

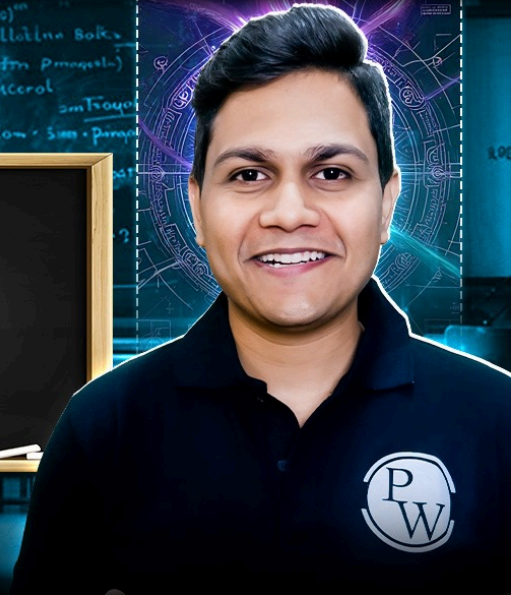
CA FOUNDATION

CHANAKYA 3.0

BUSINESS LAWS

**INDIAN
CONTRACT
ACT, 1872**

ONE SHOT





| Chapter No. | Unit | Topic |
|-------------|------|--|
| 2 | 1 | Nature of Contracts |
| | 2 | Consideration |
| | 3 | Other Essential Elements of a Contract |
| | 4 | Performance of Contract |
| | 5 | Breach of Contract It's Remedies |
| | 6 | Contingent & Quasi Contracts |
| | 7 | Contract of Indemnity & Guarantee |
| | 8 | Bailment & Pledge |
| | 9 | Agency |

General
Contract
(1 - 75)

Special
124 - 238

Chapter wise Pattern

| Ch.No | Chapter | Q.No. | Marks | Earlier | Now |
|-------|-------------------------------|--------------|-----------|---------------|---------------|
| 2 | The Indian Contract Act, 1872 | 1)a) | 7 | Case Study | Case Study |
| | | 3)c) | 6 | Direct Theory | Case Study |
| | | 4)a) | 7 | Case Study | Case Study |
| | | 5)c) | 6 | Direct Theory | True Or False |
| | | 6)b) | 6 | Direct Theory | Direct Theory |
| | | Total | 32 | | |

If ICA skipped \Rightarrow Can't Attend
more than 75
marks

1) 1st time

→ Yes^{*}

★ QB + Speed

2) Attempt

→ J26

> m26

charges in old sm & New sm
CA foundation / pw

Crux
↓

No
charge

3) Notes → PW App

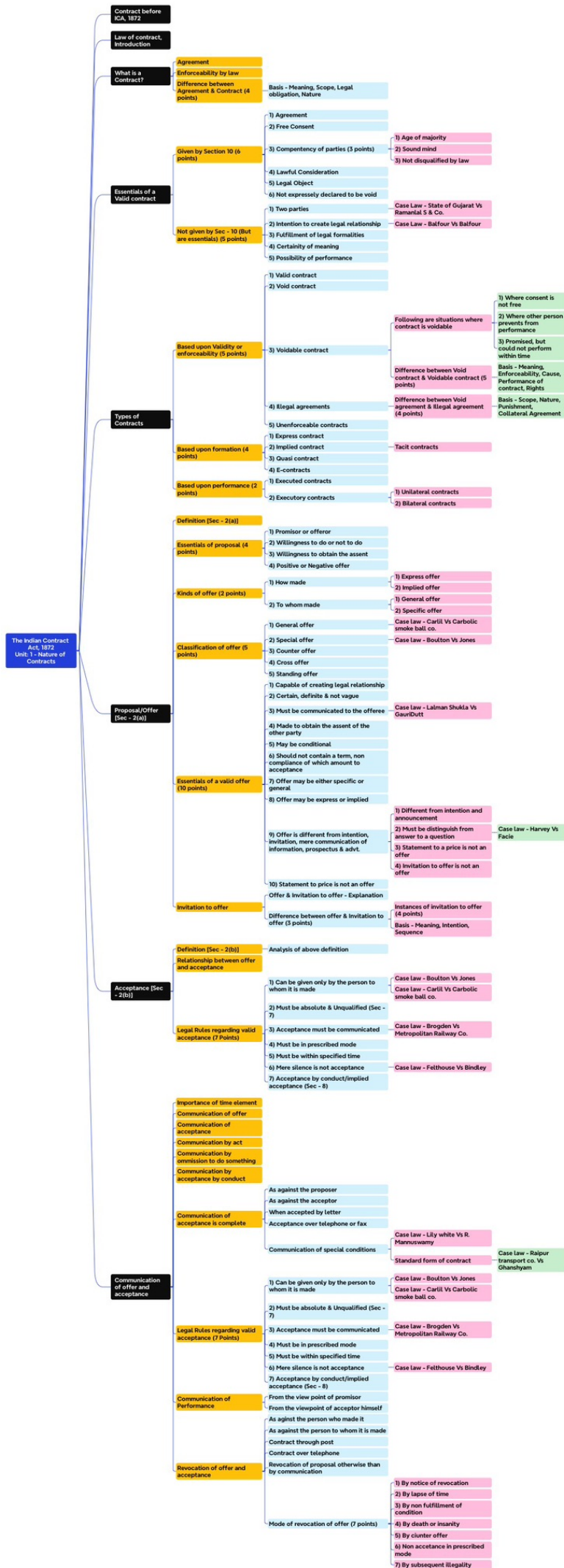
⇓

Search on YT ⇒ Business Laws free
Youtube videos ke
Notes kese lein?

⇓

Shorts ✓

4) Break ⇒ slot of 2-3 units minimum



**Contract [Section 2(h)]**

- ✓ Means - **Agreement** capable of being **enforceable by law** is called a **contract**.
- ✓ **Agreement [Sec 2(e)]** - **Every promise and every set of promises** forming **consideration** for each other.
- ✓ **Promise [Sec 2(b)]** - When the **person** to whom the **proposal is made** signifies his **assent** there to, the **proposal** is said to be **accepted**. Proposal **when accepted**, becomes a **promise**.
- ✓ Agreement = **Offer/Proposal + Acceptance + Consideration**
- ✓ Contract = **Agreement + Enforceability** by law

**Difference between Agreement and Contract**

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

**Essentials of a Valid Contract**

| ✓ | By Sec - 10 of ICA, 1872 | Not By Sec - 10 but are considered essential |
|---|---|---|
| | 1. Agreement | 1. Two parties |
| | 2. Free consent | 2. Intention to create legal relationship |
| | 3. Competency of the parties | 3. Fulfilments of legal formalities |
| | 4. Lawful consideration | 4. Certainty of meaning |
| | 5. Legal object | 5. Possibility of performance |
| | 6. Not expressly declared to be void [as per Section 24 to 30 and 56] | - |

Not By Sec - 10 but are considered essential

1. **Two Parties**
 - ✓ One **cannot contract with himself**. It involves **at least two parties** (Offer & Acceptance)
 - ✓ Contract may be made by **natural persons** and by **other persons** having **legal existence**.

2.1

Nature of Contracts

✓ **Identity** of parties must be **ascertainable** (identifiable).



Case Law - State of Gujarat vs Ramanlal S & Co.

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

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

2. Parties must intend to create legal obligations

✓ There must be an **intention** on the part of the parties to **create legal relationship**

✓ **Social or domestic** type of **agreements** are **not enforceable** in court of law.



Case Law - Balfour Vs Balfour

Facts - A **husband** agreed to pay to his **wife** certain amount as **maintenance** every month while he was abroad. **Husband** failed to pay the promised amount. **Wife** sued him for the **recovery** of the amount.

Conclusion - Here, in this case, **wife could not recover** as it was a **social agreement** and the **parties did not intend** to create any **legal relations**.

3. Other Formalities to be complied with in certain cases

✓ A contract may be **written or spoken** (no difference), But in the **interest of parties** the contract must be **written**.

✓ **Certain contracts** require some **other formalities** have to be **enforceable**. Ex - **Insurance**

4. Certainty of meaning

✓ The **agreement** must be **certain** and **not vague** or **indefinite**.

5. Possibility of performance of an agreement

✓ **Terms** of agreement should be **capable of performance**.

Impossible act **can't be enforced**.

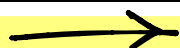
By Sec - 10 of Indian Contract Act, 1872

1. Offer and Acceptance or an agreement

✓ Every promise and every set of promises, forming **consideration** for each other, is an agreement" and A **proposal when accepted**, becomes a **promise**".

2. Free Consent

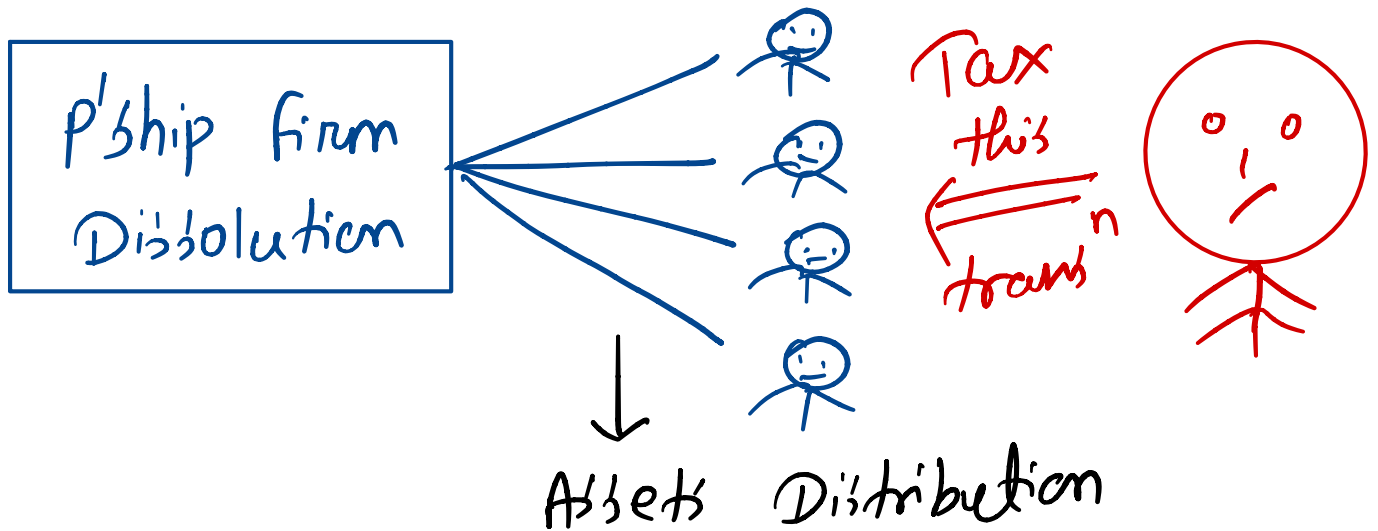
✓ Two or more persons are said to **consent** when they **agree** upon the **same thing in the same sense** viz **consensus ad idem**.



Bullet

Platina.

① State of Gujarat Vs Ramanlal & Co.



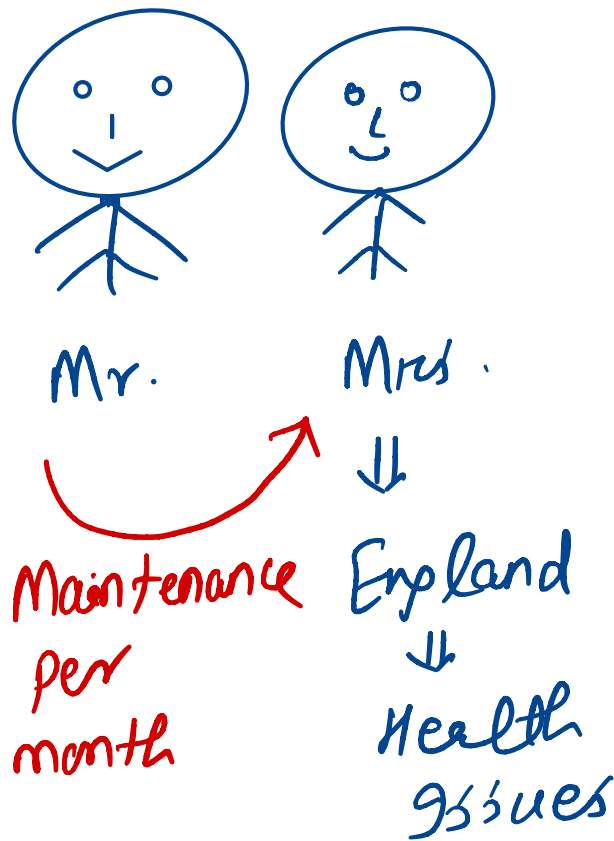
Conclⁿ ⇒ This is not a sale

Partners ⇒ Joint owners



Can't be buyer & seller both.

② Balfour V Balfour



Court \Rightarrow Not enforceable

In domestic or social agreements,
there is a presumption that
parties do not intend to create
legal relations.

- ✓ Consent would be considered as **free consent** if it is **not caused by coercion, undue influence, fraud, misrepresentation or mistake.**
- 3. Capacity of the parties**
- ✓ Capacity to contract means the **legal ability** of a person to **enter into a valid contract.**
- ✓ Section 11 of the specifies that **every person is competent to contract who**
 - (a) is of the age of **majority** according to the law to which he is subject and
 - (b) is of **sound mind** and
 - (c) is **not otherwise disqualified** from contracting **by any law** to which he is subject.
- ✓ Qualification (a) - **Person entering** into contract must be of **18 years of age.** Persons **below 18** years of age are **considered minor**, therefore, **incompetent to contract.**
- ✓ Qualification (b) - A person to be of **sound mind** i.e. he should be **in his senses** so that he **understands** the **implications** of the **contract** at the time of entering into a contract. A **lunatic**, an **idiot**, a **drunken person** or under the influence of some **intoxicant** is **not sound mind.**
- ✓ Qualification (c) - A person entering into a contract should **not be disqualified** by his **status**, in entering into such contracts.
Such persons are an **alien enemy, foreign sovereigns, convicts etc.**
They are disqualified unless they fulfil certain formalities required by law.
- 4. Consideration**
- ✓ Referred to as '**quid pro quo**' i.e. '**something in return**'.
- ✓ May **consist either** in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by other.
- 5. Lawful Consideration and Object**
- ✓ The **consideration & object** of agreement must be **lawful.**
- ✓ Sec 23 states that consideration or object is **not lawful** if it is **prohibited by law**, or it is such as would **defeat the provisions of law**, if it is **fraudulent** or **involves injury** to the **person or property** of another or court regards it as **immoral** or opposed to **public policy.**
- 6. Not expressly declared to be void**
- ✓ Agreement entered must **not be which** the **law declares** to be either **illegal or void.**
- ✓ An **illegal** agreement is an agreement expressly or impliedly **prohibited by law.**

2.1 Nature of Contracts



Types of Contracts (Total - 13 types)

| | | | | |
|---------------|----------------|---------------|----------------|--------------|
| 1. Valid | 2. Void | 3. Voidable | 4. Illegal | 5. Unenforc. |
| 6. Express | 7. Implied | 8. Quasi | 9. E-contracts | 10. Executed |
| 11. Executory | 12. Unilateral | 13. Bilateral | | |

On the basis of the validity (5 Types)

1. Valid Contract

- ✓ Agreement which is **binding and enforceable** is a valid contract. It contains **all the essential elements** of a valid contract.

2. Void Contract

- ✓ Contract which **ceases to be enforceable** by law becomes **void** when it ceases to be enforceable". Thus, a void contract is one which **cannot be enforced by a court of law**.

3. Voidable Contract

- ✓ Agreement which is **enforceable by law** at the **option of one or more parties** thereto, but **not at the option** of the **other** or others is a **voidable contract**".
- ✓ Following is the situation where **contract is voidable**
- i) **Consent is not free** under Coercion, undue influence, misrepresentation or fraud.
 - ii) If a **person promises to do something** for another, but **other person prevents** him from performing his promise, Contract becomes **voidable** at the option of 1st person.
 - iii) When a party to a contract **promise to perform a work within a specified time**, could **not perform** with in that time, Contract becomes **voidable** at the option of promise.



Distinction between a Void Contract and a Voidable Contract.

| Basis | Void Contract | Voidable Contract |
|-----------------------|---|--|
| Meaning | A Contract ceases to be enforceable by law becomes void when it ceases to be enforceable . | An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract . |
| Enforceability | A void contract cannot be enforced at all . | It is enforceable only at the option of aggrieved party and not at the option of other party. |
| Cause | A contract becomes void due to change in law or change in | A contract becomes a voidable contract if the consent of a party was not free . |

| | | | |
|-------------------------|--|---|---|
| | | circumstances beyond the contemplation of parties. | |
| Performance of contract | | A void contract cannot be performed. | If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance of the contract. |
| Rights | | A void contract does not grant any legal remedy to any party. | The party whose consent was not free has the right to rescind the contract within a reasonable time. If so rescinded, it becomes a void contract. If it is not rescinded it becomes a valid contract. |

4. Illegal Contract

- ✓ It is a contract which the law forbids to be made. (void ab initio & can't be enforced)
- ✓ The court will not enforce such a contract but also the connected contracts.
- ✓ All illegal agreements are void but all void agreements are not necessarily illegal.



