]

Definitions of express and implied authority [Section 187]

1. Express Authority

An authority is said to be express when it is given by words, spoken or written.

2. Implied Authority

It is to be inferred from

- The circumstances of the case
- Things spoken or written
- Or in the ordinary course of dealing.



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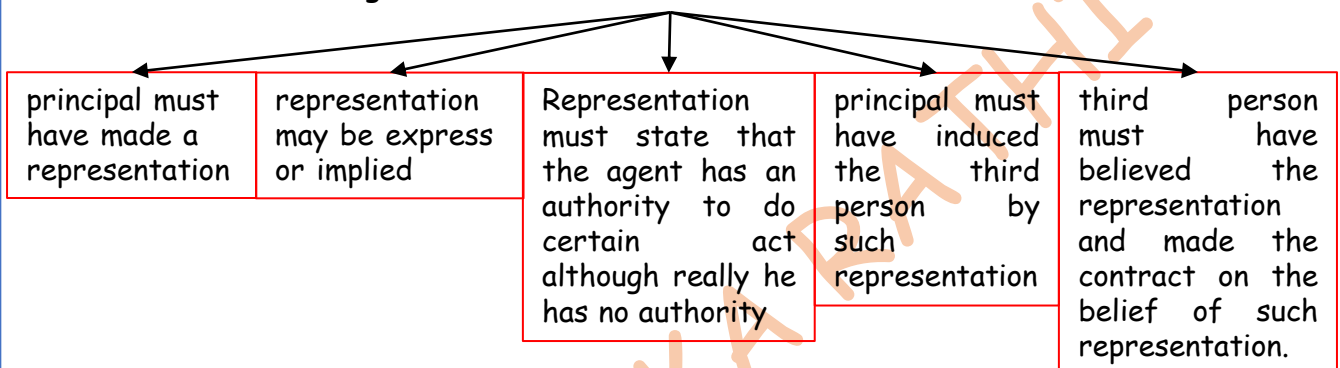
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Implied Agency includes

(a) Agency by Estoppel [Section 237]

Where the principal by his conduct or statement willfully induces another person to believe that a certain person is his agent, he is subsequently prevented or estopped from denying the fact of agency.

According to section 237 of the Contract Act, an agency by estoppel may be created when following essentials are fulfilled:



(b) Agency by Necessity

- An agency of necessity arises due to some emergent circumstances.
- where an agent is authorized 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

3. Agency by Operation of Law

- When law treats one person as an agent of other.
- **For example** :-> A partner is the agent of the firm for the purposes of the business of the firm.

4. Rights of person as to acts done for him without his authority, Effect of ratification [Section 196]

- 'Ratification " means approving a previous act or transaction.
- Where acts are done by one person on behalf of another, but without his knowledge or authority he may elect to ratify it.
- This will make the agency valid.



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Essential of Valid Ratification

- a. **Ratification may be expressed or Implied [Section 197]:**
 - Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.
- b. **Knowledge requisite for valid ratification [Section 198]:**
 - No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.
- c. **The whole transaction must be ratified [Section 199]:**
 - There can be ratification of an act in entirety or its rejection in entirety.
 - The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest.
- d. **Ratification cannot injure third person [Section 200]:**
 - When the interest of third parties is affected, the principle of ratification does not apply.
 - Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.
- e. **Ratification within reasonable time:**
 - Ratification must be made within a reasonable period of time.
- f. **Communication of Ratification:**
 - Ratification must be communicated to the other party.
- g. **Act to be ratified must be valid:**
 - Act to be ratified should not be void or illegal, for
 - e.g. payment of dividend out of capital, forgery of signatures, any other criminal offence, or anything which is not permitted under law

Extent of Agent's Authority

(A) Under Normal Circumstances (Section 188)

To do an act has authority to do every lawful thing which is necessary in order to do such act

