



## Chapter 1: Indian Contract Act

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

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

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

#### Mode of contract of indemnity:

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

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

- offer and acceptance
- Intention to create legal obligation



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

#### Examples of contract of indemnity:

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



Sec 125: Rights of indemnity holder when sued:

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

(1) All damages which he may be compelled to pay in any suit w.r.t. matter to which indemnity applies.

(2) All cost which he may be compelled to pay in bringing or defending any suit provided:

- he did not contravene the orders of promisor, and
- acted as a prudent man would act if there were no contract of indemnity.

(3) all sums which he may have paid under terms of any compromise of any such suit provided compromise:

- was not contrary to orders of promisor, and
- was one promisee would have prudently made in the absence of such contract.

When does the liability of an indemnifier commence?

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

Sec 126: Contract of Guarantee (COG):

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



3 parties involved in a COG:

Surety - Person who gives guarantee

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

Creditor - Person to whom the guarantee is given

Example:

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

In a COG, there are 3 contracts in effect:

- (i) A principal contract (of loan) between the principal debtor and the creditor (C1)
- (ii) A secondary contract between the creditor and the surety (C3)
- (iii) An implied contract of indemnity between surety and debtor (C2) whereby debtor is under an obligation to indemnify the surety; if the surety is made to pay or perform.

Essential features of contract of guarantee:

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



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

#### 1. Principal debt:-

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

#### 2. Consideration :-

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

As per Section 127:

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

Examples:

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



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

### 3. Existence of a liability :-

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

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

Any guarantee obtained by means of :

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

### Example :

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

### 5. Writing not necessary :-

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

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

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



## Types of Guarantee :-

### 1. Specific Guarantee :

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

#### Example :

A guarantees payment to B of price of 5 bags of rice to be delivered by B to C and to be paid in a month. B delivers bags to C. C pays for them. This is contract of guarantee as he intended to guarantee only for payment of price of 5 bags delivered one time.

### 2. Continuing Guarantee :

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

#### Example :

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



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





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

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

#### Note :-

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

#### Example :

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

### Sec 132 - Liability of two person:

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

#### Example :

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



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

### Discharge of surety:

#### 1. By revocation of a continuing COG:

##### ↳ by notice (Sec 130):

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

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

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

##### ↳ by death (Sec 131):

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



↳ By novation (sec 62):

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

Revocation by conduct of creditors:

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

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

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

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

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

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

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

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



Surety is not discharged in below cases :-

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

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

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

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

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

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

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

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

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



By invalidation of COG:-

↳ Guarantee obtained by misrepresentation invalid - Sec 142:

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

↳ Guarantee obtained by concealment invalid - Sec 143:

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

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

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

Right of surety:-

[A] Right against PD

↳ Sec 140: Rights of subrogation

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

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



↳ Sec 145 : Implied promise to indemnify surety

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

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

[B] Right against the creditor

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

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

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



↳ Right to set off

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

↳ Right to share reduction

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

[C] Right against co-sureties

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

↳ Sec 146 : Co-sureties liable to contribute equally

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



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

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

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

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

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

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





## UNIT 2 : BAILMENT & PLEDGE

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

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

### Parties to bailment :

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

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

### Essential elements of bailment :

#### $\hookrightarrow$ Contract :-

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

#### $\hookrightarrow$ Delivery of goods :-

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



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

↳ Purpose :-

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

↳ Possession :-

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

↳ Return of goods :-

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

Types of bailments :

↳ Gratuitous bailment : [free of charge]

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

↳ Non-gratuitous bailment :

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



### Duties of bailor :-

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

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



Indemnify any loss	Bailor to indemnify any loss that bailee may sustain by reason that bailor was not entitled to make the bailment, or to receive back the goods
Bound to receive goods	<ul style="list-style-type: none"><li>- It is the duty of bailor to receive back the goods when bailee returns them after expiry of time or purpose of bailment is accomplished</li><li>- If bailor refuses - when offered at the proper time - the bailee can claim compensation for all necessary expenses incurred for safe custody</li></ul>

#### Duties of bailee:

##### ↳ Take reasonable care of bailed goods

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

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

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

##### ↳ Not make inconsistent or unauthorized use

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

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



according to the T&Cs of bailment

↳ Not to mix the goods

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

Mixing without consent of bailor

• Separable

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

• Impossible to separate

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

↳ Return the goods

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

Bailee responsible for damage:

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



↳ Return an accretion from goods

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

↳ No adverse title

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

Rights of Bailor:

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

Right of bailor and bailee against wrong doers:

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

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



### Rights of bailee :-

↳ Right to deliver goods to one of the joint bailors

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

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

↳ Indemnity - in case of bailor's defective title

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

↳ Right to claim compensation - for faulty goods

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

↳ Right to claim necessary expenses

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

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

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

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



given to dealer for repair. Bailee can apply

Termination of contract of bailment (COB)

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

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

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

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

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

Finder of Lost Goods :-

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





Can finder sue the real owner?