Difference between Void Agreement & Illegal Agreement

| Basis | Void agreement | Illegal agreement |
|----------------------|--|--|
| Scope | A void agreement is not necessarily illegal. | An illegal agreement is always void. |
| Nature | Not forbidden under law. | Are forbidden under law. |
| Punishment | Parties are not liable for any punishment under the law. | Parties to illegal agreements are liable for punishment. |
| Collateral Agreement | It's not necessary that agreements collateral to void agreements may also be void. It may be valid also. | Agreements collateral to illegal agreements are always void. |

5. Unenforceable Contract

- ✓ Where a contract is good in substance but because of some technical defect i.e. absence in writing, barred by limitation etc. one or both the parties cannot sue upon it.

On the basis of the formation of contract (4 Types)

1. Express Contracts

If terms are expressed by words or in writing, it is an express contract.

2.1

Nature of Contracts

2. Implied Contracts

- ✓ It contrasts come into existence by **implication** i.e. by **action or conduct** of parties or **course of dealings** between them.
- ✓ **Tacit Contracts**: The word **Tacit** means **silent**. Tacit contracts are those that are **inferred through conduct** of parties without any **words spoken or written**.

3. Quasi-Contract

- ✓ Quasi-contract is **not an actual contract**, but it **resembles** a contract.
- ✓ **Law** creates and **enforces legal rights** and **obligations** when **no real contract exists**. Such obligations are known as **quasi-contracts**.

4. E-Contracts

- ✓ If Contract is entered using **electronics means**, it is known as e-commerce contracts.

On the basis of the formation of contract (4 Types)

1. Executed Contract

When the act is **done or executed or forbearance** is brought on record, then the contract is an **executed contract**. **Consideration is the act or forbearance**.

2. Executory Contract

- ✓ In an executory contract, **consideration is reciprocal promise** or obligation. It is to be **performed in future only**, hence described as executory contracts.
- ✓ **Kinds of Executory Contracts are as follows**
 - i) **Unilateral Contract**: It is a **one-sided contract** in which **one party has performed** his duty or obligation & **other party's obligation is outstanding**.
 - ii) **Bilateral Contract**: It is one where the **obligation or promise is outstanding** on the part of **both the parties**.



Proposal Offer - [Sec 2(a)]

- ✓ **Definition** - When **one person signifies to another his willingness to do or to abstain** from doing anything with a **view to obtaining the assent** of that other to such **act or abstinence**, he is said to make a **proposal**.

Essentials of a proposal/offer are

- a) Promisor or Offeror - The **person making the proposal** or offer
- Offeree - The person to **whom the offer is made**

Promisee or Acceptor - The person **accepting** the offer.

b) For a **valid offer**, Party making it must **express his willingness 'to do' or 'not to do'** something

c) Willingness must be **expressed** with a view to **obtain the assent** of the other party.

d) Offer can be **positive** (Doing) as well as **negative** (Not Doing or Abstinence)

Classification of offer

✓ Offer can be **classified as** general, special/specific, cross, counter, standing/ open/ continuing offer

1. General offer

✓ Made to **public at large** & hence **anyone can accept** and do the **desired act**. **Anyone performing the conditions of offer** can be **considered** to have **accepted it**.

✓ Until the **general offer** is **retracted or withdrawn**, it **can be accepted** by anyone at any time as it is a **continuing offer**.



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

Facts - In this famous case, Carbolic smoke Ball Co. advertised in several newspapers that a reward of £100 would be given to any person who contracted influenza after using the smoke balls produced by the Carbolic Smoke Ball Co. according to printed directions. One lady, Mrs. Carlill, used the smoke balls as per the directions of company and even then, suffered from influenza.

Conclusion - Held, she could recover the amount as by using the smoke balls she had accepted the offer.

2. Special/specific offer

✓ Made to a **specific or an ascertained person**. It can be **accepted only by that** specified person to whom the **offer has been made**.



Case Law - Boulton Vs. Jones (Discussed Later)

3. Cross offer

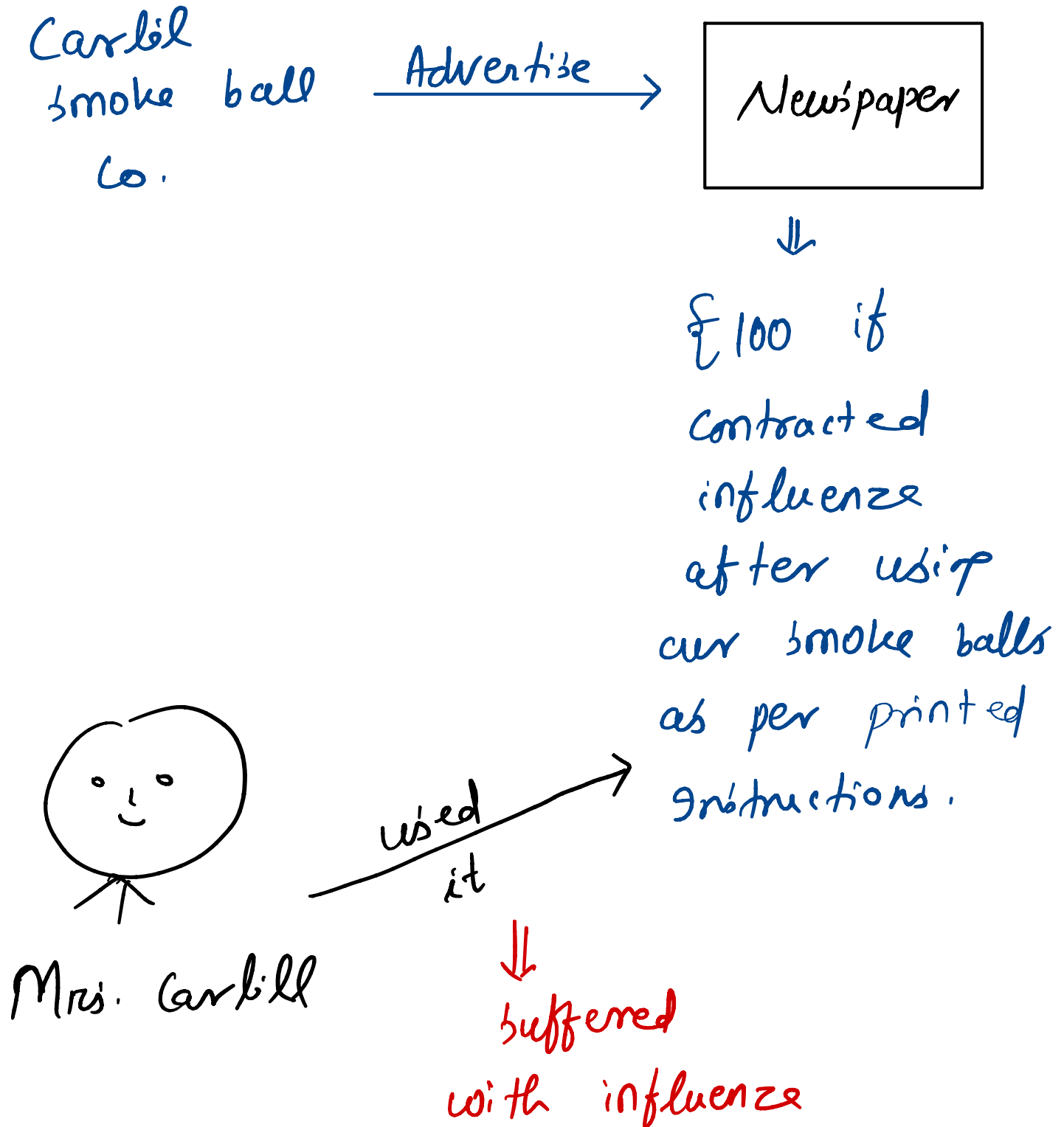
✓ When **two parties exchange identical offers** in **ignorance** of each other's offer, the offers are called **cross offers**.

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

4. Counter offer

✓ When **offeree offers to modifications & variations** in the **terms of original offer** (qualified acceptance), he is said to have **made a counter offer**.

③ Carboll vs carbolic smoke ball co.



2.1 Nature of Contracts

✓ It amounts to **rejection of original offer**, also called as **Conditional Acceptance**.

5. Standing or continuing or open offer

✓ Offer which is allowed to **remain open** for acceptance **over a period of time**.

Essential of a valid offer

1. It must be capable of creating **legal relations**:

✓ Offer must be such as in law is **capable of being accepted** and giving rise to **legal relationship**. If not, then it is **not a valid offer** in the eye of law.

✓ **Social invitation** accepted, **does not** create **legal relations** because it is not so intended.

2. It must be certain, definite and not vague:

✓ If terms are **vague or indefinite**, its acceptance **can't create** any **contractual relationship**.

3. It must be communicated to the offeree:

✓ Offer to be complete, must be **communicated to the person** to whom it is **made**, otherwise there can be **no acceptance** of it.

✓ **Acceptance** of an offer, in **ignorance of offer**, is **not acceptance** and does not confer any right on acceptor.



Case Law - Lalman Shukla v. Gauri Dutt

Facts - G (Gauridutt) sent his servant L (Lalman) to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. L traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it.

Conclusion - Held, he was not entitled to the reward, as he did not know the offer.

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

✓ Offer must be made with a view to **obtaining the assent** of the **other party** addressed and not merely with a view to **disclosing the intention** of making an offer.

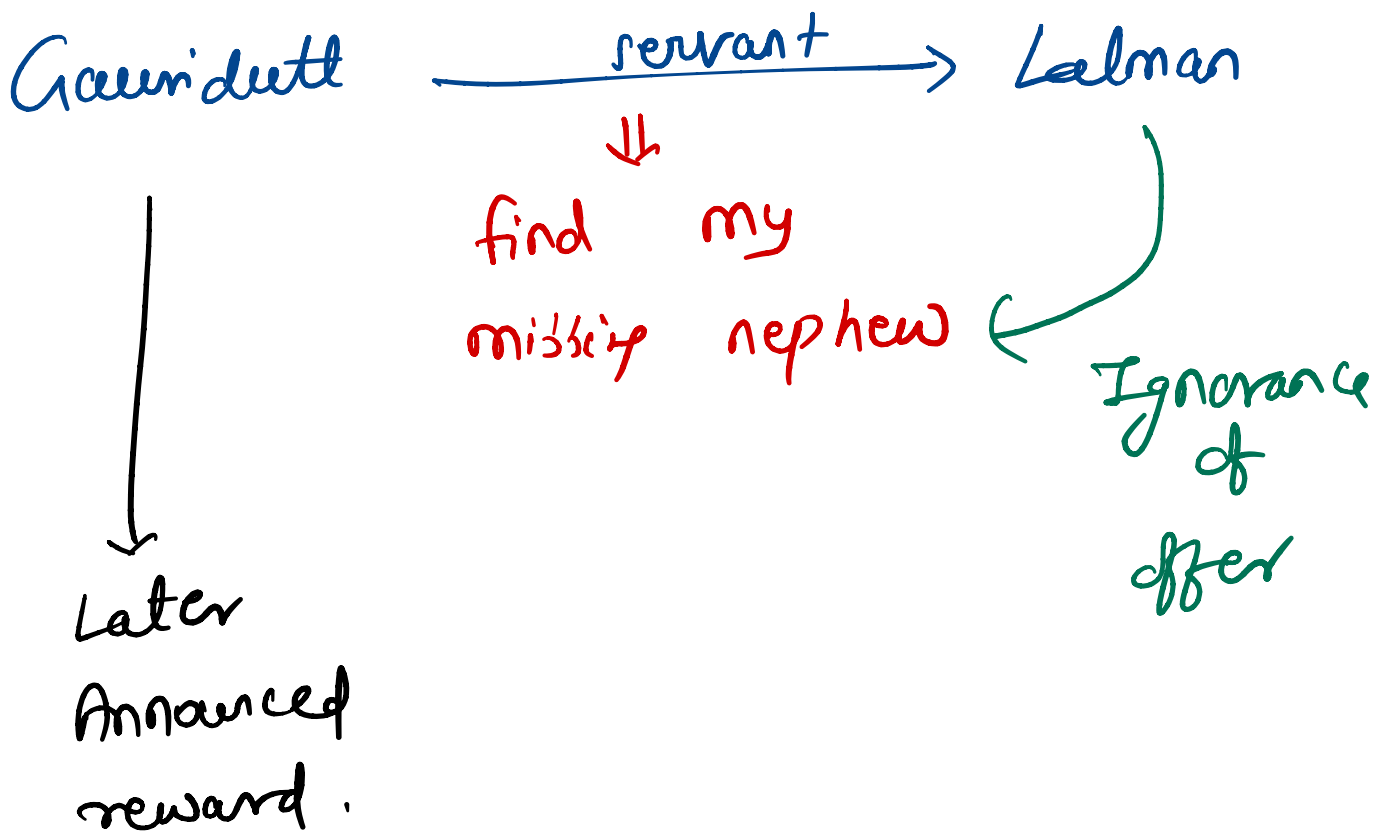
5. It may be conditional:

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

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

✓ Thus, one **cannot say** that if **acceptance is not communicated** by a certain **time** the offer would be **considered as accepted**.

④ Lalman Shukla vs Gauri Dutt



Conclⁿ \Rightarrow Not entitled for reward as was not aware of it.

7. The offer may be either **specific** or **general**:

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

8. The offer may be **express** or **implied**

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

i) A statement of **intention and announcement**.

ii) Offer must be distinguished from an **answer to a question**.

iii) A **statement of price** is not an offer

iv) An invitation **to make an offer** or do business.

10. A statement of price is not an offer.

Invitation to offer

✓ It is **only a circulation of an offer**, it is an **attempt** to **induce offers** and **precedes** a **definite offer**. It is an act **precedent** to making an offer. **Acceptance** of an invitation to an offer **does not result** in the contract and **only an offer emerges** in the process of **negotiation**



Difference between offer and invitation to make an offer

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

2.1

Nature of Contracts

- ✓ Following are instances of invitation to offer to buy or sell:
- i) A **Prospectus** by a company to the public to **subscribe for its shares**.
 - ii) **Display of goods** for sale in shop windows.
 - iii) **Advertising auction sales** and
 - iv) **Quotation of prices** sent in reply to a query regarding price.



Acceptance [Section 2(b)]

- ✓ **Definition** - 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** & cannot be **withdrawn** or **revoked**.

Legal Rules regarding a valid acceptance

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

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



Case Law - Boulton vs. Jones (1857)

Facts - Boulton bought a business from Brocklehurst. Jones, who was Brocklehurst's creditor, placed an order with Brocklehurst for the supply of certain goods. Boulton supplied the goods even though the order was not in his name. Jones refused to pay Boulton for the goods because by entering into the contract with Brocklehurst, he intended to set off his debt against Brocklehurst.

Conclusion - Held, as the offer was not made to Boulton, therefore, there was no contract between Boulton and Jones.

- ✓ In case of a **general offer**, it can be **accepted** by **any person** who has the **knowledge** of the offer.



Case law - Carlill vs. Carbolic Smoke Ball Co. (1893) (Already covered)

2. **Acceptance must be absolute and unqualified**

- ✓ Acceptance is valid only if, it is **absolute & unqualified** and is also expressed in **some usual & reasonable manner** unless proposal **prescribes** the **manner** in which it must be accepted.

- ✓ If proposal **prescribes** the manner of **acceptance**, then it must be **accepted accordingly**.

3. **The acceptance must be communicated**

- ✓ Acceptance must be **communicated** in some **perceptible form**.

- ✓ Any **conditional** or varying or too deviant conditions is **no acceptance**.

- ✓ Conditional acceptance is a **counter proposal** and has to be **accepted by the proposer**.

⑤ Boulton vs Jones (1857)



Boulton
(B)

Bought
Business of

Brocklehurst
(Bk)

Supplied
↓

placed
order
↗

Jones
(creditor of Bk)

Conclⁿ ⇒ offer was not made to B.
No contract between
Boulton & Jones.

✓ Further when a proposal is **accepted**, the **offeree must have the knowledge** of the offer made to him. If he **does not have the knowledge**, there can be **no acceptance**.

✓ Acceptance must **relate specifically** to the **offer** made to be materialize into contract.



Case law - Brogden vs. Metropolitan Railway Co. (1877)

Facts - B a supplier, sent a draft agreement relating to the supply of coal to the manager of railway Co. viz, Metropolitan railway for his acceptance. The manager wrote the word "**Approved**" on the same and put the draft agreement in the drawer of the table intending to send it to the company's solicitors for a formal contract to be drawn up. By an over sight the draft agreement remained in drawer.

Conclusion - Held, that there was no contract as the manager had not communicated his acceptance to the supplier, B.

✓ Mere **variation in language** not involving any difference in substance would **not make the acceptance ineffective**.

4. Acceptance must be in prescribed mode:

✓ If **mode** of acceptance is **prescribed** in the proposal, **Accept in that manner**.

✓ But if **proposer does not insist** if it has been **accepted otherwise** - The proposer is **presumed to have consented to the acceptance**.

5. Time

✓ If **time specified** - Acceptance must be **given within** the specified time limit,

✓ If **no time** is stipulated - Acceptance **within reasonable time** and **before the offer lapses**.

✓ **Reasonable time** is nowhere defined & depend on **facts and circumstances** of each case.

6. Mere silence is not acceptance

✓ Acceptance **cannot be implied from silence** of offeree **or his failure to answer**, **unless** the offeree has in any **previous conduct indicated** that his silence is **evidence** of acceptance.



Case Law - Felthouse vs. Bindley (1862)

Facts - F (Uncle) offered to buy his nephew's horse for £30 saying "If I hear no more about it I shall consider the horse mine at £30." The nephew did not reply to F at all. He told his auctioneer, B to keep the particular horse out of sale of his farm stock as he intended to reserve it for his uncle. By mistake the auctioneer sold the horse. F sued him for conversion of his property.