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



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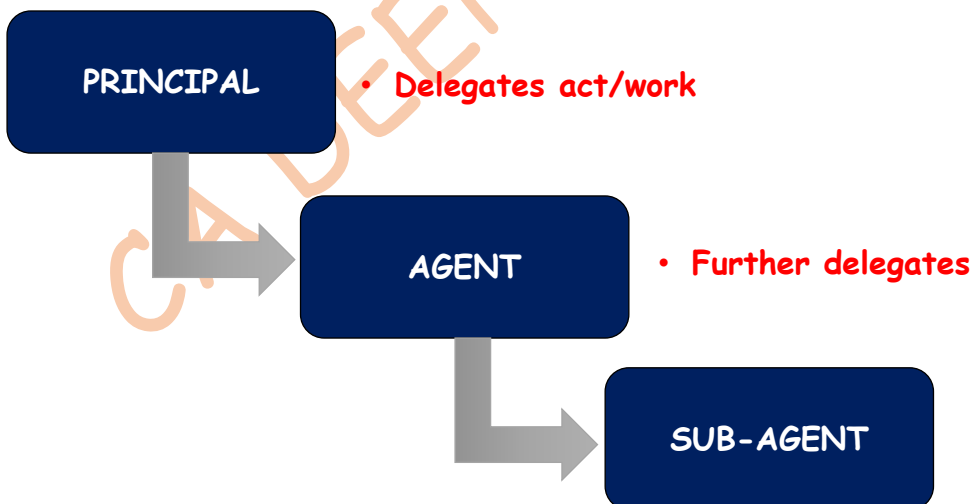


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(B) In Emergency (Section 189)

- An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.
- **Conditions for valid agency during emergency**
 1. Agent should not be in a position or have any opportunity to communicate with his principal within the time available.
 2. There should have been actual and definite commercial necessity for the agent to act promptly
 3. Agent should have acted bonafide and for the benefit of the principal.
 4. Agent should have adopted the most reasonable and practicable course under the circumstances, and
 5. Agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

Sub-Agents



- **When agent cannot delegate [Section 190]** : An agent cannot lawfully employ another 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 the agency, a sub-agent must, be employed.



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- "Sub-agent" defined [Section 191] : A "Sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

- The appointment of sub agent is not lawful, because the agent is a delegatee and a delegatee cannot further delegate.
- This is based on the Latin principle "**delegatus non potest delegare**".
- A contract of agency is of a fiduciary character.
- It is based on the confidence reposed by the principal in the agent and that is why a delegatee cannot further delegate.

Exception where an agent can appoint Sub-agent

The appointment of a sub agent would be valid if the terms of appointment originally contemplated it.

- Sometimes **customs of the trade** may provide for appointment of sub agents
- *In both these cases the sub agent would be treated as the agent of the principal.*

Where in the course of the agent's employment, **unforeseen emergency** arise making it necessary for him to delegate the authority that was given to him by the principal

Representation of principal by sub-agent properly appointed [Section 192]

Where a sub-agent is properly appointed

Principal is liable to third parties for the acts of the sub-agent

Agents responsibility for sub agents:

The agent is responsible to the principal for the acts of the sub-agent.

Sub-agents liability to principal:

The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or willful wrong.



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Agent's responsibility for sub-agent appointed without authority [Section 193]

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

Agent is responsible for his acts both to the principal and to third persons

Principal is responsible for the acts of the sub agent

- Sub agent is not responsible to the principal at all.
- He is answerable only to the agent.

Substituted Agent

- Substituted Agent is a **person appointed by the agent to act for the principal, in the business of agency, with the knowledge and consent of the principal.**
- Substituted agents are not sub agents.
- They are agents of the principal.

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

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

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

- 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 the agent so selected.



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DIFFERENCE BETWEEN A SUB-AGENT AND SUBSTITUED AGENT

S. No.	Sub Agent	Substitued Agent
1.	A sub-agent does his work under the control and directions of agent.	A substituted agent works under the instructions of the principal.
2.	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.
3.	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.
4.	The sub-agent is responsible to the agent alone and is not generally responsible to the principal.	A substituted agent is responsible to the principal and not to the original agent who appointed him.
5.	The agent is responsible to the principal for the acts of the sub- agent.	The agent is not responsible to the principal for the acts of the substituted agent.
6.	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.
7.	Sub-agents may be improperly appointed.	Substitued agents can never be improperly appointed.
8.	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 OBLIGATIONS OF AN AGENT

Duty to execute mandate

- Agent should perform the work which he has been appointed to do.
- Otherwise he shall be liable to compensate the principal.

Duty to follow instructions or customs (Section 211)

- Agent must conduct business as per the instructions of the principal.
- In absence of instructions, he must follow general customs of business.
- Otherwise, loss sustained/ undue profits made must be compensated back by agent to principal.

Duty to Reasonable care and skill (Section 212)

- Duty to reasonable care and skill to be used in exercising all his duties.
- Moreover, he is liable to compensate the principal for his negligence/misconduct



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**Agent duty to
communicate with
principal (Section 214)**

- Agent duty to communicate with principal and seeking his instructions in case of any difficulty in execution of his duties.

