

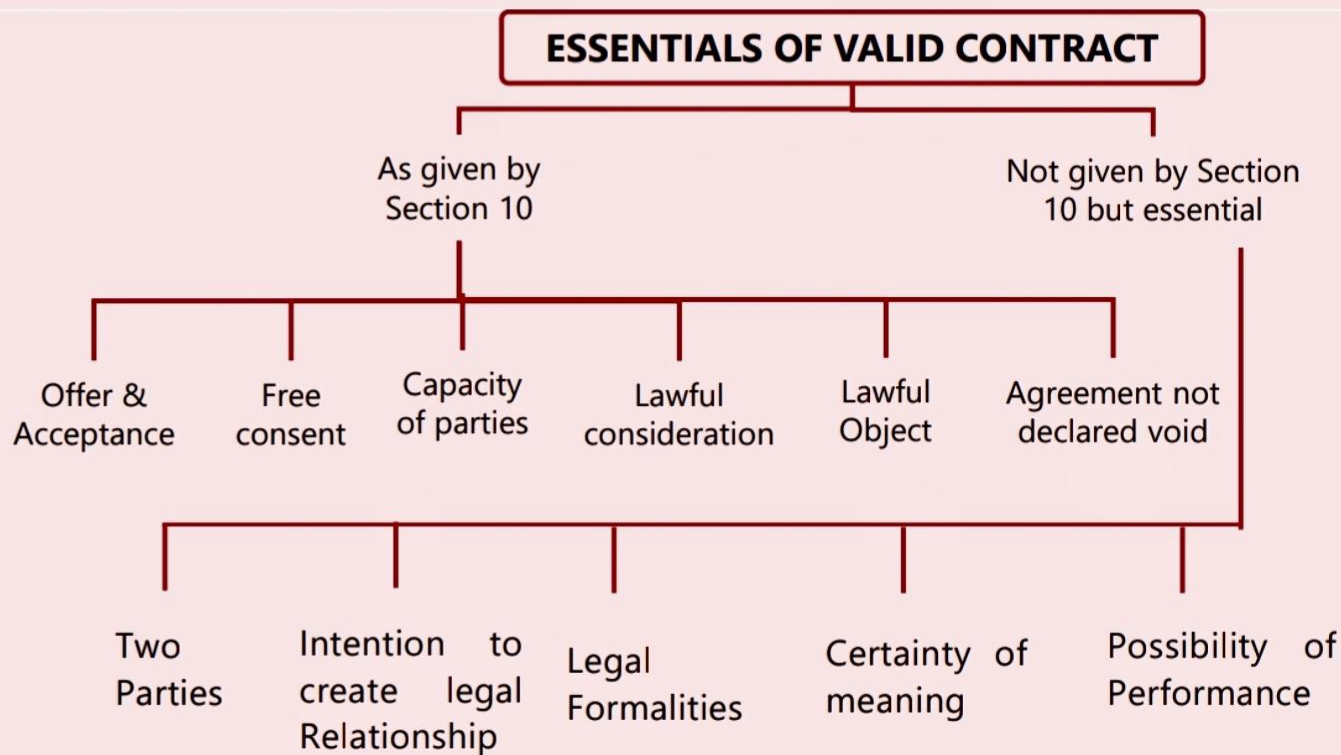
Chapter 02

Indian Contract Act 1872

unit 1



Note: Agreement may be social or legal. Social Agreement is not enforceable by law.



CLASSIFICATION OF CONTRACTS

On the Basis of Validity or Enforceability

- 1. Valid Contract:** Contains all the essential elements of valid contract.
- 2. Void Contract: Sec. 2(j):** A contract, which ceases to be enforceable by law.
- 3. Voidable Contract: Sec.2(i):** An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others.
- 4. Illegal Contracts:** A contract which is forbidden by law.
- 5. Unenforceable Contract:** Contract is good in substance but having technical defect

On the Basis of Formation

- 1. Express Contract:** By words spoken or written
- 2. Implied Contract or tacit contract:** Where the proposal or acceptance is otherwise than in words.
- 3. Quasi Contract:** The law creates and enforces legal rights and obligations when no real contract exists.
- 4. E-Contracts:** A contract is entered into by two or more parties using electronics means.