Conclusion - Held, F could not succeed as his nephew had not communicated the acceptance to him.

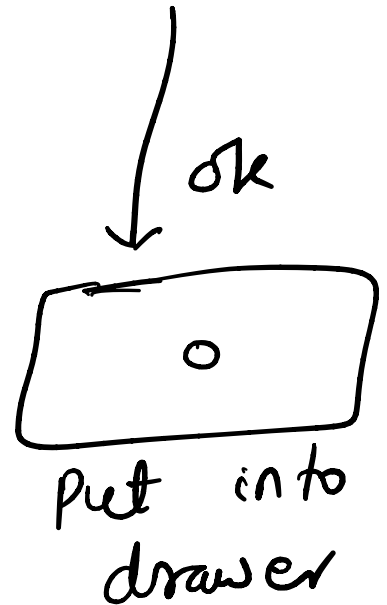
7. Acceptance by conduct/Implied Acceptance

6

Brogden vs Metropolitan Railway Co. (1877)

B

Draft agreement → Railway Co.
supply of coal



Conclⁿ ⇒ No contract as not communicated.

⑦ Felthouse vs Bindley (1862)



Uncle offered £30 → Nephew
for Horie
+

No Ans → I will
assume your
acceptance

Auctioneer
[Not to take
horie & reserve
for uncle]
↓
Sold it

Conclⁿ ⇒ Acceptance not communicated
hence, No contract.

2.1

Nature of Contracts

- ✓ Performance of conditions of proposal, or acceptance of any consideration for a reciprocal promise, constitutes an acceptance of proposal i.e. Acceptance by conduct.
- ✓ Therefore, when a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.



Communication of Offer & Acceptance

Communication of offer (Sec 4)

- ✓ Communication of offer is complete when it comes to the knowledge of the person to whom it is made.
- ✓ Thus, if a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.
- ✓ Mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

Modes of Communication of acceptance

- ✓ By any act (written or oral) and by omission (conduct or by forbearance to convey his willingness or assent).
However, silence would not be treated as communication by 'omission'.
- ✓ Communication also includes positive acts or signs so that other person understands what means to say or convey.
- ✓ A mere mental unilateral assent in one's own mind would not amount to communication.

When communication of acceptance is complete (Sec 4)

- ✓ As against the proposer, when it is put in the course of transmission to him so as to be out of the power of the acceptor to withdraw the same;
- ✓ As against the acceptor, when it comes to the knowledge of the proposer.
- ✓ It is necessary that, letter is correctly addressed, adequately stamped and duly posted.
In the event of loss of letter in transit, wrong delivery, non-delivery etc., will not affect the validity of the contract.

Acceptance over telephone or telex or fax

- ✓ When offer is made of instantaneous communication like telex, telephone, fax or through e-mail, the contract is only complete when the acceptance is received by the offeree.
- ✓ However, in case of a call drops & disturbances in line, there may not be a valid contract.

Communication of special conditions

Commⁿ of offer is complete

letter posted \longrightarrow Reached
1/12 4/12

\downarrow
Read
6/12

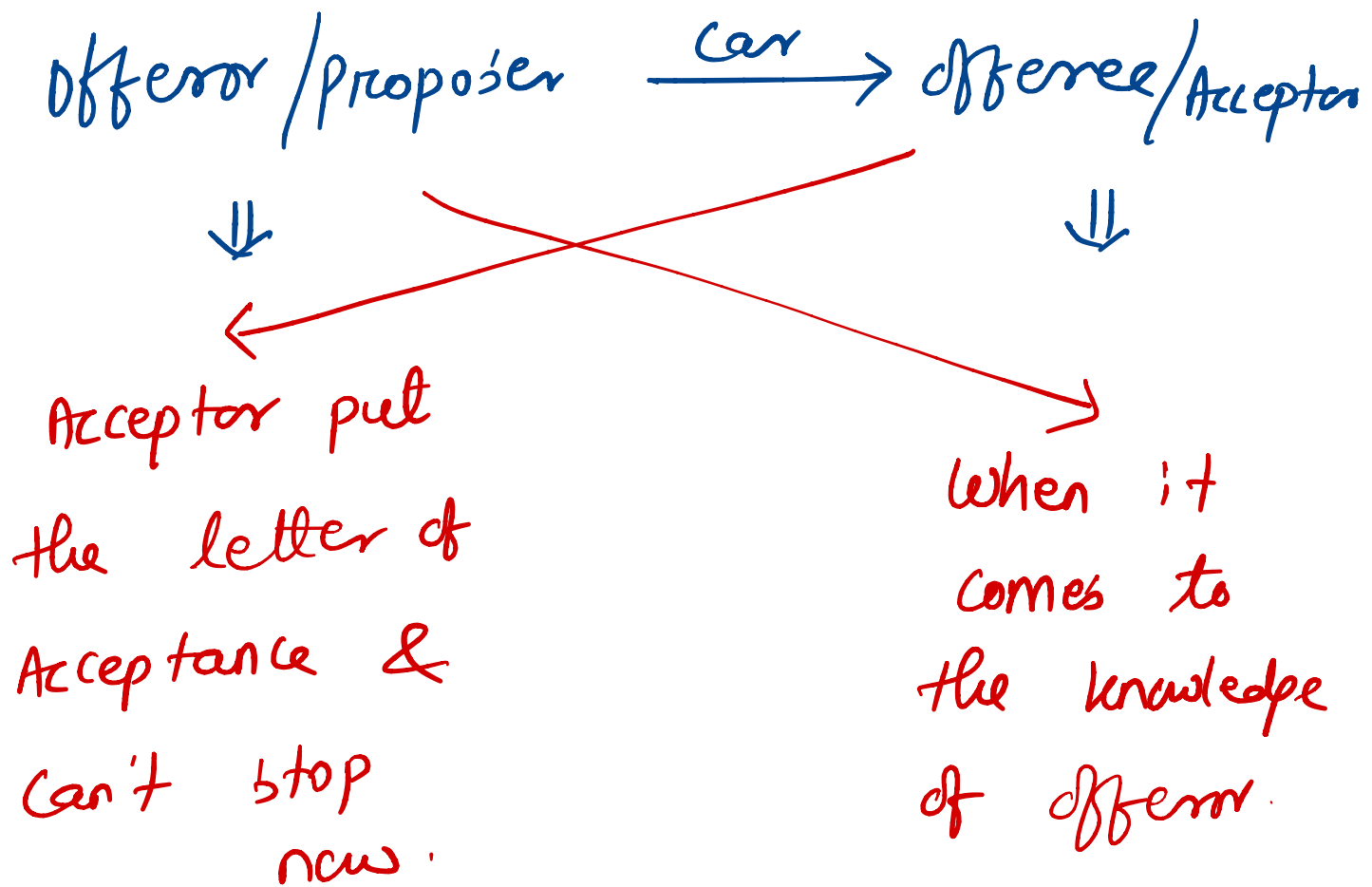
offer commⁿ \nearrow

Q \longrightarrow 6/12 Given $\rightarrow \checkmark$

Not Given \rightarrow 4/12

[presumed read
on the same
day]

Commⁿ of Acceptance



Ex \rightarrow offeror \rightarrow 10/12 \rightarrow Reached \rightarrow 14/12

\Downarrow 16/12 \checkmark

Acceptance posted \rightarrow 16/12

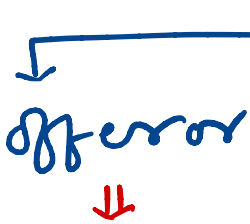
Reached \rightarrow 19/12

\hookrightarrow offeree \checkmark

Summary

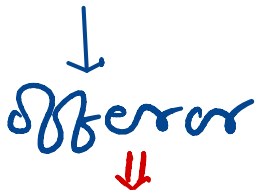


Offer

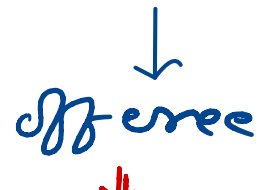


when it comes to the knowledge of offeree.

Acceptance



when acceptor puts the letter into transmission and could not stop.



when it gets to the knowledge of offeror

Revocation

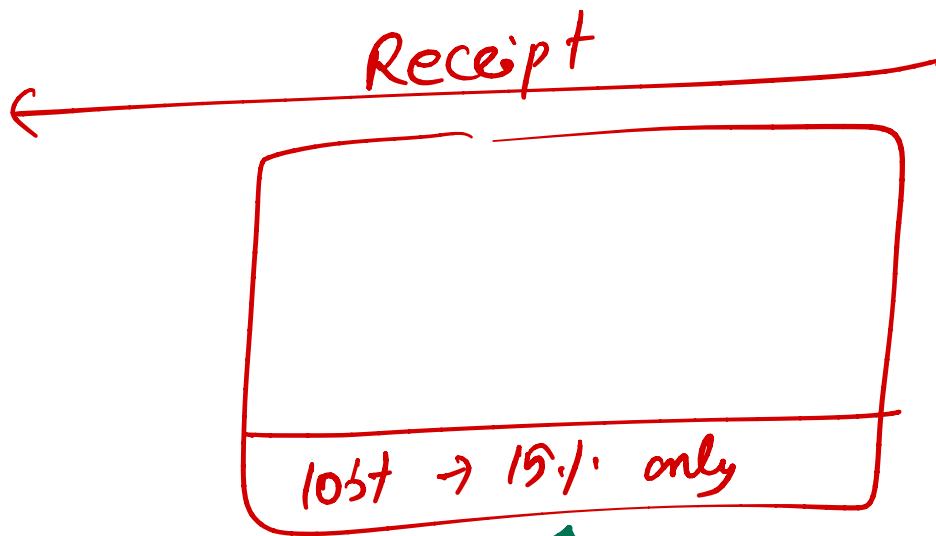
Before offeree puts the letter into transmission

Before the letter is received by offeror.

| | |
|---|--|
| ✓ | <p>Sometimes special conditions are conveyed & accepted tacitly or even without realizing it.</p> <p>Question here is whether these conditions can be considered to have been communicated?</p> <p>If such terms and condition are reasonable, communication is effective.</p> <p>But if it does not give reasonable notice on its face, Acceptor will not incur any obligation.</p> |
| | <p>Case Law - Lily White vs. R. Mannuswamy</p> <p>Facts - P delivered some clothes to drycleaner for which she received a laundry receipt containing a condition that in case of loss, customer would be entitled to claim 15% of the market price of value of the article, P lost her new saree.</p> <p>Conclusion - Held, the terms were unreasonable and P was entitled to recover full value of the saree from the drycleaner.</p> <p>The respective documents have been accepted without a protest and hence amounted to tacit acceptance.</p> |
| | <p>Case law - Raipur transport Co. vs. Ghanshyam</p> <p>Facts - A transport carrier accepted the goods for transport without any conditions. Subsequently, he issued a circular to the owners of goods limiting his liability for the goods.</p> <p>Conclusion - since the special conditions were not communicated prior to the date of contract for transport, these were not binding on the owners of goods</p> |
| | Communication of Performance |
| ✓ | <p>Communication of Acceptance from the viewpoint of proposer - when the acceptance is put into a course of transmission, when it would be out of the power of acceptor.</p> |
| ✓ | <p>from the viewpoint of acceptor - It would be complete when it comes to the knowledge of the proposer.</p> |
| | Revocation of Offer & Acceptance |
| ✓ | <p>Communication of revocation (of the proposal or its acceptance) is complete as against the person who makes it - When it is put into a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it, and As against the person to whom it is made - When it comes to his knowledge.</p> |
| ✓ | <p>Acceptor can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.</p> |
| ✓ | <p>Contract over Telephone- Contract is formed as soon as the offer is accepted but offeree must make it sure that his acceptance is received by offeror.</p> |

8

Lily white vs R. Mannuswamy (1970)



Conclⁿ → Not reasonable
Dry cleaner is liable

⑨ Raipur Transport Co. Vs Ghanshyam

Ghanshyam $\xrightarrow{\text{Goods}}$ Transporter
[Accepted]



Later on, Liab is limited

Conclⁿ \Rightarrow It was not communicated
before contract.

Hence, Not binding on the
owners.

2.1

Nature of Contracts

If telephone unexpectedly goes dead during conversation, Acceptor must confirm again that the words of acceptance were duly heard by the offeror.



Modes of Revocation of Offer

- i) By notice of revocation
- ii) By lapse of time - Time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.
- iii) By non-fulfilment of condition precedent - Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.
- iv) By death or insanity - Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.
- v) By counter offer
- vi) By the non-acceptance of the offer according to the prescribed or usual mode
- vii) By subsequent illegality.

No Selective

The Indian Contract Act, 1872
Unit: 2 - Consideration

Consideration

Definition (Sec - 2(d))

- 1) Is an act of doing something
- 2) Is abstinence
- 3) At the desire of promisor
- 4) May move from promisee or other
- 5) May be past, present, future

About (5 Points)

- 1) Must move at the desire of promisor
- 2) May move from promisee or any other person
- 3) Executed and Executory consideration
- 4) May be past, present or future
- 5) Need not be adequate
- 6) Performance of what one is legally bound to perform
- 7) Consideration must be real and not illusory
- 8) Consideration must not be unlawful, immoral or opposed to public policy

Case Law - Durga Prasad Vs Baldeo

Case Law - Chinnayya Vs Ramayya

Legal Rules regarding Consideration

Rules (8 points)

- 1) In case of trust
- 2) Family Settlement
- 3) Certain Marriage contracts/arrangements
- 4) Assignment of a contract
- 5) Acknowledgement or estoppel
- 6) Covenant running with the land
- 7) Contract through agent

Suit by a third party to a contract

Explanation

Exceptions (8 points)

- 1) Natural Love & Affection
- 2) Compensation for past voluntary service
- 3) Promise to pay time barred debt
- 4) Agency
- 5) Completed gifts
- 6) Bailment
- 7) Charity

Case Law - Kadarnath Vs Gorie Mohammad

Validity of an agreement without consideration

Explanation

Exception (7 Exceptions)



Consideration (Section 2)

- ✓ "When at the **desire** of the **promisor**, the **promisee** or any **other person** has **done** or abstained from **doing** (past), or **does** or abstains from **doing** (present) or **promises to do** or abstain from doing something (future), such an **act or abstinence or promise** is called **consideration** for the promise".
- ✓ Consideration **may consist of either** some right, interest, profit or benefit accruing to one party or forbearance, detriment, loss or responsibility given, suffered or undertaken by other.
- ✓ It is a **term** used in the sense of **quid pro quo**, i.e., '**something in return**'.



Legal Rules regarding Consideration

1. Consideration must move at the desire of the promisor

- ✓ Consideration must be **offered by promisee or third party** at the **desire** or request of **promisor**. An act **done** at the **desire of a third party** is **not** a consideration.



Case Law - Durga Prasad v. Baldeo

Facts - D (**defendant**) promised to pay to P (plaintiff) a certain commission on articles which would be sold through their agency in a market.

Market was constructed by P at the desire of C (Collector), & not at the desire of D.

Conclusion - D was **not bound** to pay as it was without consideration and **hence void**.

2. Consideration may move from promisee or any other person

- ✓ Consideration may **proceed from the promisee** or any **other person** who is **not a party** to the **contract**. There **can be a stranger** to a **consideration** but **no stranger to a contract**.



Case Law - Chinnayya vs. Ramayya (1882)

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

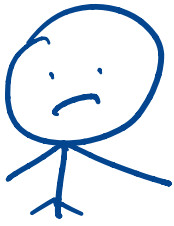
Conclusion - It was held that there was **sufficient consideration** for the **uncle** to recover the money from the **daughter**.