**Duty to Avoid Conflict of
Interest (Section 215)**

- a. Right of Principal when agent deals, on his own account, in business of agency without principals consent (Section 215)
The Principal may cancel the transaction if :
 - i. Material fact has been dishonestly concealed from him or
 - ii. Dealing have been disadvantageous to him.
- b. Principal's right to benefit gained by agent dealing on his account in business of agency (Section 216)
 - The principal is entitled to claim any benefit resulting from the transaction from the agent.

**Duty not to make secret
profits**

- An agent not to make any secret profit in the business of agency.
- His relationship with the principal is of fiduciary nature and this requires absolute good faith in the conduct of agency.

**Duty to render proper
accounts (Section 213)**

- Accounts supported with vouchers must be submitted whenever demanded by principal.

**Duty not to Delegate
(Section 190)**

- Acts which he is personally responsible to fulfil unless its required in ordinary course of trade.

**Agent's Duty to pay
sums received for
principal (Section 218)**

- Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

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



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RIGHT OF AN AGENT

Right of retain out of sums received on principal's account
(Section 217)

- a. All moneys due to himself
- b. Expenses properly incurred by him in conducting such business
- c. Remuneration

Right to remuneration
(Section 219)

- Remuneration may be as per contract or as per usual customary in business.
- **Section 120** : 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.

In the absence of any contract to the contrary an agent is entitled

- Retain the goods, papers and other property, whether movable or immovable of the principal.
- Until the amount due to himself for commission, disbursement and services in respect of the same has been paid or accounted for him.

Agent's lien on principal's property
(Section 221)

Conditions :

- ✓ Agent should be lawfully entitled to receive remuneration /commission from the principal
- ✓ Property belongs to the principal
- ✓ Property has been received by the agent in his capacity and during the course of his ordinary duties as agent.
- ✓ Agent has only a particular/ specific lien.

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

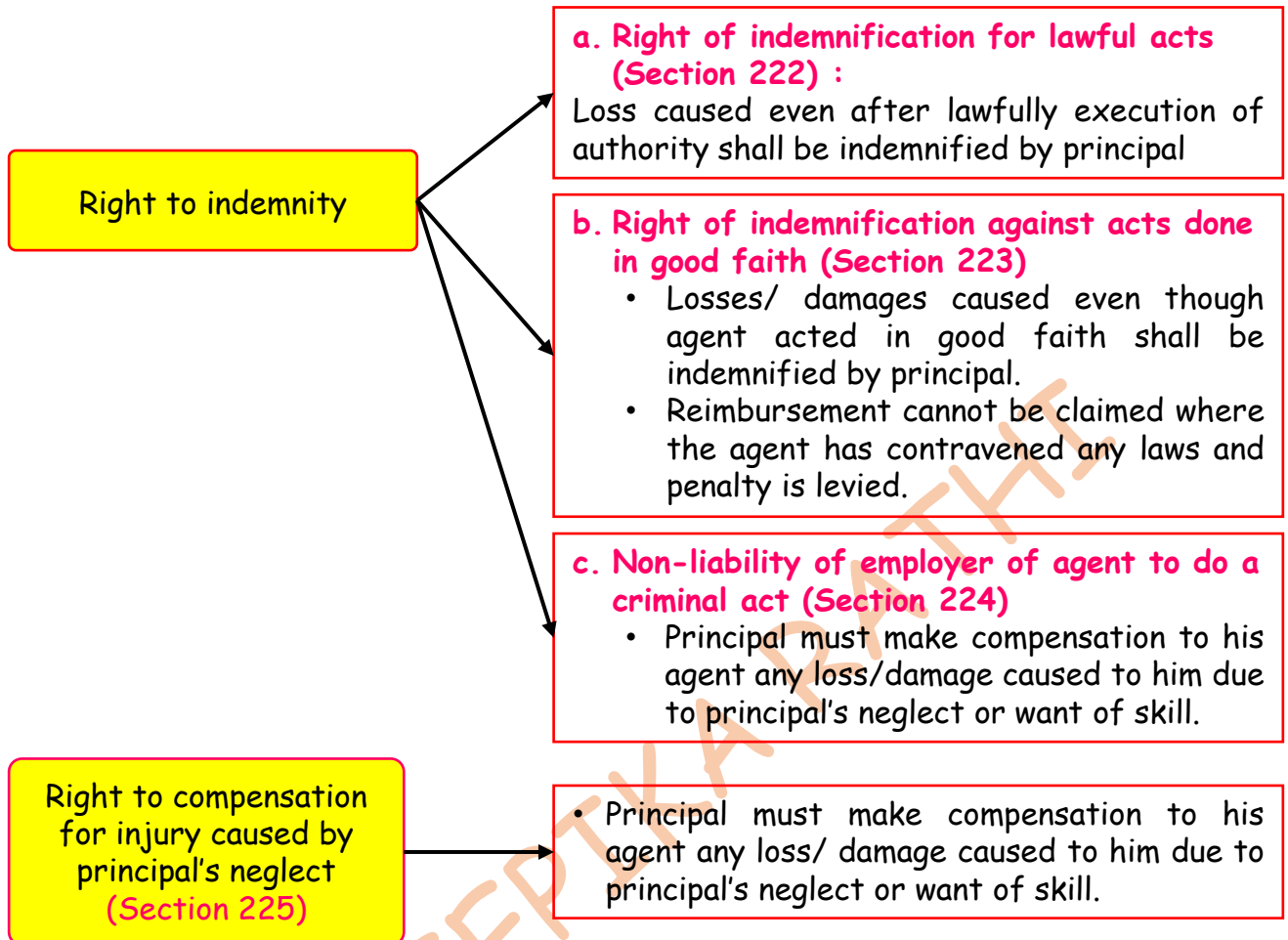
- ✓ Possession of the property is lost.
- ✓ Agent waives his right expressly or impliedly.
- ✓ Contract does not allow lien.