On the Basis of Performance

- 1. Executed Contracts:** Both the parties have performed their respective obligations.
- 2. Executory Contract:** Both the parties have yet to perform their obligations.
 - a. Unilateral or one-sided contract:** Only one party has fulfilled his obligation
 - b. Bilateral contract:** Both the parties have to perform

PROPOSAL OR OFFER Sec.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".

Classification of Offer

- (a) General Offer:** Offer to the world at large.
- (b) Specific Offer:** Offer made to a definite person
- (c) Cross Offer:** When two parties make identical offers to each other
- (d) Counter Offer:** When offeree imposes conditions which have the effect of modifying or varying the offer.
- (e) Standing or continue or open offer:** Offer to public at large for acceptance for certain period of time

Essentials of A Valid Offer

1. Must be with intent to create legal relationship
2. Terms of the offer must be certain, definite & unambiguous.
3. Must be communicated to the offeree.
4. Must be made with a view to obtaining the assent of the other party.
5. May be conditional.
6. Must not contain a term the non-compliance of which amount acceptance.
7. May be general or specific or express or implied.
8. An offer must be distinguished from an invitation to offer.

ACCEPTANCE Sec 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".

Legal Rules

1. Given only by the person to whom offer is made.
2. Must be absolute and unqualified.
3. Must be communicated.
4. Must be in the prescribed mode.
5. Mere silence is not acceptance.
6. May be by conduct/implied Acceptance

COMMUNICATION OF OFFER AND ACCEPTANCE

Mode of Communication: By Act, By Omission, By Conduct

Communication of Offer: (Sec.4)

The communication of offer is completed when it comes to the knowledge of person to whom it is made.

Communication of Acceptance: (Sec.4)

The communication of acceptance is complete-

- as against the proposer when it is put into a course of transmission to him, so as to be out of the power of acceptor to withdraw the same.
- as against the acceptor when it comes to the knowledge of proposer.

REVOCATION OF OFFER AND ACCEPTANCE

Time for revocation

Proposal: Before the communication of its acceptance is complete as against the proposer.

Acceptance: Before communication of the acceptance is complete as against the acceptor

Mode of Revocation

1. By communication of notice.
2. By lapse of time it is not accepted within the prescribed time.
3. By non-fulfillment by the offeree of a condition precedent to acceptance.
4. By death or insanity of the offer or provided the offeree comes to know of it before acceptance.
5. If a counter-offer is made to it.

Chapter 2

Indian contract act

unit 2

CONSIDERATION Sec.2(d)

"When at the desire of the promisor, the promisee or any other person has done or abstained from doing, something, such act or abstinence or promise is called a consideration for the promise."

Legal Rules

- (i) move at the desire of the promisor.
- (ii) move from the promisee or any other person.
- (iii) may be executed and executor.
- (iv) May be past, present or future.
- (v) need not be adequate.
- (vi) must be something which the promisor is not already bound to do.
- (vii) must be real, not illusory.
- (viii) must not be unlawful, immoral or opposed to public policy.

Suit by a Third Party to any Agreement

- (i) Trust
- (ii) Family Settlement
- (iii) Marriage contracts
- (iv) Assignment of contract
- (v) Acknowledgement or estoppel
- (vi) Covenants running with land
- (viii) Agency

Contract is Valid even without Consideration in following situations:

- (i) A written and registered agreement based on natural love and affection between near relatives
- (ii) A promise to pay for a past voluntary service is binding
- (iii) A written promise to pay time-barred debt.
- (iv) Agency.
- (v) Completed gifts
- (vi) Bailment(sec.148).
- (vii) Charity

Chapter 2

Indian contract act

unit 3

Minor: Sec.3 Indian Majority Act, 1875: Minor who is under 18 years.