3. Executed and executory consideration

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

4. Consideration may be **past**, **present** or **future**

① Durga Prasad vs Baldeo



D P

[Contractor]

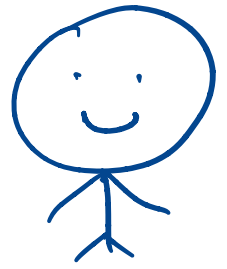
[Promisee]



Baldeo

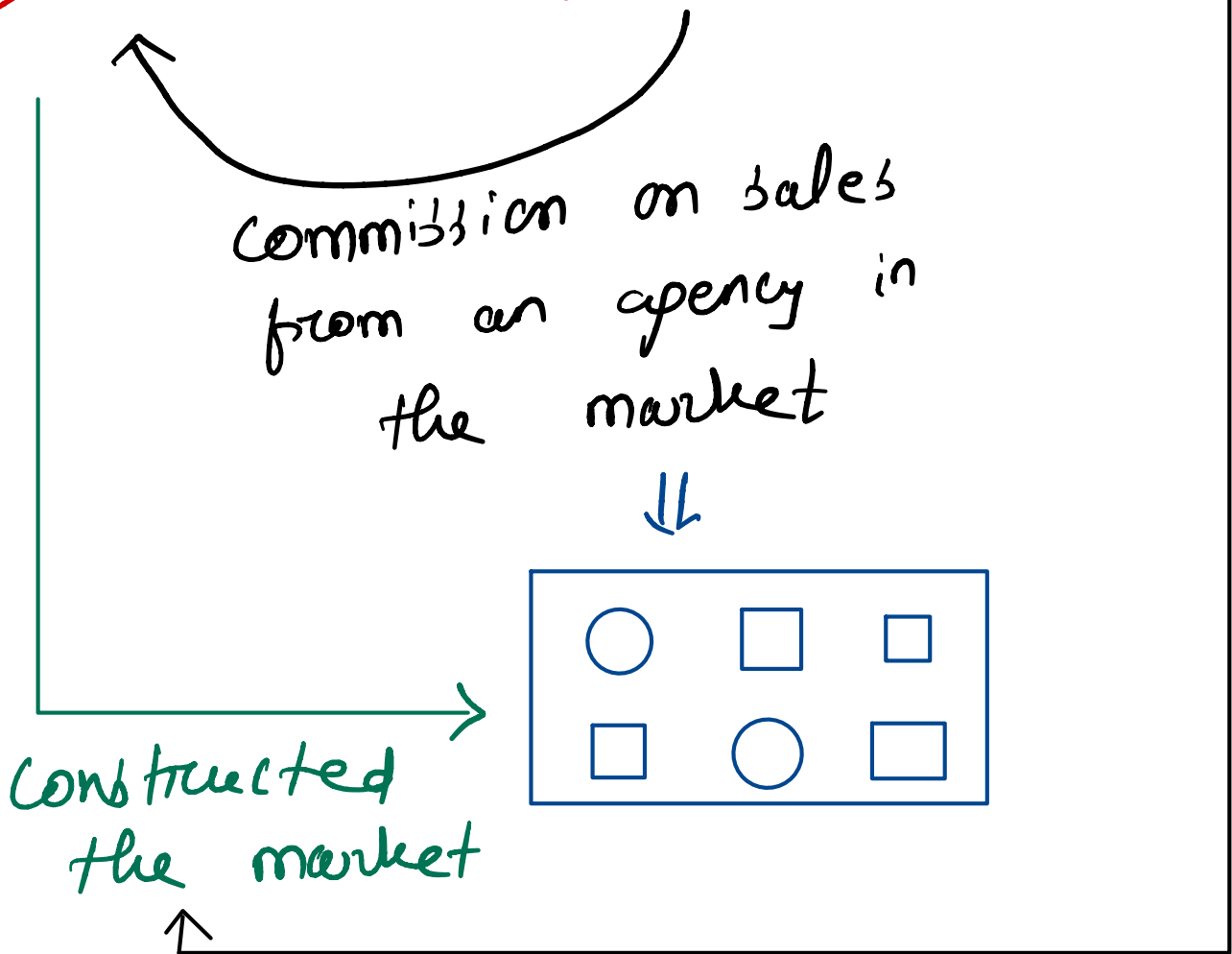
[Shopkeeper]

[Promisor]

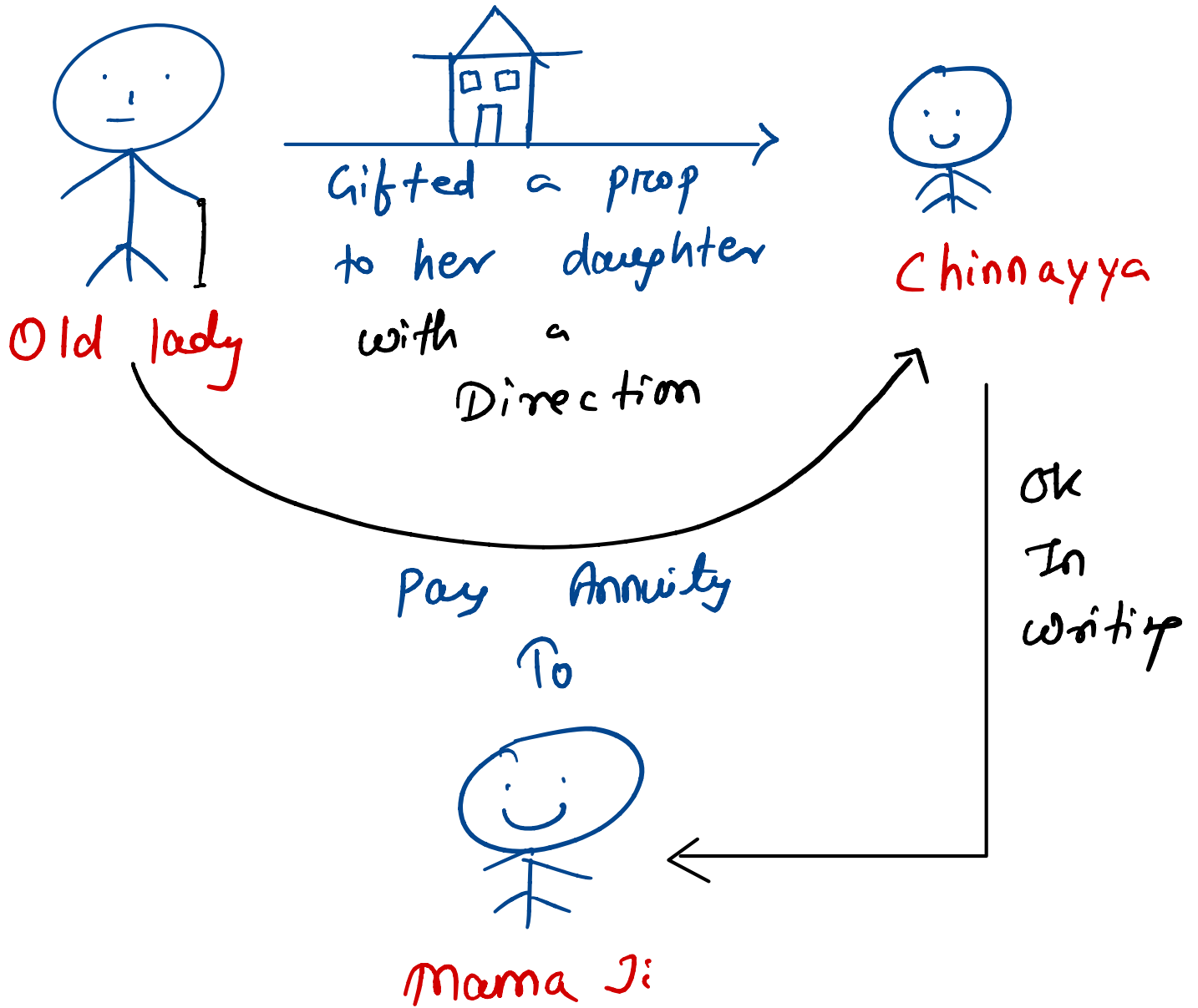


Collector

[3rd Party]



② Chinnayya Vs Ramayya



Daughter No Annuity as No consideration → Mamaji

2.2

Consideration

- ✓ Consideration, if **past**, may be the **motive** but **cannot** be the **real consideration** of a **subsequent promise**.
But, If **services** being rendered in **past** at the **request** or desire of **promisor**, the **subsequent promise** is regarded as an **admission** that, **past consideration was not gratuitous**.

5. Consideration need not be adequate

- ✓ It **need not** be approximately of **equal value** with the **promise** for which it is **exchanged** but it **must be something** which the **law** would regard as **having some value**.
Something in return need not be equal to something given.
If **consent is freely given** will **not be void** merely because consideration is **inadequate**.
But if it is **less** & other party **alleges** that his consent was **not free** than this **inadequate consideration** can be **taken as evidence** in support of **this allegation**.

6. Performance of what one is legally bound to perform

- ✓ Performance of an act by a person who is **legally bound** to perform the same **cannot be consideration** for a contract.
But where a person **promises to do more** that he is **legally bound to do** or such a **promise** provided it is **not opposed to public policy**, is a **good consideration**.

7. Consideration must be real and not illusory

- ✓ It must be **something** to which the **law attaches some value**.
If it is **legally or physically impossible** it is **not considered valid consideration**.

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

- ✓ **Only presence** of consideration is **not sufficient** it must be **lawful**.
Anything which is **immoral** or **opposed to public policy** can't be **valid consideration**.



Suit by Third Party to a Contract

- ✓ **Consideration** for an agreement **may proceed from a third party**, but **third party cannot sue on contract**.
Only a **person** who is a **party to a contract** **can sue** on it.
Thus, **Stranger to consideration** is a **valid** and is different from **stranger to a contract**.
- ✓ **Stranger to contract cannot sue** is known as a "**Doctrine of privity of contract**".
It is however, subject to certain **exceptions**. **Privacy**

Stranger to a contract may enforce a claim in the following cases

1. In the case of **trust**

Bharat

✓ Beneficiary can enforce his right, though he was not a party to contract between the settler and the trustee.

2. In case of family settlement

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

3. In case of certain marriage contracts/arrangements

M ✓ Provision may be made for benefit of a person, he may file the suit though he is not a party to the agreement.

4. In the case of assignment of contract

A ✓ when benefit under a contract has been assigned, Assignee can enforce the contract but such assignment should not involve any personal skill.

5. Acknowledgement or estoppel

A ✓ where promisor by his conduct acknowledges himself as an agent of third party, it would result into a binding obligation towards third party.

→ Condition attached with land

6. In the case of covenant running with land

C ✓ Person who purchases land with notice that the owner of land is bound by certain duties affecting land, Covenant affecting the land may be enforced by successor of the seller.

7. Contracts entered into through an agent

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



Memory Capsule: MAA CA Banunga Bharosa Rakho!

Validity of an Agreement without Consideration (Section 25)

✓ Agreement made without consideration is void. Contract may be enforceable when consideration is there. However, there are certain exceptions to this rule.

In the Following cases, Agreement though made without consideration, will be valid & enforceable.

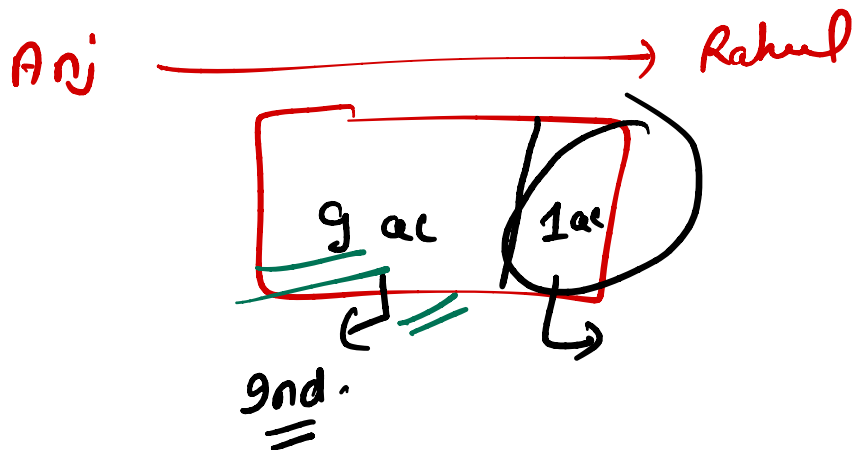
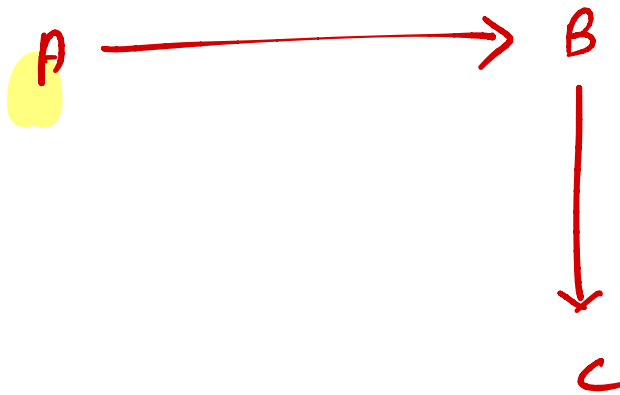
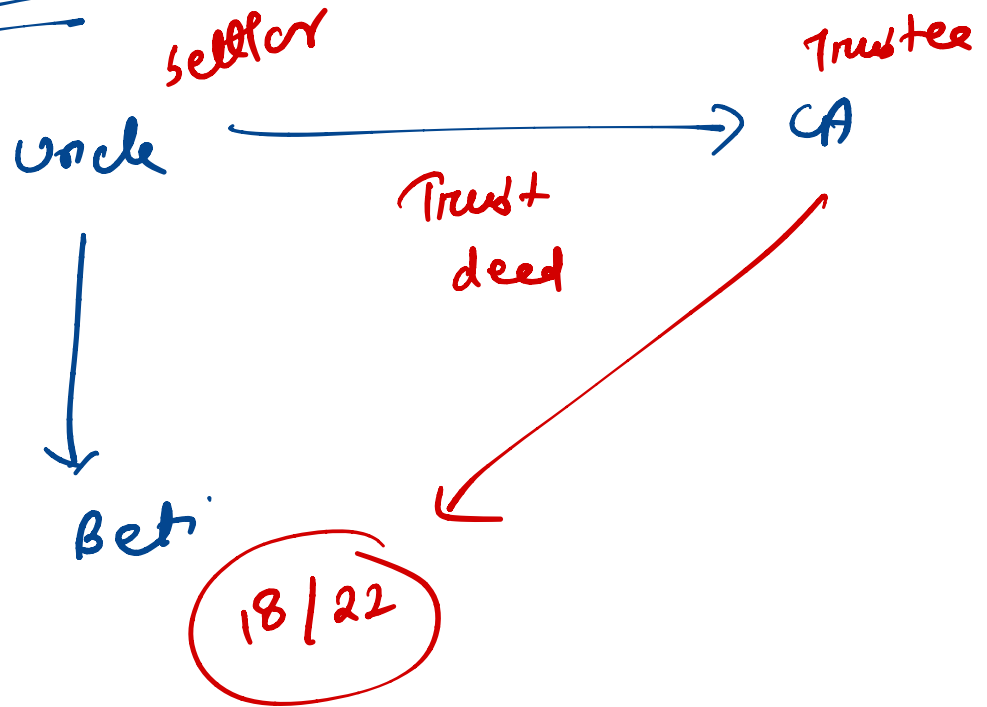


1. Natural Love and Affection

✓ Following conditions must be fulfilled

a) It must be made out of natural love and affection between the parties.

Bharosa.



- b) Parties must stand in **near relationship** to each other.
- c) It must be in **writing**.
- d) It must also be **registered** under the law.

2. Compensation for past voluntary services

- ✓ **Promise to compensate**, wholly or in part, a person who has already **voluntarily** done something for the promisor is **enforceable**.

The following **essential factors** must exist:

- a) The **services** should have been rendered **voluntarily**.
- b) The services must have been **rendered for the promisor**.
- c) The **promisor** must be in **existence** at the time when **services were rendered**.
- d) The **promisor** must have **intended to compensate** the **promisee**.

3. Promise to pay time barred debt

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

4. Agency

- ✓ **No consideration is necessary** to create an **agency**. (Section 185)

5. Completed gift

- ✓ In case of completed **gifts**, the rule **no consideration no contract** does not apply. **Gifts do not require any consideration**.

6. Bailment

- ✓ **No consideration** is required to affect the contract of **bailment**. Section 148 defines bailment. **No consideration is required** to affect a contract of bailment.

7. Charity

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



Case Law - Kadarnath v. Gorie Mohammad

Facts - Mr. G promised Mr. K, the secretary of committee of temple to donate Rs. 1,00,000 for renovation of that temple.

On the faith of his promise, secretary has incurred some cost for renovation.

Conclusion - Secretary can claim from Mr. G even contract was without consideration.



Memory Capsule: A B CCC No Problem

The Indian Contract Act, 1872
Unit: 3 - Other Essential Elements of a Contract

- Sec - 10 must satisfy following conditions
- 1) Parties competent to contract
 - 2) Free consent
 - 3) Lawful consideration & Lawful object
 - 4) Not expressly declared to be void

Meaning

- 1) Contract with minor is Void ab initio
 - 2) No ratification after majority
 - 3) Minor can be beneficiary of contract
 - 4) Minor can always plead minority
 - 5) Liability for necessities
 - 6) Contract by guardian (Enforceability)
 - 7) No specific performance
 - 8) No insolvency
 - 9) Partnership
 - 10) Minor can be an agent
 - 11) Minor can not bind parent or guardian
 - 12) Joint contract by minor and adult
 - 13) Surety for a minor
 - 14) Minor as shareholder
 - 15) Liability for torts
- Case law - Mohori bibi Vs Dharmo Das Ghose

Who is competent to contract (Sec - 11) (3 points)

- 1) Age of Majority/ Minor's position
- 2) Person of Sound mind
- 3) Contract by disqualified person

Definition

1) Coercion (Sec - 15)

- Meaning
- Effects of it
- Suicide is coercion?
- Meaning

2) Undue Influence (Sec - 16)

- Essential ingredients (4 points)
- 1) Relation between parties
 - 2) Position to dominate the will (4 points)
 - 3) Object to take undue advantage
 - 4) Burden of proof
- Effect of Undue influence (Sec - 19A)
- Definition (5 points)

Free Consent

3) Fraud (Sec - 17)

- Essential elements (7 points)
- 1) Must be a representation
 - 2) Representation must be of a fact
 - 3) Made before conclusion of contract
 - 4) Made with intention of falsity
 - 5) Other party must have induced to act
 - 6) Other party must have relied upon representation
 - 7) Other party had suffered a loss
- Effect of fraud (3 effects)
- Exceptions
- Explanation (3 points)

4) Misrepresentation (Sec - 18)

- Difference between coercion & Undue influence (6 points)
- Difference between Fraud & Misrepresentation (4 points)
- Explanation
- Mistake of Law
- Mistake of Foreign Law
- Mistake of Fact
- Bilateral Mistake (6 points)
- Unilateral Mistake

5) Mistake (Sec 20,21 & 22)

- 1) Forbidden by law
- 2) Such nature, if permitted would defeat the law
- 3) When it is fraudulent
- 4) Injury to person or property of another
- 5) Consideration is immoral

Legality of Object & Consideration (Sec - 23)

Unlawful consideration or objects (6 points)

- 1) Trading with enemy
 - 2) Stifling prosecution
 - 3) Maintenance & Champerty
 - 4) Trafficking relating to public offices and titles
 - 5) Agreements tending to create monopolies
 - 6) Marriage brokerage agreements
 - 7) Interference with the course of justice
 - 8) Interest against obligation
 - 9) Consideration Unlawful in part
- 6) Consideration is opposed to public policy (9 points)

Expressly declared Void agreements (11 points)

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

2 Exceptions

Explanation

Essentials of Wagering (6 points)

Transactions similar to Wager (Gambling) (4 points)

Transactions resembling with wagering but are not void (4 points)

Difference between Contract of Insurance & Wagering Agreement (7 points)

Basis - Meaning, Consideration, Insurable Interest, Contract of Indemnity, Enforceability, Premium, Public Welfare

- 1) Lottery transactions
- 2) Crossword puzzles and competitions
- 3) Speculative transactions
- 4) Horse Race Transactions
- 1) Chit fund
- 2) Commercial transactions or Share market transactions
- 3) Game of Skills and Athletic competition
- 4) A contract of Insurance

**Introduction**

✓ Agreement in order to be a contract, must satisfy the following conditions:

- I) Parties must be competent to contract;
- II) it must be made by the free consent of the parties;
- III) it must be made for a lawful consideration and with a lawful object;
- IV) it should not have been expressly declared as void by law.