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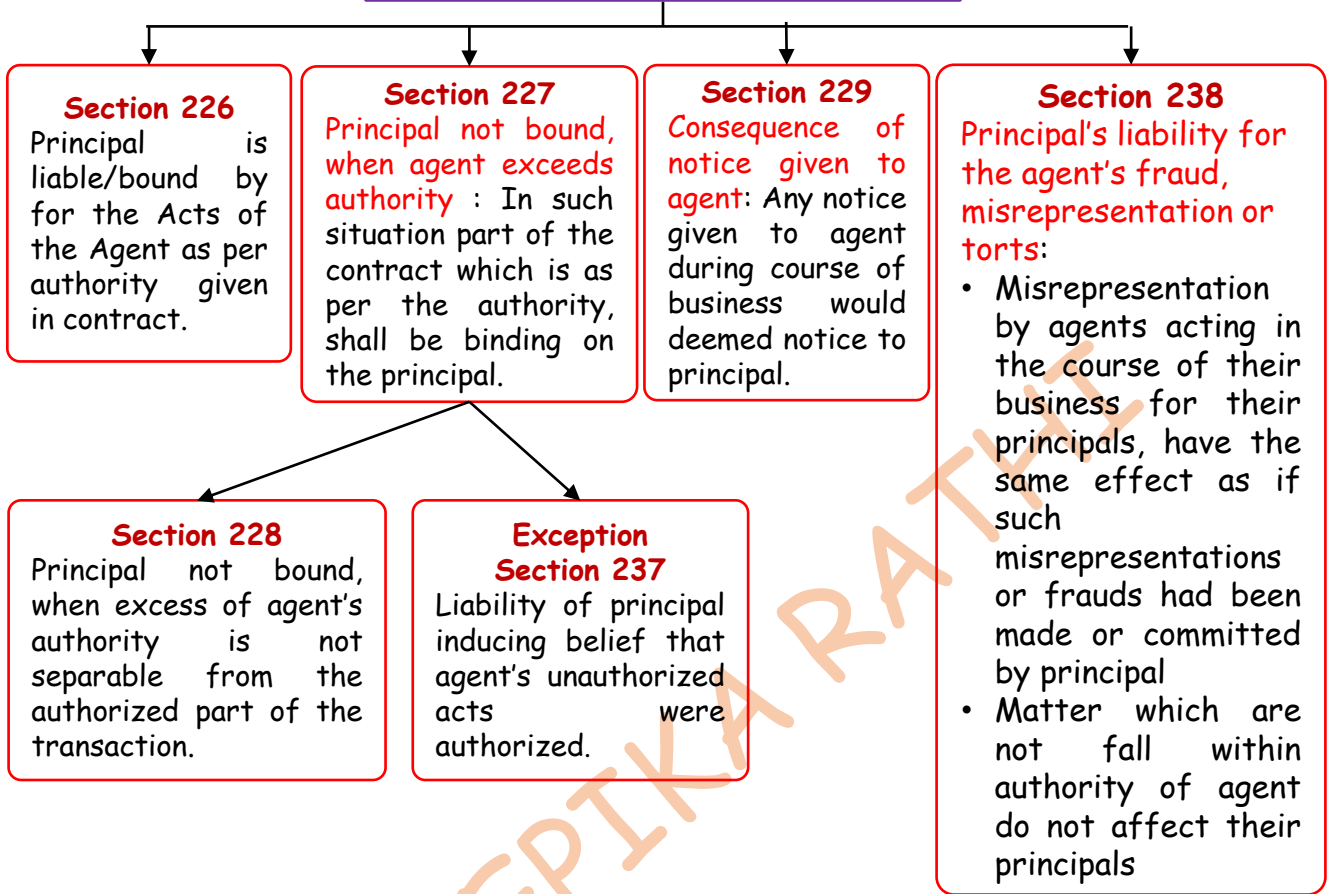