Position of a contract with Minor

1. Agreement with or by minor is void-ab-initio agreement
2. Cannot be ratified on attaining majority.
3. Minor can be a beneficiary or can take benefit out of a contract.
4. Minor can always plead minority.
5. Minor's estate is liable for necessities.
6. Minor is personally liable for contracts for his benefit or supply of necessities entered by guardian within scope of authority.
7. No specific performance can be claimed.
8. Minor cannot be adjusted insolvent.
9. Minor cannot enter into partnership.

10. Minor can be an agent without incurring any personal liability.
11. Parents/guardians are not liable for the contract entered into by him.
12. In case of joint contract by adult and minor, only adult is liable.
13. If adult is surety for minor, adult is liable as direct contract between adult and third party.
14. Shares cannot be allotted to minor but minor can become a shareholder by transfer or transmission of fully paid shares to him.
15. Minor is Liable for torts.

1. Contract with person of unsound mind is void.

2. Person usually Unsound. sometimes sound - can contract when sound.

3. Person usually sound. sometimes unsound - cannot contract when unsound.

Disqualified by Law

1. Foreign sovereigns (Rulers)
2. Alien Enemy
3. Corporations
4. Convicts.

CONSENT & FREE CONSENT

Consent: "Two or more persons are said to consent when they agree upon the same thing in the same sense." (Consensus-ad-idem). When there is no consent, there is no contract.

Free Consent(Sec.14): Consent is said to be free when it is not caused by

Coercion (Sec. 15)

(i) Committing or threatening to commit any act forbidden by IPC

(ii) Unlawful detaining or threatening to detain any property.

Consequences

(i) Voidable at the option of party whose consent was so caused.

(ii) Person to whom money is paid or thing delivered under coercion must repay or return it.

Burden of Proof

Lies on the aggrieved party
Note: Threat to commit suicide is coercion

Undue Influence (Sec. 16)

One party is in the position to dominate the will of other and it takes unfair advantages of relation.

Consequences

(i) Voidable at the option of party whose consent was so caused.

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

Burden of Proof

Firstly, Lies on the aggrieved party after that other party has to prove that no undue influence.

Fraud (Sec. 17)

(i) Knowingly make a false suggestion.

(ii) Active concealment of a fact

(iii) Promise without any intention of performance.

(iv) Any other act fitted to deceive.

(v) Act or omission declared by law as fraud.

Essentials

(i) The representation must be false.

(ii) Misrepresentation must be made willfully.

(iii) Misrepresentation must be made with intention to deceive the other party.

(iv) The other party is actually deceived.

(v) The other party has suffered a loss.

Note. Silence amounts to fraud where:

(i) There is a duty to speak.

(ii) His silence is speech.

Consequences

Party can

- rescind the contract.

- insist for genuine performance.

- sue for damages.

Note: If party takes any benefit, contract is not voidable.

Mis- representation (Sec. 18)

(i) False statement but maker believes it to be true.

(ii) Breach of duty without any intention to deceive.

(iii) Misrepresentation even made innocently, the other party has actually acted.

Consequences

Party can

- rescind the contract.

- insist for genuine performance.

Mistake (Sec. 20 to Sec.22)

Mistake of Law

(i) Mistake of law of the country-

Contract is not voidable.

(ii) Mistake of law of a foreign country- Contract is void.

Mistake of Fact

(i) Bilateral Mistake-

Contract is void if- mistakes relates to material fact; both parties are under mistake.