I) Capacity To Contracts

✓ Meaning - Capacity refers to the competence of the parties to make a contract.

✓ Every person is competent to contract who (Sec. 11)

- A) Has attained age of majority
- B) Is of sound mind
- C) Is not disqualified by any law to which he is subject to.

A) Age of Majority

✓ Every person domiciled (permanent home) in India shall attain the age of majority on the completion of 18 years of age and not before.

A person less than that age even by a day would be minor for the purpose of contracting.

✓ Law relating to Minor's agreement/Position of Minor

| | | | |
|-------------------|-----------------|-------------------------|--------------------|
| 1) Void-ab-initio | 2) Ratification | 3) Beneficiary | 4) Plead minority |
| 5) Necessaries | 6) Guardian | 7) Specific perform. | 8) Insolvency |
| 9) Partnership | 10) Agent | 11) Parents/Guardian | 12) Joint contract |
| 13) Guarantor | 14) Shareholder | 15) Liability for torts | |

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

✓ Minor is not competent to contract & any agreement with or by minor is void from the very beginning.



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

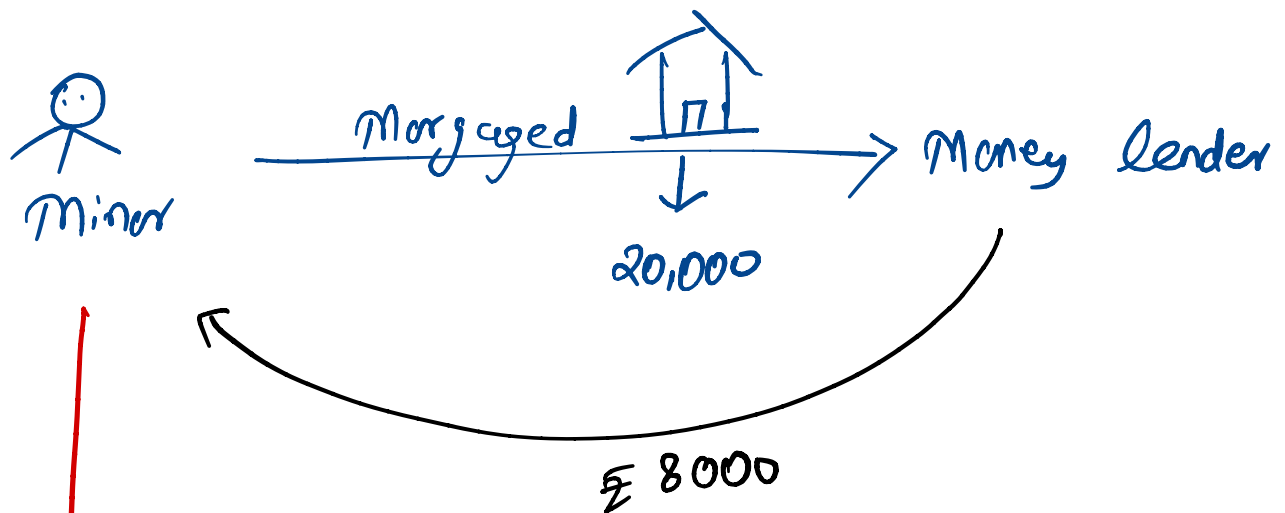
Facts - Mr. D a minor, mortgaged his house for Rs. 20,000 to money lender, but the mortgagee i.e. money lender has paid him Rs. 8,000. Subsequently the minor had filed a suit for cancellation of contract.

Conclusion - Held the contract is void as Mr. D is minor and therefore he is not liable to pay anything to lender.

2. No ratification after attaining majority

✓ As the original agreement is void ab initio and a void agreement can never be ratified. Hence, No ratification after attaining majority.

① Mohori Bibi Vs Dharmoo Das Ghose (1903)



Later on, suit for cancellation

Conclⁿ \Rightarrow Contract is void, Minor is not liable.

2.3

Other Essential Elements

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

- ✓ Though a minor is **not competent** to contract, **nothing** in the **Contract Act prevents** the minor from **making the other party bound to him**.
- ✓ Thus, a **promissory note duly executed in favour of a minor is not void** and can be sued upon by him, because he though **incompetent** to contract, may yet **accept a benefit**.
- ✓ Minor **cannot become partner** in a partnership firm.
However, he may with the **consent of all** the partners, be **admitted to the benefits** of partnership (**Sec 30** of Indian Partnership Act, 1932).

4. A minor can always plead minority

- ✓ Minor can **always plead minority** and is **not stopped** to do so even where he has **taken any loan** or entered into any contract **by falsely representing** that he was **major**.
- ✓ **Rule of estoppel can't be applied** against minor, i.e. he can **plea** his minority in defence.

5. Liability for necessities (Sec 68)

- ✓ Claim for **necessaries** supplied to minor or to any **other person** whom **such minor is legally bound to support** is **enforceable** by law.
- ✓ But a minor is **not liable** for any **price** that he may **promise** and **never** for **more than the value** of the **necessaries**.
- ✓ There is **no personal liability** of minor, but only his **property is liable**.
- ✓ To render **minor's estate liable** for necessities **two conditions** must be satisfied.
 - a) Contract must be for **goods reasonably necessary** for his **support in life**.
 - b) Minor must **not have already a sufficient supply** of these necessities.
- ✓ Necessaries mean those things that are **essentially needed** by a minor.
They **cannot include luxuries** or costly or **unnecessary articles**.
Necessaries extend to **all such things as reasonable persons would supply to an infant** in that **class of society** to which the infant belongs.
Expenses on minor's **education, funeral** ceremonies come within the scope of **necessaries**.

6. Contract by guardian - how far enforceable

- ✓ Though a minor's agreement is **void**, his **guardian can**, enter into a **valid contract on minor's behalf**.
- ✓ Where, guardian makes a **contract for minor**, which is **within his competence** and which is for the **benefit of minor**, there will be **valid contract** which the **minor can enforce**.
- ✓ But **all contracts** made by **guardian** on behalf of a minor **are not valid**.
For **instance**, **guardian** of a minor has **no power** to bind the minor by a contract for the **purchase of immovable Property**. But a **contract** entered into by a **certified guardian** of a minor, with the **sanction of court** for sale of **minor's property**, may be **enforced**.

Q \longrightarrow Support +
Dadi

7. No specific performance

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

8. No insolvency

- ✓ Minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and he shall never be held personally liable.

9. Partnership

- ✓ Minor being incompetent to contract cannot be a partner but under Sec. 30 of the Indian Partnership Act, he can be admitted to the benefits of partnership.

10. Minor can be an agent

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

11. Minor cannot bind parent or guardian

- ✓ In the absence of authority, express or implied, an infant is not capable of binding his parent or guardian, even for necessities.
- ✓ Parents will be held liable only when the child is acting as an agent for the parents.

12. Joint contract by minor and adult

- ✓ Adult will be liable on the contract and not the minor.

13. Surety (Guarantor) for a minor

- ✓ In a contract of guarantee when an adult stands surety for a minor then he (adult) is liable to third party as there is direct contract between surety and the third party.

14. Minor as Shareholder

- ✓ Minor being incompetent to contract cannot be a shareholder of the company.
- ✓ If by mistake he becomes a member, Company can rescind the transaction and remove his name from register.
- ✓ But, a minor may, acting through his lawful guardian become a shareholder by transfer or transmission of fully paid shares to him.

15. Liability for torts

2.3 Other Essential Elements

- ✓ Tort is a **civil wrong**.
Minor is **liable** in **tort** unless the **tort** in reality is a **breach of contract**.
- ✓ Thus, if minor **borrowed a horse** for riding only, he was held **liable** when he **lent** the horse to one of his **friends** who **jumped and killed** the horse.
Similarly, minor was held **liable** for his failure to **return certain instruments** which he had **hired** and then **passed on to a friend**.

B) Person of sound mind (Sec 12)

- ✓ A person is said to be of **sound** mind if, at the time when he makes a contract is **capable** of **understanding** it and of **forming a rational judgement** as to its effect upon his **interests**."
- ✓ Person who is **usually** of **unsound** mind, but **occasionally** of **sound** mind, may make a **contract** when he is of **sound** mind.
- ✓ Person who is **usually** of **sound** mind, but **occasionally** of **unsound** mind, may **not make** a contract when he is of **unsound** mind.
- ✓ Position of **unsound** mind person making a contract is **void**.

C) Contract by disqualified persons

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

II) Free Consent

- ✓ **Definition of Consent (Sec 13) -**
Two or more persons are said to **consent** when they agree upon the **same thing** in the **same sense**."
Parties are said to have **consented** when they agreed upon the **same thing in the same sense**.
- ✓ When parties make some **fundamental error** as to **nature** of transaction, or **person** dealt with or **subject-matter** of agreement, they have **not agreed upon same thing in same sense**, and there cannot be consent. A contract cannot arise in the absence of consent.
- ✓ Consent may be **free or not free**.
Only **free consent** is **necessary** for the **validity** of a contract.
- ✓ **Definition of Free Consent (Sec 14) -**
Consent is said to be **free** when it is **not caused by**:

- A) Coercion (Sec 15) or
 B) Undue Influence (Sec 16) or
 C) Fraud (Sec 17) or
 D) Misrepresentation (Sec 18) or
 E) Mistake subject to Sec 20, 21, & 22
- } voidable
 → void

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

When the consent is vitiated by mistake, the contract becomes void.

A) Coercion (Sec 15)

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

- ✓ It is not necessary that, Coercion must proceed from a party to contract, nor subject of the coercion must be the other contracting party, it may be directed against any third person.

✓ Effects of coercion (Sec 19)

a) Voidable at the option of party whose consent was so obtained.

b) Person to whom money has been paid or anything delivered under coercion must repay or return it. (Sec 72)

Threat to commit suicide - Whether is it coercion?

- ✓ Suicide though forbidden by Indian Penal Code is not punishable, as a dead man cannot be punished.

But Sec. 15 declares that committing or threatening to commit any act forbidden by Indian Penal Code is coercion.

Hence, a threat to commit suicide will be regarded as coercion.

B) Undue influence (Sec 16)

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

Essential ingredients under this provision are

1. Relation between the parties

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

2.3 Other Essential Elements

2. Position to dominate the will

✓ Relation exist in a manner that one of them is in a position to dominate the will of other.

✓ A person is deemed to be in such position in the following circumstances:

a) Real and apparent authority

Where a person holds a real authority over other

Example - Master & servant, doctor & patient, etc.

b) Fiduciary relationship

Where relation of trust & confidence exists between parties.

Example - Father & son, solicitor & client, husband & wife, creditor & debtor, etc.

c) Mental distress

Undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.

d) Unconscionable bargains

Where one party is in a position to dominate the will of other & the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence.

Example - Money-lending transactions and in gifts.

3. Object must be to take undue advantage in getting consent of other

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

4. Burden of proof

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

a) The other party is in position to dominate his will,

b) the other party actually used his position to obtain his consent,

c) transaction is unfair or unconscionable.

✓ Effect of undue influence- (Sec 19A)

✓ i) Contract is voidable at the option of the party whose consent was so caused.

ii) Such contract may be set aside either absolutely or if party entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem fit,

~~IX~~ Fraud (Sec. 17)

(C)

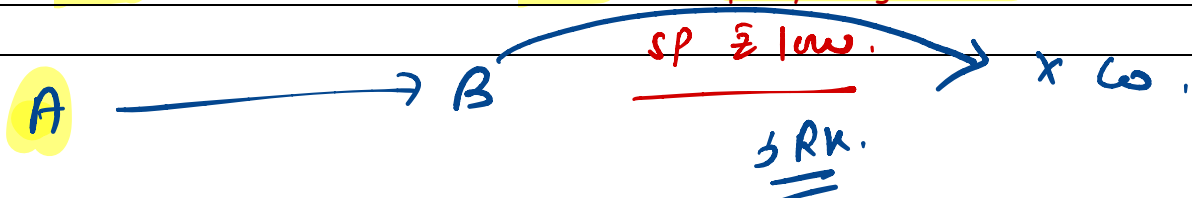
- ✓ Definition - Fraud means and includes any of the following acts committed by a party to a contract, or his connivance or by agent, with an intent to deceive another party or his agent, or to induce him to enter into the contract:
- Suggestion as a fact, which is not true by any person, who does not believe it to be true;
 - Active concealment of a fact by one having knowledge or belief of the fact;
 - A promise made without any intention of performing it;
 - Any other act fitted to deceive;
 - Any such act or omission as the law specially declares to be fraudulent.

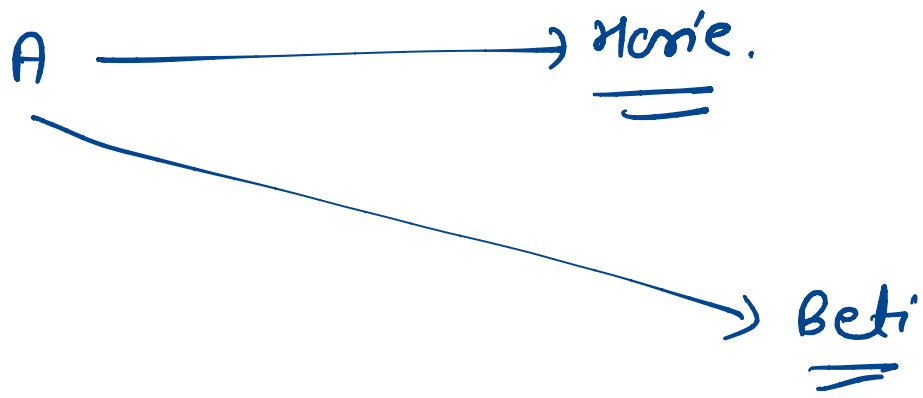
The following are the essential elements of the fraud:

- There must be a representation or assertion and it must be false.
However, silence may amount to fraud or an active concealment may amount to fraud.
Question - Whether Silence is fraud or not?
Answer - Silence is fraud in following situations:
 - There is duty to speak.
 - When silence is equal to speech.
- Representation must be related to a fact.
- Representation should be made before the conclusion of the contract with the intention to induce the other party to act upon it.
- Representation or statement should be made with a knowledge of its falsity or without belief in its truth or recklessly not caring whether it is true or false.
- The other party must have been induced to act upon the representation or assertion.
- The other party must have relied upon the representation and must have been deceived.
- The other party acting on the representation must have consequently suffered a loss.

- ✓ **Effect of Fraud upon validity of a contract**
When consent to an agreement is caused by fraud, the contract is voidable at option of the party defrauded and he has the following remedies:
- He can rescind the contract within a reasonable time.
 - He can sue for damages.
 - He can insist on performance of contract on the condition that he shall be put in the position in which he would have been had the representation made been true.

- ✓ **Exception: In the following cases, contract is not voidable**
- If the party whose consent was caused by silence which amounting to fraud, had the means of discovering the truth with ordinary diligence.
 - A fraud which did not cause the consent of the party to agreement.