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

Finder of goods may sell such goods:

Generally, the finder does not have right to sell the goods

However, if owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it:

- when the thing is in danger of perishing or of losing the greater part of its value or
- when lawful charges of finder amount to  $\frac{2}{3}$ <sup>rd</sup> of its value

General v/s Particular Lien :-

Sec 170 : Particular Lien

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

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



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

#### Sec 171 : General Lien

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

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

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



### General lien

### Particular lien

Sec 171 : Right of general lien

Sec 170 : Rights of particular lien

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

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

It is not automatic but is recognised through an agreement

It is automatic

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

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

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

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

### Pledge

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

Ex: Jewellery deposited as security against loan



### Essentials of a contract of pledge:

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

### Rights of a pawnee / pledge

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

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

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

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

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

#### ↳ Right to extraordinary expenses incurred:

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



↳ Right to file suit:

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

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

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

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

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

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

Right of redemption:

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



#### Duties of pawnee :

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

#### Duties of pawnor :

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

#### Pledge by non-owners :

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

##### 1. Mercantile Agent

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



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

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

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

## 3. Limited interest

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

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

## 4. Pledge by a co-owner

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



5. Pledge by seller or buyer in possession

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

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





### UNIT 3 : AGENCY

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

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

Test of agency :

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

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

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

Appointment of an agent :

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

Who may become an agent ?

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

Can a minor become an agent ?

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



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

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

### Modes of creation of agency

#### ↳ Express authority

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

Ex: Appointment of caretaker by way of power of attorney

#### ↳ Implied Authority

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

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

Ex: - Person realising rental on behalf of landlord

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



#### ↳ Agency by estoppel

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

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

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

#### ↳ Necessity

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

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

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



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

#### ↳ Ratification

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

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

#### Essentials of valid ratification:

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

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

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

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



### Extent of Agent's Authority:

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

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

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

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

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

### Sub-Agents:

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

General Rule - Agent cannot delegate further:

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



Exception where an agent can appoint sub-agent :

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

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

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

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

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

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

Substituted agents

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

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



Sec 194 : Relation between principal and substituted agents

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

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

Sec 195 : Agent's duty in naming such person

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

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

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



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





## Duties and obligation of an agent :-

### ↳ Duty to execute mandate :

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

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

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

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

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

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

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

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

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



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

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

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

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

↳ Sec 215: Duty to avoid conflict of interest

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

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

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



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

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

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

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

↳ Duty to make secret profits

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

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

↳ Sec 213: Duty to render proper accounts on demand

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

↳ Sec 190: Duty not to delegate

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



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

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

Rights of an agent:

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

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

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

↳ Sec 219: Right to remuneration

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

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



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

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

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

The conditions of this right are:

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

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

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

↳ Right to indemnity

• Right to indemnification for lawful acts - Sec 222

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



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

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

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

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

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

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



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

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

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

Principal's liability to third parties :-

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

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

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

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

↳ When agent exceeds authority [Sec 227]

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



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

↳ Not bound when excess of agent's authority is not separable [Sec 222]  
Where an agent does more than he is authorized to do and what he does beyond the scope of his authority cannot be separated, principal is not bound to recognize the transaction

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

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

Exception:

Liability of principal including belief that agent's unauthorized acts were authorized [Sec 211]  
When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third person to believe that such acts and obligations were within the scope of the agent's authority

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





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

Consequences of notice given to agent [sec 229]

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

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

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

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

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

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



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

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

#### Compensation for revocation by principal [Sec 205]

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

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

#### Notice of revocation [Sec 206]

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

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

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

#### b) Renunciation by agent [Sec 206]

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



renunciation without sufficient cause [sec 205]

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

c) Completion of business:

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

d) Death or insanity

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

e) Principal's insolvency

An agency ends on the principal being adjudicated insolvent

f) On expiry of time

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

When the agency is irrevocable?

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

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



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

When does termination take effect? [sec 208]

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

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





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

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

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

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



*Thank You*