(ii) Unilateral Mistake- Contract is neither void nor voidable

UNLAWFUL OBJECT AND CONSIDERATION (Sec.23)

If consideration or object forbidden by law	When consideration or object is of such a nature that if permitted it would defeats provisions of law	When it is fraudulent	When consideration involves injury to person or property of another	When consideration is immoral	When consideration is opposed to public policy
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Agreements of trading with enemy	Trafficking relating to Public Offices & titles.	Interference with the course of justice
Agreement of stifling prosecution	Agreements tending to create monopolies	Interest against obligation
Maintenance & champerty	Marriage brokerage agreements	Consideration unlawful in part

VOID AGREEMENTS

Made by Incompetent Parties(S.11)	Without consideration (S.25)	With uncertain meaning (S.29)
Under a mutual mistake of fact (S.20)	In restraint of marriage (S.26)	Wagering Agreements (S.30)
Unlawful consideration or object (S.23)	In restraint of trade (S.27)	To do impossible act (S.56)
Unlawful consideration or object in part(S.24)	In restraint of legal proceedings (S.28)	

WAGERING AGREEMENT (SEC. 30)

<p>Meaning: Agreement between two parties by which one promises to pay money or money's worth on the happening of same uncertain event in consideration of the other party's promises to pay if the event does not happen.</p>	<p>Essentials</p> <ul style="list-style-type: none"> (i) Promises to pay money (ii) Uncertain event (iii) Mutual Chances of win or lose. (iv) No control over the event (v) No other interest in the event. <p>Effects</p> <ul style="list-style-type: none"> (i) Agreement is void (ii) No suit to recover amount won. 	<p>Transactions are not Wager</p> <ul style="list-style-type: none"> (i) Chit Fund (ii) Share market transactions in which delivery of stocks and shares is intended to be given & taken. (iii) Game of skill, crossword, etc. (iv) a contribution toward any prize value of Rs. 500 or above to be awarded to the winner or winners of a horse race. (v) A contract of insurance.
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UNIT-4: PERFORMANCE OF CONTRACT

PERFORMANCE OF CONTRACTS (SEC.37)

Meaning: Fulfillment of obligations to contract

Types

- (i) Actual: Party actually fulfills the obligation.
- (ii) Tender Performance (Sec. 38): Promisor offers to perform his obligation under the contract at the proper time and place but the promisee refuses to accept the performance.

Condition for a Valid Tender Performance

- 1. Must be unconditional.
- 2. At proper time & Place.
- 3. Reasonable opportunity to examine goods.
- 4. For whole obligation.

By Whom

- 1. Promisor himself
- 2. Agent: Where contract doesn't involve personal skills.
- 3. Legal Representative: In case of death of promisor. However, if contract involves personal skill, it comes to an end with death of promisor.
- 4. Third persons: When promisee accepts performance from a third person, he cannot afterward enforce it against promisor.

Performance of Joint Promises

- 1. All joint promisors are liable jointly and severally. However Contract may provide otherwise.
- 2. In case of death of any joint promisor, legal representative with surviving joint promisors jointly fulfill the promise.
- 3. One has right of contribution from others.
- 4. If one of the joint promisors is released, he is responsible to the other joint promisor or promisors.

Time place and manner: As decided otherwise during business hours at business place or residence of promise.

Performance of Reciprocal Promises

1. Mutual and Concurrent- Promises have to be simultaneously performed.

2. Mutual and Dependent- If the promisor, who must perform, fails to perform it, he cannot claim the performance of the reciprocal promise.

3. Mutual and Independent- Each party must perform his promise without waiting for the performance or readiness to perform on the part of the other.

Note1: Where contract is not complete in time &:-

- (a) Time is essential – Contract is voidable.
- (b) Time is not essential – Contract not voidable but compensation is there.

Note2: Contract to do impossible act is void.

Note3: Reciprocal promises to do things legal and also other things illegal-first set of promises is a contract but second is a void agreement.

Appropriation of Payment (Adjustment of Payment Against Debt)

Rule1: Appropriation by Debtor- if accepted, must be applied to that debt.

Rule2: Appropriation by Creditor- Debtor does not intimate, the creditor may apply it at his discretion to any lawful debt including a time-barred debt. (But not to a disputed debt)

Rule3: Where neither party appropriates – neither party makes any appropriation the payment is to be applied in discharge of the debts in order of time, including time-barred debts. If the debts are equal the payment is to be applied proportionately.