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Other Essential Elements

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IV

Misrepresentation (Sec. 18)

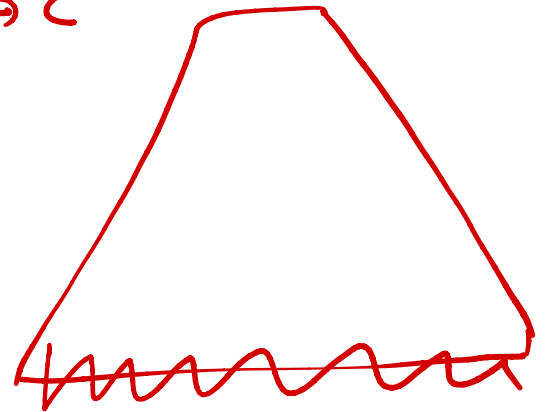
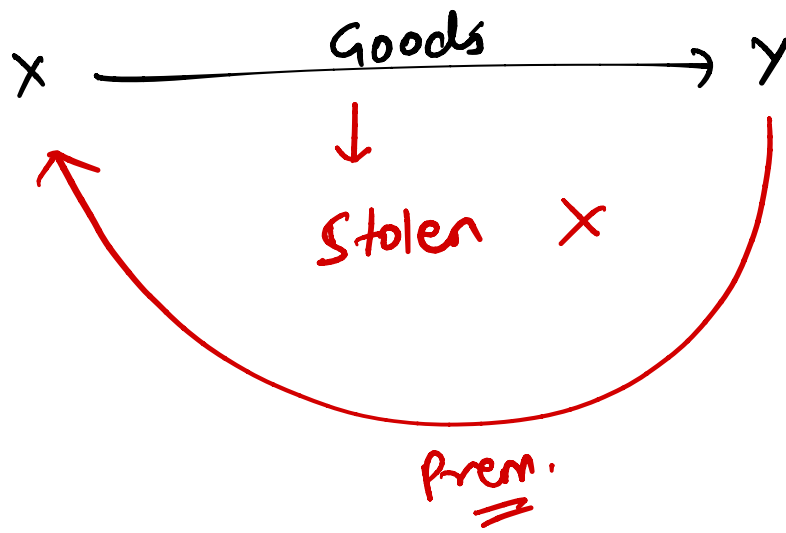
- ✓ There is misrepresentation if
- Statement of fact which is false, would constitute misrepresentation if the maker believes it to be true but which is not justified by the information he possesses;
 - When there is a breach of duty by a person without any intention to deceive, but which brings an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

✓

Difference between Coercion and Undue influence

| Basis | Coercion | Undue Influence |
|--------------------------------|---|--|
| Nature of action | It involves the physical force or threat. The aggrieved party is compelled to make the contract against its will. | It involves moral or mental pressure. |
| Involvement of criminal action | It involves committing or threatening to commit and act forbidden by Indian Penal Code or detaining or threatening to detain property unlawfully. | No such illegal act is committed or a threat is given. |
| Relationship between parties | It is not necessary that there must be some sort of relationship between the parties. | Some sort of relationship between the parties is absolutely necessary. |
| Exercised by whom | Coercion need not proceed from the promisor nor need it be the directed against the promisor. It can be used even by a stranger to the contract. | Undue influence is always exercised between parties to the contract. |
| Enforceability | The contract is voidable at the option of the party whose consent has been obtained by the coercion. | Where the consent is induced by undue influence, the contract is either voidable or the court may set it aside or enforce it in a modified form. |
| Position of benefits received | In case of coercion where the contract is rescinded by the aggrieved party, as per Section 64, any benefit received has to be restored back to the other party. | The court has the discretion to direct the aggrieved party to return the benefit in whole or in part or not to give any such directions. |

(MC) PEE IN Relation



✓ Distinction between fraud and misrepresentation

| Basis | Fraud | Misrepresentation |
|--|---|--|
| Intention | To deceive the other party by hiding the truth. | There is no such intention to deceive the other party. |
| Knowledge of truth | The person making the suggestion believes that the statement as untrue. | The person making the statement believes it to be true, although it is not true. |
| Rescission of the contract and claim for damages | The injured party can repudiate the contract and claim damages. | The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages. |
| Means to discover the truth | The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth. | Party can always plead that the injured party had the means to discover the truth. |

V) Mistake

✓ Mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others.

✓ Mistake may be either mistake of law or mistake of fact.

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

b) **Mistake of fact:** It is of two types -

- i) Bilateral Mistake,
- ii) Unilateral Mistake

✓ i) **Bilateral mistake:** Where both parties to an agreement are under a mistake as to matter of fact essential to the agreement, the agreement is void (Sec 20)
Cases of Bilateral Mistakes - It can be quality/ existence/ identity/ title/ price/ quantity of the subject matter

✓ ii) **Unilateral Mistake:** Contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. (Sec 22)

✓ Legality of Object and Consideration (Sec 23)

In each of the following cases, consideration or object of an agreement is said to be unlawful



2.3 Other Essential Elements

| | | | |
|---|-------------------------------|-------------------------|-----------------------------|
| ✓ | 1) Forbidden by Law | 2) Defeat the provision | 3) Fraudulent |
| | 4) Injury to person/ property | 5) Immoral | 6) Opposed to public policy |

1. When consideration or object is forbidden by law

- ✓ Acts forbidden by law are those which are punishable under any statute as well as those prohibited by regulations or orders.

2. When consideration or object are of such a nature that, if permitted, not directly but indirectly it would defeat the provisions of law, Agreement is void.

3. When it is fraudulent

- ✓ Agreements which are entered into to promote fraud are void.

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

5. When consideration is immoral.

6. When consideration is opposed to public policy

- ✓ In the name of public policy, freedom of contract is restricted by law only for the good for the community.

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

| | | |
|--------------------------------|-----------------------------------|------------------------------------|
| i) Trading with enemy | ii) Stifling prosecution | iii) Maintenance & Champerty |
| iv) Public offices/titles | v) Creating monopolies | vi) Marriage brokerage agr. |
| vii) Interference with justice | viii) Interest against obligation | ix) Consideration unlawful in part |

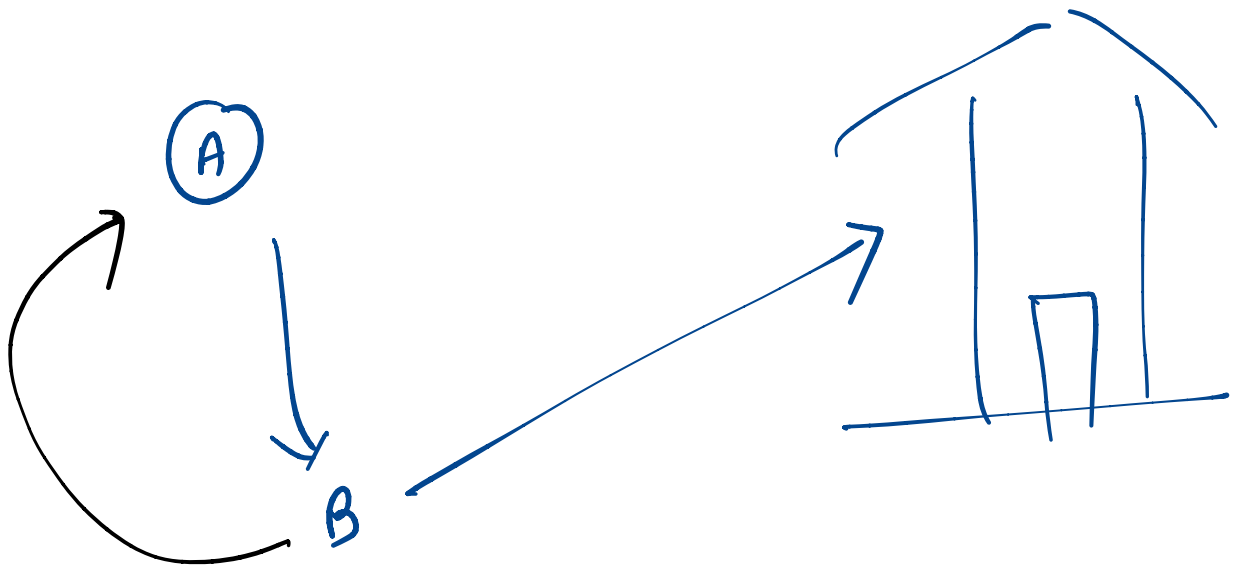
i) Trading with enemy

- ✓ Any trade with person owing allegiance to a government at war with India without the licence of the Government of India is void, as the object is opposed to public policy.

- ✓ Here, the agreement to trade offends against the public policy by prejudice to the interest of the State in times of war.

ii) Stifling Prosecution

- ✓ An agreement to present proceedings already instituted from running their normal course using force tends to be a perversion or an abuse of justice; therefore void.



| | |
|------|--|
| ✓ | The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal. |
| ✓ | However, Indian Criminal Procedure Code provides a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, in consideration the accused promising to do something for the complainant, is not opposed to public policy and hence valid. |
| iii) | Maintenance and Champerty |
| ✓ | Maintenance is an agreement in which a person promises to maintain suit in which he has no interest. |
| ✓ | Champerty is an agreement in which a person agrees to assist another in litigation in exchange of a promise to hand over a portion of the proceeds of the action. a) It is unreasonable so as to be unjust to other party or b) It is made by a malicious motive and not with bonafide object of assisting a claim. |
| iv) | Trafficking relating to Public Offices and titles |
| ✓ | Agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. |
| ✓ | Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. |
| ✓ | Following are the examples of agreements that are void: a) Agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void. b) An agreement to procure a public recognition like Padma Vibhushan for reward. |
| v) | Agreements tending to create monopolies are opposed to public policy, therefore void |
| vi) | Marriage brokerage agreements |
| ✓ | Agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy. |
| ✓ | Note: Marriage bureau only provides information and doesn't negotiate marriage for reward, therefore, it is not covered under this point. |
| vii) | Interference with the course of justice |
| ✓ | An agreement whose object is to induce any judicial officer of the State to act partially or corruptly is void, as it is opposed to public policy. |

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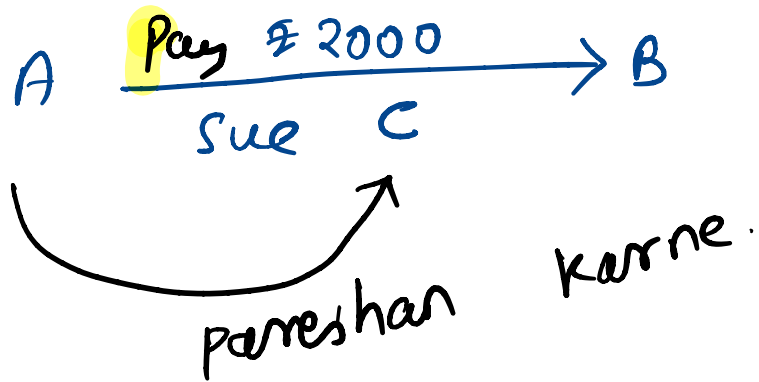
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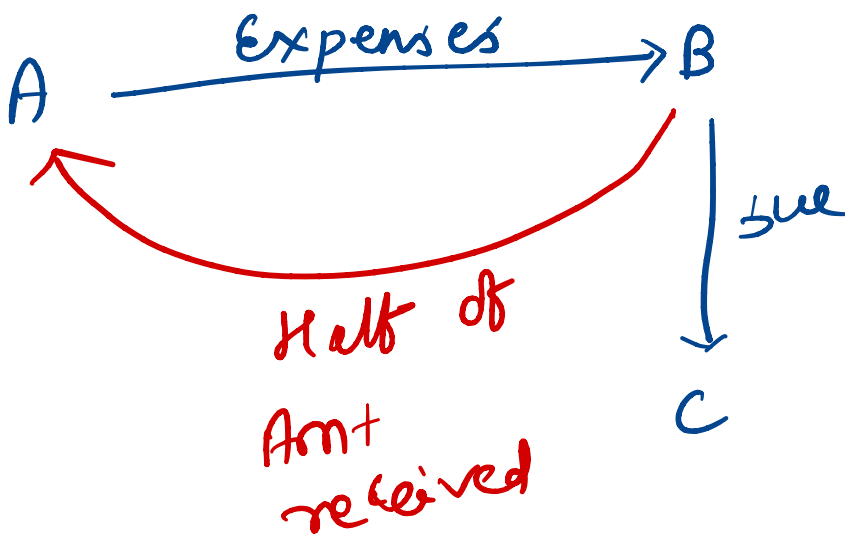
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Maintenance.



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2.3 Other Essential Elements

viii) Interest **against obligation**, object of such agreements is opposed to public policy

ix) **Consideration Unlawful in Part**

✓ If **any part** of a **single consideration** for **one or more objects**, or any **one or any part** of any one of **several considerations** for a **single object**, is **unlawful**, the agreement is **void**."

✓ There is **no promise** for a **lawful consideration** if there is **anything illegal** in a consideration which **must be taken as a whole**.

✓ Where **legal part** of a contract can be **severed from illegal part**, the **bad part** may be **rejected** and the **good one** can be **retained**.
But where the **illegal part cannot** be severed, the contract is **altogether void**.

~~VII~~ Expressly declared Void Agreements

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

Note: Point number **1,2,3,4,5,9** - Already discussed.
Point number **11** will be discussed in **Chapter 5**.

6. **Agreement in restraint of marriage (Sec 26)**

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

✓ So, if a person, being a **major**, agrees for **good consideration not to marry**, the promise is **not binding** and considered as **void agreement**.

7. **Agreement in restraint of trade (Sec 27)**

✓ Agreement by which any person is **restrained from exercising a lawful profession, trade or business** of any kind, is to that extent **void**.

| | |
|------|--|
| ✓ | But this rule is subject to following exceptions: |
| i) | where a person sells goodwill of a business and agrees with the buyer to refrain from carrying on a similar business , within specified local limits , so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid . The local limits must be reasonable . |
| ii) | If an outgoing partner makes an agreement with continuing partners that he will not carry on any business similar to that of the firm within a specified period or within specified local limits , such an agreement , thought in restraint of trade, will be valid , if the restrictions imposed are reasonable . (Sec.36 of IPA, 1932) |
| iii) | Similarly, Agreement between partners not to carry on competing business during the continuance of partnership is valid . (Sec 11 of IPA, 1932) |
| iv) | But an agreement of service by which an employee binds himself , during the term of his agreement , not to compete with his employer is not in restraint of trade . |
| 8. | Agreement in restraint of legal proceedings (Sec 28) |
| ✓ | It is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court or which abridges the usual period for starting legal proceedings . A contract of this nature is void . ↳ Shorten |
| ✓ | However, there are certain exceptions to the above rule: i) A contract by which the parties agree that any dispute between them in respect of any subject shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable is a valid contract . ii) Similarly, a contract by which the parties agree to refer to arbitration any question between them which has already arisen or which may arise in future , is valid ; but such a contract must be in writing . |
| 10. | Wagering agreement (Sec 30) |
| ✓ | Agreement by way of a wager is void . |
| ✓ | It is an agreement involving payment of a sum of money upon the determination of an uncertain event . |
| ✓ | Essence of a wager is that each side should stand to win or lose , depending on the way an uncertain event takes place |
| ✓ | Essentials of a Wager: i) There must be a promise to pay money or money's worth . ii) Promise must be conditional on an event happening or not happening. iii) There must be uncertainty of event . |

2.3 Other Essential Elements

- iv) There must be **two parties**, each party must stand to **win or lose**.
- v) There must be **common intention to bet** at the timing of making **such agreement**.
- vi) Parties should have **no interest** in the event **except for stake**.

Transactions similar to Wager (Gambling)

i) Lottery transactions:

- ✓ Lottery is a **game of chance** and not of **skill or knowledge**.
- ✓ Where the **prime motive** of participant is **gambling**, the transaction amounts to a **wager**.
- ✓ Even if the **lottery is sanctioned by the Government** of India it is a **wagering** transaction.
- ✓ The **only effect** of such sanction is that the **person responsible** for running the lottery will **not be punished under the Indian Penal Code**.
- ✓ **Lotteries are illegal** and even **collateral transactions** to it are tainted with **illegality** (Section 294A of Indian Penal Code).

ii) Crossword Puzzles and Competitions:

- ✓ Crossword puzzles in which **prizes depend** upon the **correspondence** of the competitor's solution with a **previously prepared solution** kept with the **editor of a newspaper** is a **lottery** and therefore, a **wagering** transaction.
- ✓ Crossword puzzles, **picture** competitions and athletic competitions where **prizes are** awarded on the **basis of skill and intelligence** are the **games of skill** and hence such **competitions are valid**.
- ✓ According to the **Prize Competition Act, 1955** prize competitions in games of **skill** are **not wagers** provided the **prize money does not exceed ₹ 1,000**.

iii) Speculative transactions:

- ✓ An **agreement** or a **share market transaction** where parties **intend to settle** the **difference** between **contract price and market price** of certain goods or shares on a specified day, is a **gambling** and hence **void**.

iv) Horse Race Transactions where prize payable to bet winner is less than ₹ 500, is a wager.