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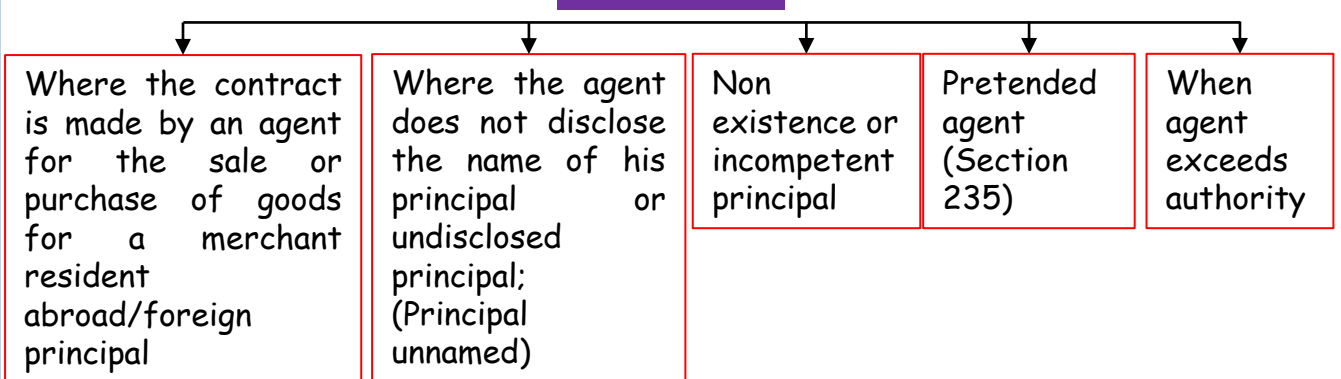
Principal's Liability to Third Parties



PERSONAL LIABILITY OF AGENT TO THIRD PARTIES

- **Agent cannot personally enforce nor be bound by, contract on behalf of principal [Section 230] :**
 - In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.
 - He can neither sue nor be sued on contracts made by him on his principal's behalf.

Exceptions





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Agent cannot personally enforce, nor be bound by, contracts on behalf of principal (Section 230) : Agent can neither sue nor be sued on contracts made by him on his principal's behalf.

RIGHTS OF THIRD PARTIES

(i) Rights of parties to a contract made by undisclosed agent [Section 231]

- If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.
- If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfill the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

(ii) Rights of parties to a contract made by undisclosed agent [Section 231]

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

(iii) Option to Third Person -Sue the Agent or the Principal

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

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

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

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



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REVOCATION OF AUTHORITY

Termination of Agency [Section 201]

Revocation

Renunciation
by agents

Completion of
business

Death of Principal or
the agent

Principal or agent
becoming of unsound mind

Insolvency of
principal

Expiry of time

i. Revocation

- **Section 203** : Principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal .
- **Section 204** : However, the principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise for acts already done in the agency.
- **Compensation for revocation by principal [Section 205]** : If there is premature revocation of agency without sufficient cause, the principal must compensate the agent, for such revocation.
- **Notice of revocation [Section 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 [Section 207]**: Revocation of agency may be expressed or implied in the conduct of the principal.

ii. Renunciation by Agent [Section 206]

- An agent may renounce the business of agency in the same manner in which the principal has the right of revocation.
- **Section 205** : If the agency is for a fixed period, the agent would have to **compensate the principal** for any premature renunciation without sufficient cause.
- **Section 206** : 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.



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iii. 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.

iv. Death or Insanity

- An agency is determined 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.

v. Principal's Insolvency

An agency ends on the principal being adjudicated insolvent.

vi. 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.

Section 202 states that "where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."

Effect of Termination [Section 208]

[When termination of agent's authority takes effect as to agent, and as to third persons Section 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.



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Agent's duty on termination of agency by principal's death or insanity [Section 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 interests entrusted to him.

Termination of sub-agent's authority [Section 210]

The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

CA DEEPIKA RATHI