Contracts which need not be performed

- 1. If the parties mutually agree to substitute the original contract by a new one or to rescind or alter it.
- 2. If the promise dispenses with or remits, wholly or in part the performance of the promise made to or extends the time for such performance or accepts any satisfaction for it.
- 3. If the person, at whose option the contract is voidable, rescinds it.
- 4. If the promisee neglects or refuses.
- 5. If it is illegal.



UNIT – 5: BREACH OF CONTRACT AND ITS REMEDIES

1. In case of breach of contract by one party, the other party need not perform his part of the contract and is entitled to compensation for the loss occurred to him.
2. Damages for breach of contract must be such loss or damage as naturally arise, in the usual course of things or which had been reasonably supposed to have been in contemplation of the parties when they made the contract, as the probable result of the breach.
3. Any other damages are said to be remote or indirect damages, hence, cannot be claimed.

REMEDIES FOR BREACH OF CONTRACT

Suit for Damages

Monetary Compensation

Kinds of Damages

1. **Ordinary Damages**- Equal to actual loss but not for indirect or remote loss.
2. **Special Damages**- Decided at the time of contract entered.
3. **Exemplary Damages**- Granted only in-case of breach of contract to marry & unjustified dishonor of cheque.
4. **Nominal Damages**- When there is no loss
5. **Damages for deterioration caused by delay**- Can be recovered from carrier even without notice.
6. **Liquidated Damages & Penalty**-If damages equal to loss then liquidated damages. If more than loss then penalty (Note Under 'English law' Liquidated damages are enforceable but penalties cannot be claimed).

Rescission of Contract

Termination of contract by promisee when promisor refuses to perform.

Suit for Specific Performance

Where damages are not an adequate remedy, court may direct party in breach to carry out his promise according to terms of contract.

Suit for Injunction

Order of the court

Where a party does something which he promised not to do, the Court may issue an order, prohibit him from doing so.

Quantum Meruit

As much as earned

When a person has done some work under a contract, and other party repudiated the contract, or some event happens which makes the further performance of contract impossible then party who has performed the work can claim remuneration for the work he has already done.

UNIT – 6: CONTINGENT AND QUASI CONTRACTS

CONTINGENT CONTRACT (SEC.31)

A contract to do or not to do something if some event, collateral to such contract, does or does not happen. E.G. Contracts of insurance, indemnity or guarantee.

Legal Rules

<u>Contingent upon</u>	<u>When can it be enforced</u>	<u>When it become void?</u>
Happening of an event	When event has happened	When event becomes impossible
Non-happening of an event	When the happening of the event becomes impossible	When event has happened.
Behavior of a person within the specified time	Such person acts in specified manner.	When such person does anything which renders it impossible
Happening of an event within the specified time	When event has happened within the specified time.	When event has not happened within the specified time OR Event becomes impossible before expiry of specified time.
Non-happening of an event within the specified time	When event has not happened within the specified time OR Event becomes impossible before expiry of specified time.	When event has happened within the specified time.
Happening of an impossible event	Void, whether the impossibility of the event is known or not known to the parties to the agreement at the time when it is made.	

QUASI CONTRACTS

Under certain special circumstances, the law creates and enforces legal rights and obligations, although the parties have never entered into a contract.

Types of Quasi Contracts

1. Claims for necessities supplied to a person incompetent to contract (but upto property of incompetent.)
2. Reimbursement to a person paying money due by another in the payment of which he is interested.
3. Obligation of a person enjoying benefits of non-gratuitous (without any cost) acts.
4. Responsibility of a finder of lost goods. His responsibility is same as that of a bailee.
5. Liability of a person to whom money is paid or goods delivered under mistake or coercion.

UNIT – 7: CONTRACT OF INDEMNITY AND GUARANTEE

CONTRACT OF INDEMNITY

'Indemnify' meaning: To make good the loss incurred by another person.

Sec.124 covers the losses caused:

- i) By the conduct of promisor himself or
- ii) By the conduct of any other person.

But as per decision taken in case of *Gajanan Moreshwar v/s Moreshwar Madan (1942)*, losses by conduct of promisee, or accident, or act of God.