- ✓ Transactions resembling with wagering transaction but are not **void**

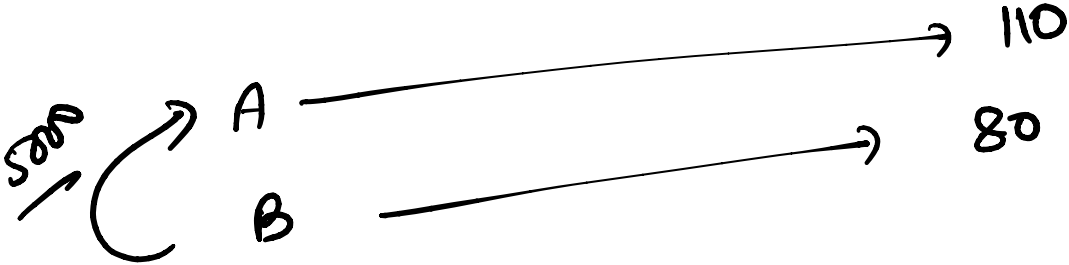
i) Chit fund (Sec 30)

- ✓ In case of a chit fund, a **certain number of persons decide** to **contribute** a **fixed sum** for a **specified period** and at the **end of a month**, the **amount** so contributed is **paid** to the **lucky winner** of the lucky draw.

ii) Commercial transactions or share market transactions

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- ✓ In these transactions in which **delivery of goods or shares** is **intended** to be given or taken, **do not amount to wagers**.

iii) Games of skill and Athletic Competition

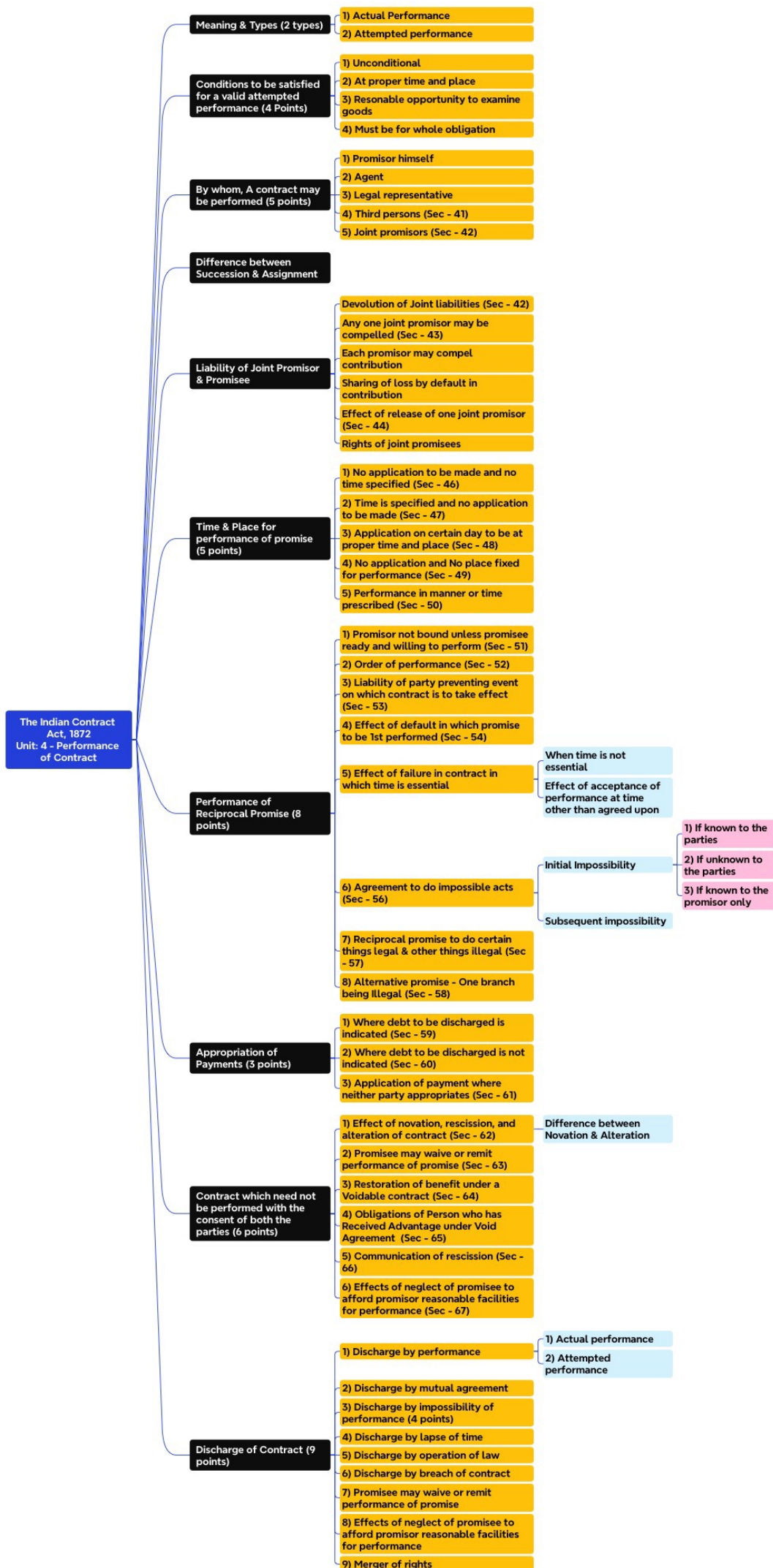
- ✓ Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the **games of skill** and hence such competition are **valid**.
- ✓ According to the Prize Competition Act, 1955 **prize competition in games of skill** are **not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

iv) A contract of insurance

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

VII) Distinction between Contract of Insurance and Wagering Agreement

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





Performance of a Contract (Section 37)

- ✓ Means **fulfilment of obligations** to the contract.
Parties to a contract must **either perform**, or **offer to perform**, their respective promises **unless** such performance is **dispensed with** or **excused** under ICA or any other law.
- ✓ **Types:** Performance may be **actual or attempted**.
 - i) **Actual Performance:** Where party to contract has **done what he had undertaken to do** or **either** of parties has **fulfilled their obligations** within **time & manner** prescribed.
 - ii) **Offer to perform/Attempted performance/Tender of performance:** When **performance becomes due**, Promisor **offers** to perform his obligation **but promisee refuses to accept**.

Conditions to be Satisfied for a **Valid** Tender or Attempted Performance

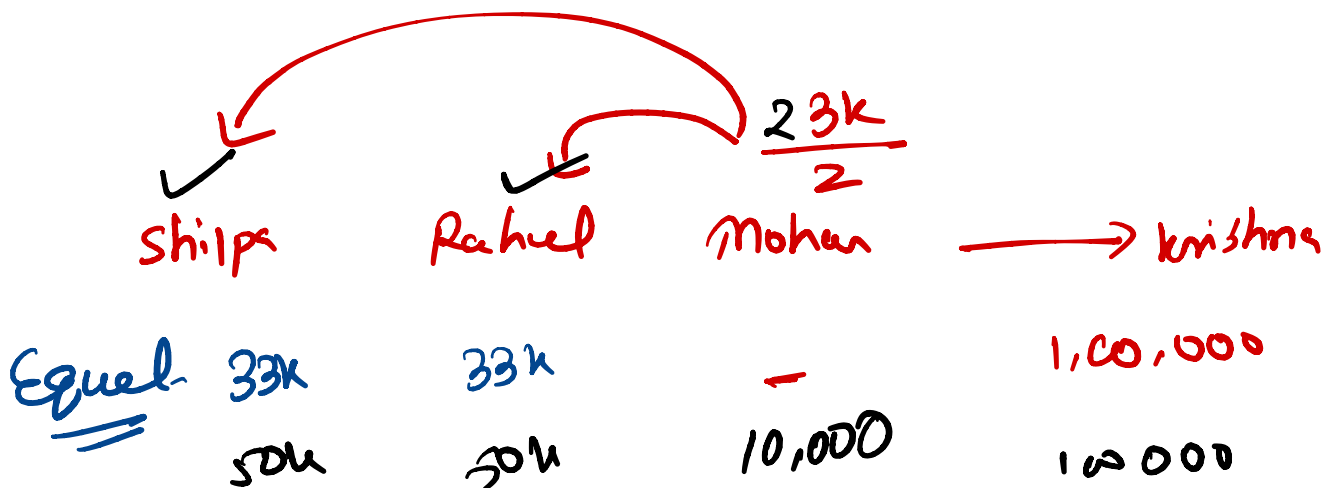
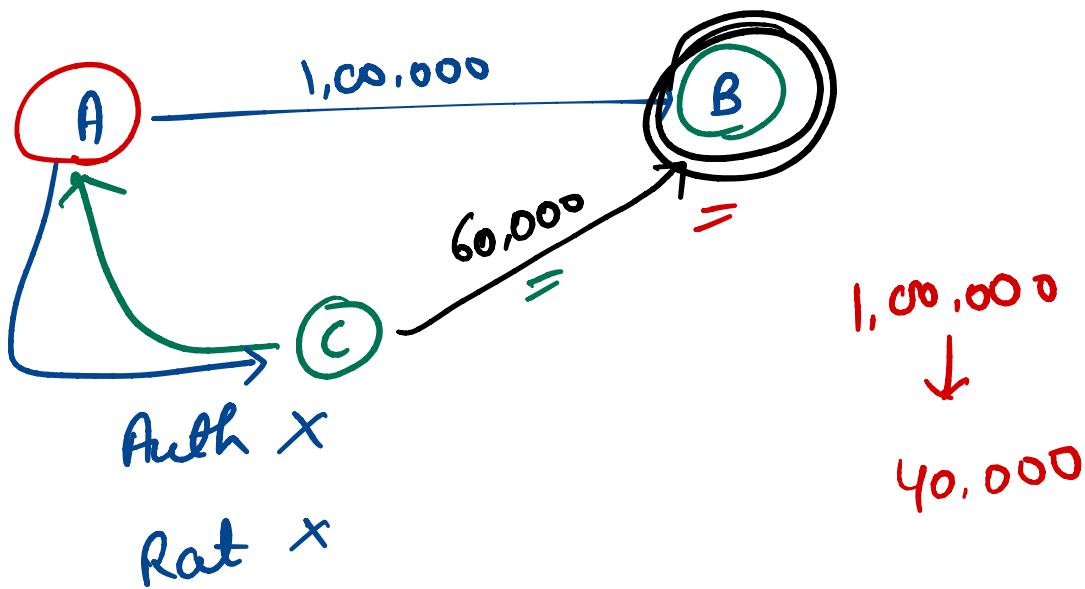
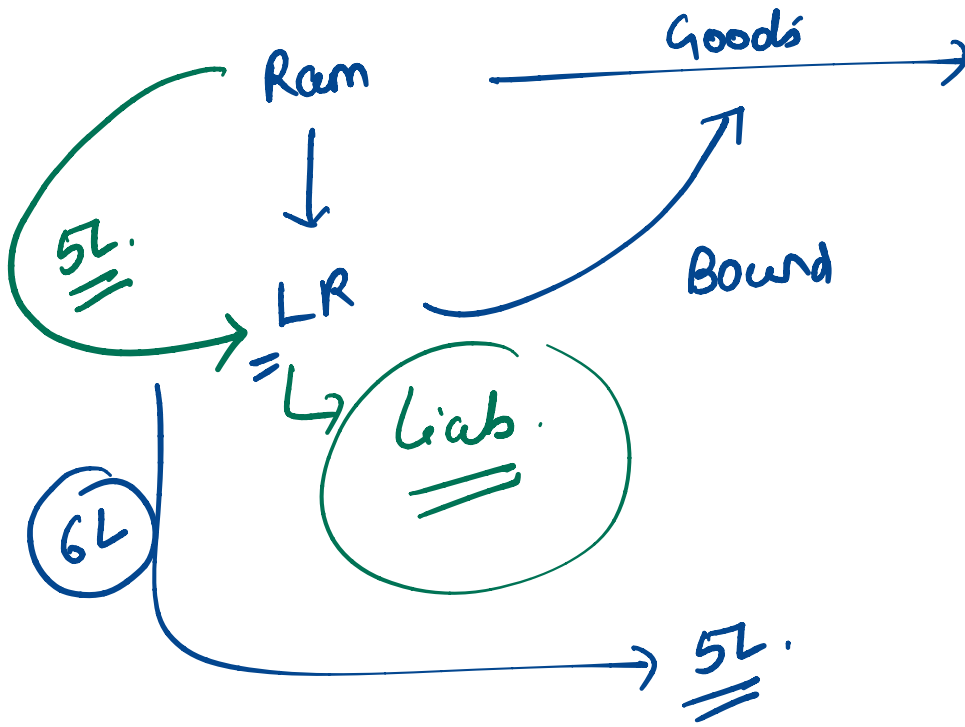
- i) It must be **unconditional**.
- ii) It must be made at **proper time and place**.
- iii) Reasonable **opportunity to examine goods**.
- iv) It must be for **whole obligation**.



By Whom a Contract May be Performed (Section 40 to 42)

| | | | | |
|-------------|----------|-------|---------------------------|-----------------|
| 1. Promisor | 2. Agent | 3. LR | 4. 3 rd Person | 5. J. Promisors |
|-------------|----------|-------|---------------------------|-----------------|

1. **Promisor himself**
 - ✓ If it was the **intention** of the parties that the **promise** should be performed by the **promisor himself**, such promise must be performed by the promisor.
 - ✓ If contract involves **exercise of personal skill or diligence**, or which are **founded on personal confidence** between parties must be performed by **promisor himself**.
2. **Agent**
 - ✓ Where **personal consideration is not the foundation** of contract, **promisor** or his **representative** may **employ a competent person** to perform it.
3. **Legal Representatives**
 - ✓ Contract which involves **use of personal skill** or is founded on **personal consideration** comes to an **end on the death** of the promisor.
 - ✓ **Unless** a **contrary intention** appears, **LR** of **deceased promisor** are **bound** to perform, But their **liability is limited** to the **value** of property **inherited** from deceased.
4. **Third persons (Section 41)**
 - ✓ When **promisee accepts** performance from **third person**, he **can't afterwards enforce** it



2.4 Performance of Contract

against promisor although promisor has neither authorised nor ratified the act of third party.

5. Joint promisors (Section 42)

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



Distinction between Succession & Assignment

- ✓ **Succession** - When benefits of a contract are succeeded to by process of law, then both burden and benefits attaching to the contract devolve on legal heir. However, the liability will be limited to the extent of the property inherited by him.
- ✓ **Assignment** - Benefit of a contract can only be assigned but not the liabilities thereunder, because when liability is assigned, a third party gets involved therein. Thus, Debtor cannot relieve himself of his liability to creditor by assigning to someone else his obligation to repay debt. Further, where the benefit is coupled with a liability or when a personal consideration has entered into making of contract then benefit cannot be assigned.



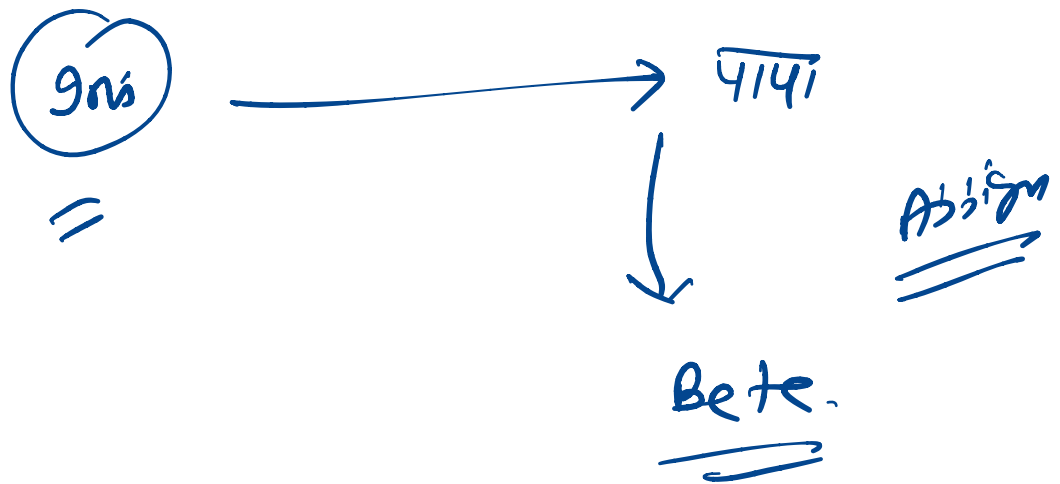
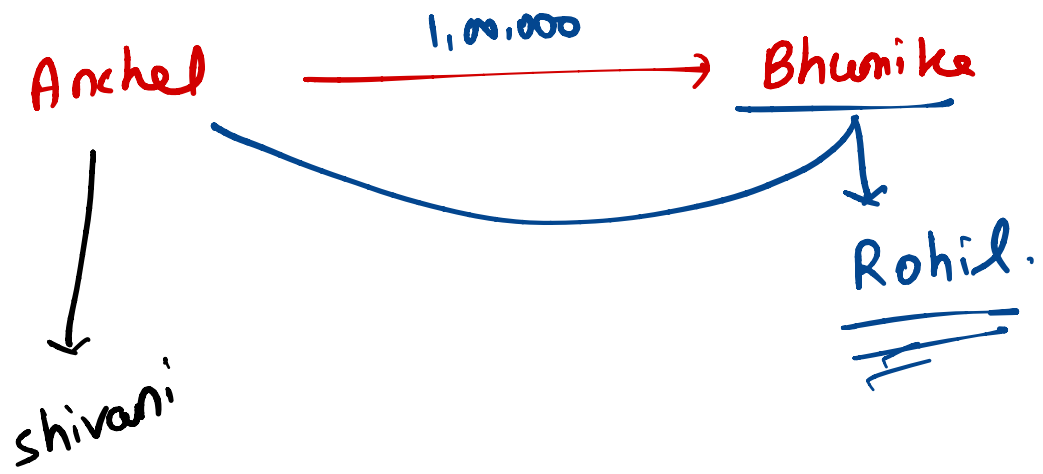
Liability of Joint Promisor & Promisee

Devolution of joint liabilities (Section 42)

- ✓ Ordinarily, all joint promisors during their life time must jointly fulfil the promise. After death of any one of them, his LR jointly with survivor or survivors should do so. After death of last survivor, the LR of all the original co-promisors must fulfil promise.

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

- ✓ Promisee may, in absence of express agreement to contrary, compel any one or more of such joint promisors to perform the whole of the promise.
- ✓ Each promisor may compel contribution other joint promisor to contribute equally with himself to performance of promise, unless a contrary intention appears from contract.
- ✓ **Sharing of loss** in case of default in contribution by any one of two or more joint promisors - The remaining joint promisors must bear the loss arising from such default in equal shares. Hence, the liability is of both joint & several, in the absence of a contract to contrary.



Effect of release of one joint promisor (Section 44)

- ✓ Where two or more persons have made a joint promise, a release of one by the promisee does not discharge the other joint promisor or joint promisors, neither does it free joint promisors so released from responsibility to the other joint promisor or promisors.