Parties to Contract of Indemnity

Indemnifier' - who promises to compensate for the loss,

'Indemnity Holder' or the 'Indemnified' - whose loss is to be made good

Rights of Indemnity Holder

Right to recover

- all damages,
- costs of suit,
- other sums.

CONTRACT OF GUARANTEE

'Guarantee' meaning:

Contract to perform the promise; or discharge the liability, of a third person in case of his default.

Parties to Contract of Guarantee

Surety: Who gives the guarantee,

Principal Debtor: In respect of whose default the guarantee is given,

Creditor: To whom the guarantee is given

Essential Features

1. **Purpose:** To secure the payment of a debt.
2. **Consideration:** Must be there, may be direct or indirect.
3. **Existence of liability:** Liability must be legally enforceable, not time barred.
4. No misrepresentation or concealment
5. May be oral or written.
6. Joining of co-sureties must be if provided in contract.

Types of Guarantee

Specific Guarantee

1. Guarantee which extends to a single debt/specific transaction,
2. Surety's liability comes to an end when guaranteed debt is duly discharged.

Continue Guarantee

1. Guarantee which extends to a series of transaction,
2. Surety's liability continues until the revocation of the guarantee,

Modes of Discharge of Surety

By Revocation

1. By Notice,
2. By surety's death,
3. By Novation,

By Conduct of Creditors

1. By variance in terms,
2. By release or discharge of PD,
3. Composition with PD,
4. Impairing surety's remedy,

On Invalidity of Contract of Guarantee

1. Guarantee obtained by misrepresentation,
2. Guarantee obtained by concealment,
3. Guarantee on contract that creditor shall not act on it until co-surety joins

Rights of Surety

Against Principal Debtor

1. Right of Subrogation,
2. Right of Indemnity,

Against Creditor

1. Right to Security
2. Right to Set Off
3. Right to share reduction

Against Co-Sureties

1. Right to claim contribution equally,
2. Right to claim contribution only agreed sum

UNIT-8: BAILMENT AND PLEDGE

BAILMENT (SECTION 148-171)

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

Parties

Bailor: Who delivers;
Bailee: Who receives;

Essentials

1. Agreement,
2. Delivery of goods,
3. For some purpose,
4. Return of goods

Kinds of Bailment

On the basis of benefit

1. For the benefit of Bailor
2. For the benefit of Bailee
3. For the benefit of both

On the basis of consideration

1. Gratuitous – No consideration
2. Non-Gratuitous – For consideration

Gratuitous Bailment : without Consideration, Bailor is liable for known faults Only. All expenses born by Bailor.

Non-Gratuitous Bailment: With Consideration, Bailor is liable for all faults, Extra Ordinary expenses born by Bailor

Duties & Rights

Duties of Bailor

1. Disclose known faults,
2. Bear expenses,
3. Indemnify Bailee,
4. Receive back goods.

Rights of Bailor

1. Terminate bailment,
2. Demand return of goods any time,
3. Claim accretion,
4. Right against third party.

Duties of Bailee

1. Take care of the goods bailed,
2. No unauthorized use of goods,
3. Not mix goods with own goods,
4. Return the goods,
5. Return accretions to goods,
6. Not to set up adverse title

Rights of Bailee

1. Delivery to any of joint bailors,
2. Right to compensation,
3. Claim necessary expenses,
4. Action for wrongful deprivation of goods,
5. Right of lien

Termination of Bailment

1. On expiry of stipulated period,
2. Accomplishment of Specified purpose,
3. Doing anything inconsistent with conditions,
4. Gratuitous Bailment (Any time),
5. By Death,
6. Destruction of subject-matter,

Finder of Lost Goods

Duties: Same as of Bailee,

Rights: Lien, Sue for Reward, Sale of Goods,

Lien

Meaning: To retain the goods belonging to another until his claim is satisfied or some debt due to him is repaid,

General Lien: Right to retain any goods in respect of any debt.

Particular Lien: Right to retain any goods in respect of concerned debt only.

PLEDGE (SECTION 171 – 181)

Meaning: Bailment of goods as security for payment of a debt or performance of a promise.

Parties: Bailor – Pawnor; Bailee – Pawnee

Pledge by Non-owner

1. Pledge by Mercantile Agent,
2. Pledge by Person in Possession under voidable contract,
3. Pledge where Pawnor has only a Limited Interest,
4. Pledge by co-owner in possession,
5. Pledge by buyer or seller in possession

Duties & Rights

Duties of Pawnor

1. Pay Debt,
2. Indemnify Pawnee,
3. Disclose all the faults,
4. Pay extra ordinary expenses,
5. Pay deficit if Pawnee sells goods due to default by Pawnor

Rights of Pawnor

Same as that of Bailor alongwith right of redemption (*to recover back the goods by making of the payment of debt*)

Duties of Pawnee

1. Take care of the goods bailed,
2. No unauthorized use of goods,
3. Not mix goods with own goods,
4. Return the goods,
5. Return accretions to the goods,
6. Not to set up adverse title

Rights of Pawnee

1. Retain the Pledged Goods,
2. Retention for Subsequent Debts,
3. Recover Extraordinary Expenses,
4. Right on Default by Pawnor

UNIT-9: AGENCY

AGENCY (SECTION 172-238)

Agency: Relation between an agent and his principal created by an express/ implied agreement authorising an agent by his principal to create contractual relations with third parties.

Agent: Person employed to do any act for another, or to represent another.

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

Who can be Agent: any person including minor, Person of unsound mind

Who can appoint an Agent: Major, Person of sound mind

Modes of creation of Agency

By Express Agreement

By Implied Agreement

a. Agency by Estoppel or holding out, b. By Necessity

By Operation of Law

By Ratification

Essentials for Valid Ratification

a. May be express or implied; **b.** Full knowledge of facts; **c.** Whole transaction must be ratified; **d.** Ratification not put a third party to damages; **e.** Within reasonable time; **f.** Communication; **g.** Act to be ratified must be valid

Extent of Agent's Authority

1. An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.
2. An agent having an authority 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.
3. In emergency, an agent has authority to do all such acts for the purpose of protecting his principal from loss.

Sub- Agent

A person who is appointed by and acts under the control and direction of original agent.

Rules of Sub-Agent

1. Work under control and directions of agent.
2. Agent delegates a part of his own duties to Sub Agent.
3. No privity of contract between principal and sub-agent.
4. Sub-agent is responsible to the agent only.
5. Agent is responsible to the principal for the acts of the sub- agent.
6. Sub-agent has no right of action against the principal for remuneration due to him.

Substituted Agent

A person appointed by agent to act for principal with knowledge and consent of principal.

Rules of Substituted Agent

1. Works under the instructions of the principal.
2. Agent does not delegate any part of his task to a substituted agent.
3. Privity of contract exists between a principal and a substituted agent.
4. Responsible to the principal.
5. Agent is not responsible to the principal for the acts of the substituted agent.
6. Substituted agent can sue the principal for remuneration due to him.

Duties & Rights of Agent

Duties of Agent

1. To act according to Principal,
2. Reasonable care,
3. Present proper accounts,
4. Communicate with principal,
5. Not to deal on his own account,
6. Not to make secret profit,
7. Not to delegate authority.
8. Pay sums received,
9. Not to Mis-use information obtained

Rights of Agent

1. Right of Retainer,
2. To receive agreed remuneration,
3. Right of lien,
4. Right of indemnification,
5. Right of compensation for injuries.

Personal Liability of Agent

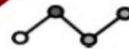
1. Foreign principal,
2. Undisclosed principal,
3. Principal incompetent,
4. Pretended Agent.
5. Acts beyond his authority

Termination of Agency

1. By Revocation
2. By Renunciation by agent
3. On completion of business.
4. On death or insanity of Principal or Agent
5. Principal's insolvency
6. On expiry of time

CHAPTER

3



THE SALE OF GOODS ACT, 1930