Rights of Joint Promisees (Section 45)

- ✓ In case of joint promise unless a contrary intention appears from contract, right to claim performance rests, as between them during their joint lives, & after death of any of them, with the representative of such deceased person jointly with survivor or survivors, and after death of last survivor, with representatives of all jointly.



Time & Place for Performance of Promise (Section 46 to 50)

| | |
|---|---|
| No time specified + No application needed | Perform within "Reasonable Time" |
| Time fixed + No application needed | Perform during business hours |
| Application needed | Promisee must ask at proper time & place |
| No place fixed + No application needed | Promisor must ask promisee to fix a place |
| Performance in manner/time prescribed | Prescribed manner |

- i) Time for performance where no application (request) is to be made & no time is specified (Sec 46) - Engagement must be performed within a reasonable time.
- ii) Time & place for performance where time is specified & no application to be made (Sec 47) - Promisor may perform it at any time during usual business hours, on such day and place at which promise ought to be performed.
- iii) Application for performance on certain day to be at proper time and place (Sec 48) - Promisor has not undertaken to perform it without application by promisee, it is the duty of promisee to apply for performance at a proper place and within usual business hours.
- iv) Place for performance of promise, where no application to be made and no place fixed for performance (Sec 49) - It is the duty of the promisor to apply to the promisee to appoint a reasonable place for performance of promise, and to perform it at such a place.
- v) Performance in manner or at time prescribed or sanctioned by promise (Sec 50) - Performance of promise may be made in any such manner or at any time which the promisee prescribes or sanctions.

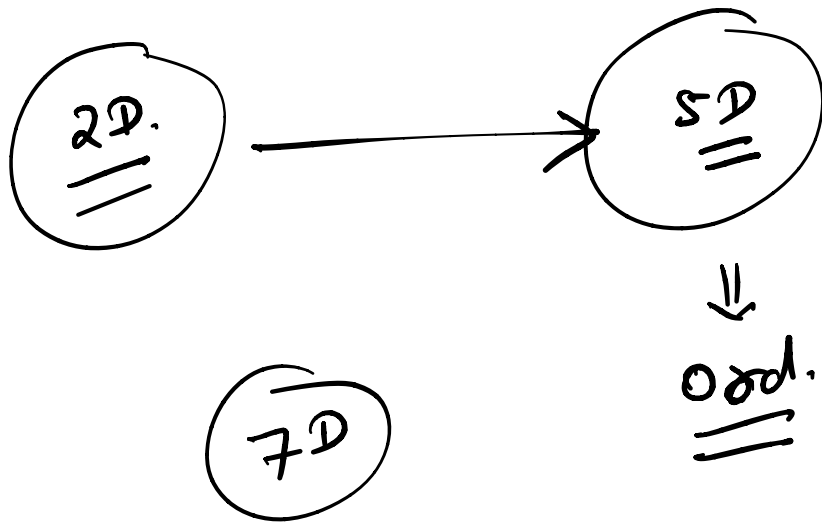


Performance of Reciprocal promise (Section 51 to 58)

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

2.4 Performance of Contract

- ✓ When contract consists of reciprocal promises to be simultaneously performed, No promisor needs to perform his promise unless promisee is ready & willing to perform his reciprocal promise.
- ii) **Order of performance of reciprocal promises (Sec 52)**
 - ✓ If order of performance of reciprocal promises is expressly fixed by contract - they shall be performed in that order;
If not fixed, it shall be performed in that order which the nature of transaction requires.
- iii) **Liability of party preventing event on which contract is to take effect (Sec 53)**
 - ✓ When one party to contract prevents the other from performing his promise, Contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from other party for any loss he may sustain in consequence of non- performance of contract.
- iv) **Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises (Sec 54)**
 - ✓ If promises are reciprocal & dependent and where if promisor who has to perform his promise before the performance of the other's promise fails to perform it, He cannot claim performance of the other's promise, & also liable for compensation for his non- performance.
- v) **Effects of Failure to Perform at a Time Fixed in a Contract in which Time is Essential (Sec 55)**
 - ✓ When party to a contract promises to do certain thing at or before specified time, & fails to do any such thing at or before specified time -
Contract becomes voidable at the option of promisee, if the intention of parties was that time should be of essence of contract.
 - ✓ **Effect of such failure when time is not essential -**
Contract does not become voidable but promisee is entitled to compensation from promisor for any loss occasioned to him by such failure.
 - ✓ **Effect of acceptance of performance at time other than agreed upon -**
If contract becomes voidable on account of promisor's failure to perform at the time agreed, and promisee accepts performance at any time other than agreed, Promisee cannot claim compensation for any loss occasioned by non-performance at the time agreed, unless, at the time of acceptance, he gives notice to promisor of his intention



$\tau \longrightarrow \text{voidable}$

$\tau \times \longrightarrow \text{voidable } x$

$\tau \longrightarrow AC \longrightarrow \text{Later}$
 $\text{comp} \rightarrow \underline{\text{Int}^n}$

to do so.

vi) Agreement to do Impossible Act (Sec 56)

✓ **Types** of Impossibility of performance

- A) **Initial** impossibility,
- B) **Subsequent** impossibility.

A) Initial Impossibility (Impossibility existing at the time of contract):

✓ When **parties** agree upon doing of **something** which is **impossible in itself**, agreement would be **void**. The **fact** of impossibility **may be** and may **not be known** to the parties.

1) If known to parties:

It would be observed that an **agreement constituted**, quite **unknown** to parties, may be **impossible** of being performed and hence **void**.

2) If unknown to parties:

Where **both** the promisor and the promisee are **ignorant** of the impossibility of performance, the contract is **void**.

3) If known to promisor only:

Where at the **time** of entering into a contract, the **promisor alone knows** about the **impossibility** of performance, **or even** if he **does not know** though he should have **known** it with **reasonable diligence**, the promisee is **entitled** to **claim compensation** for any loss he suffered **on account of non-performance**.

B) Subsequent or Supervening impossibility (Becomes impossible after entering into contract):

✓ When **performance** becomes **impossible or illegal** by occurrence of an **unexpected event** or a change of **circumstances** beyond the **contemplation of parties**, the contract becomes **void**.

In other words, sometimes, **Performance** of a contract is **quite possible** when it is **made**, **But subsequently** some event **happens** which renders it **impossible or unlawful**. Such impossibility is called the **subsequent or supervening or post-contractual impossibility**.

Effect - Contract becomes **void** & **parties are discharged** from further performance contract.

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

✓ The **first set** of promises is a **valid** contract, but the **second** is a **void** agreement.

viii) Alternative promise' one branch being illegal (Sec 58)

✓ **Legal** branch alone can be **enforced**".

2.4

Performance of Contract



Appropriation of Payments (Section 59 to 61)



Sometimes, a debtor owes several debts to same creditor and makes payment, which is not sufficient to discharge all the debts.

In such cases, Appropriation of payment applies.

i) Application of payment where debt to be discharged is indicated (Sec 59)

Where a debtor owing several distinct debts to one person, makes payment either with express intimation or under circumstances implying that payment is to be applied to discharge of some particular debt, payment if accepted, must be applied accordingly.

ii) Application of payment where debt to be discharged is not indicated (Sec 60)

Where a debtor has omitted to intimate and there are no other circumstances indicating to which debt payment is to be applied, Creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law. However, he cannot apply the payment to disputed debt.

iii) Application of payment where neither party appropriates (Sec 61)

Where neither party makes any appropriation, Payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law. If the debts are of equal standing, Payments shall be applied in discharge of each proportionately.



Contracts which need not be performed with the consent of both parties (Section 62 to 67)

i) Effect of novation, rescission, and alteration of contract (Sec 62)



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

a) Effect of novation: Parties may substitute a new contract for the old.

The old contract is discharged and consequently it need not be performed.

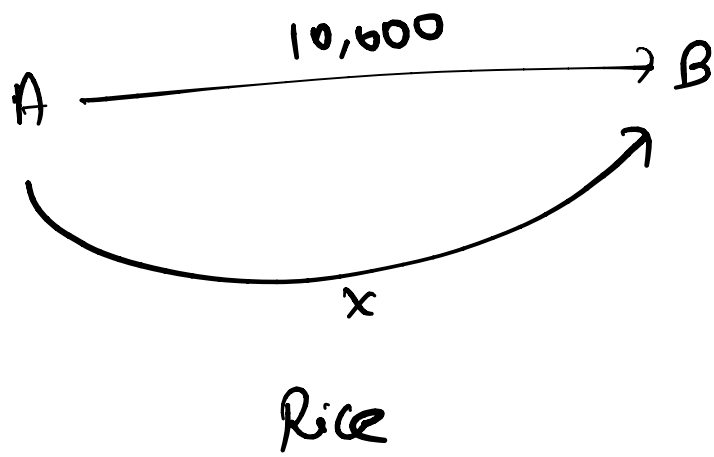
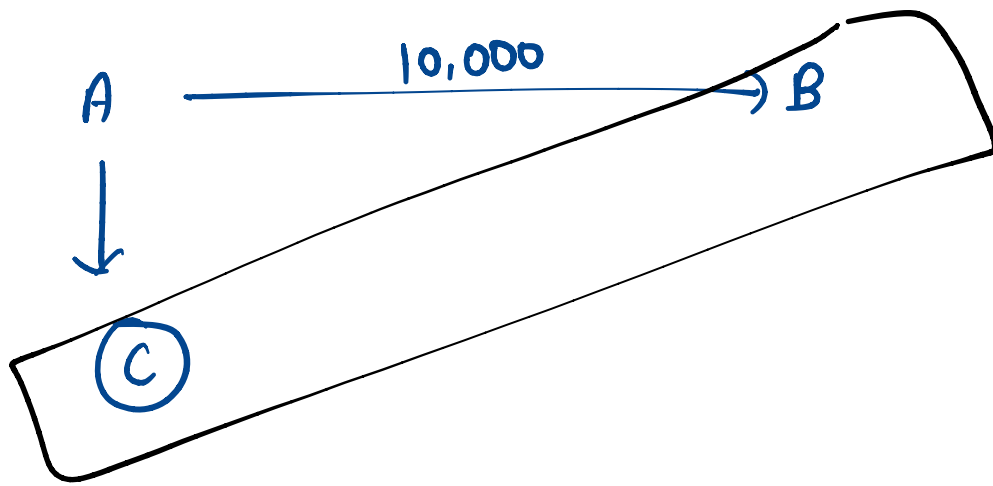
On Novation, some new contract is substituted for old contract either between the same parties or between different parties.

Novation can take place only by mutual agreement between the parties.

b) Effect of rescission: When parties to a contract agree to rescind it, Contract need not be performed.

In rescission, only the old contract is cancelled and no new contract comes to exist in its place. Both in novation & in rescission, contract is discharged by mutual agreement.

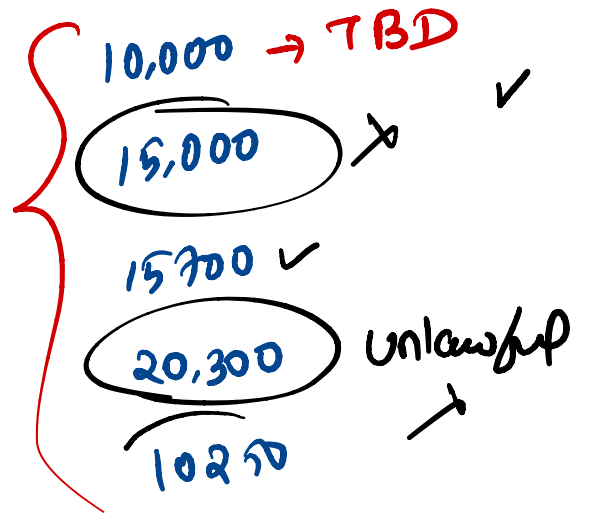
c) Effect of alteration: Where parties to a contract agree to alter it, the original



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Time

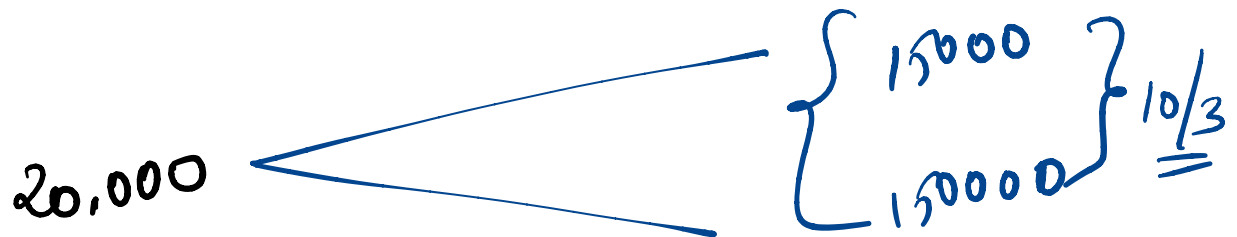
~~①~~

~~②~~

✓ ✓ TBD ✓

unlx

DX



| | |
|------------------|---------------|
| 1/10/24 → 10,000 | Time barred |
| 1/1/25 → 20,000 | Lawful debt |
| 1/3/25 → 15000 | " " |
| 1/3/25 → 15000 | " " |
| 1/4/25 → 12000 | Disputed debt |
| 10/4/25 → 12500 | Illegal debt |

Payment →

contract is **rescinded** & need **not to be performed**.

Terms of contract may be **so altered** by **mutual agreement** that the alteration may have the effect of **substituting a new contract** for the **old one**.

Distinction between **novation** and **alteration** is **very slender (little)**.

Difference between Novation and alteration:

- ✓ 1. **Meaning:** Novation means **substitution** of an **existing** contract with a **new one**. But in case of **alteration** the **terms** of the contract may be **altered** by **mutual agreement** by the contracting parties.
- 2. **Change in terms and conditions and parties:** Novation may be made by **changing** in the **terms** (Big change) of the contract or there may be a **change** in the **contracting parties**. But in case of **alteration** the **terms** of the contract may be **altered** by **mutual agreement** by the **contracting parties** but the **parties** to contract will **remain the same**.
- 3. **Substitution of new contract:** In case of **novation**, there is **altogether** a **substitution of new contract** in place of the **old** contract. But in case of **alteration**, it is **not essential to substitute** a new contract in place of the **old** contract. In **alteration**, there may be a **change in some** of the **terms and conditions** of the original agreement.

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

- ✓ Contract may be **discharged by remission**. Every promisee may **dispense** with or **remit**, **wholly or in part**, the **performance** of promise made to him, **or may extend the time** for performance or may **accept any satisfaction** which he thinks fit.

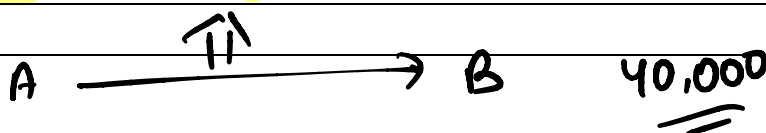
iii) Restoration of Benefit under a Voidable Contract (Sec 64)

- ✓ When a person at whose option a contract is **voidable rescinds** it, the **other** party thereto **need not perform** any promise therein contained in **which he is the promisor**. **Party rescinding** contract shall, if he has **received any benefit** from another party to such contract, **restore such benefit**, to the person from **whom it was received**".

iv) Obligations of Person who has Received Advantage under Void Agreement or contract that becomes void (Sec 65)

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

Note: **Deposit** is **not a benefit** received under the contract, It is the **security** that **purchaser** will fulfil his **contract**.



2.4 Performance of Contract

v) Communication of rescission (Sec 66)

- ✓ A contract **voidable** at the option of one party can be **rescinded**; but **rescission** must be **communicated** to other party in the **same manner** as a proposal is **communicated**. Similarly, rescission may be **revoked** in the **same manner** as a **proposal** is **revoked**.

vi) Effects of neglect of promisee to afford promisor reasonable facilities for performance (Sec 67)

- ✓ If **promisee neglects or refuses** to **afford** the promisor **reasonable facilities** for performance of his promise, **Promisor** is **excused** by such **neglect** or refusal for any **non-performance** caused thereby.

Discharge of a Contract

- ✓ A contract is discharged when obligations created by it come to an end.

A contract may be discharged in any one of the following ways

| | | |
|---------------------|-----------------------------|-----------------------------|
| i. Performance | ii. Mutual Agreement | iii. Impossibility of Perf. |
| iv. Lapse of time | v. Operation of Law | vi. Breach of Contract |
| vii. Waive or Remit | viii. Reasonable Facilities | ix. Merger of Rights |

i) Discharge by performance

- ✓ When parties to contract **fulfil their obligations** arising under the contract within the **time and manner** prescribed.

Discharge by performance may be

- Actual** performance - when each party has done what he had agreed to do under the agreement.
- Attempted performance** or Tender of Performance - When promisor offers to perform his obligation, but the promisee refuses to accept it.

ii) Discharge by mutual agreement (Sec 62)

- ✓ If parties to a contract **agree to substitute a new** contract or to **rescind or remit** or **alter it**, the original contract need not be performed.

iii) Discharge by impossibility of performance (Sec 56)

- ✓ If impossibility **exist from the very start**, it would be **impossibility ab initio**. Alternatively, it may **supervene**.

Supervening impossibility may take place owing to:

- An **unforeseen change in law**;
- Destruction** of the **subject-matter essential** to that performance;

- c) **Non-existence or non-occurrence** of particular state of **things**, which was **naturally contemplated for performing** the contract, as a result of some **personal incapacity** like **dangerous malady (disease)**;
d) **Declaration of a war**

iv) **Discharge by lapse of time**

- ✓ A contract should be **performed** within a **specified period** as prescribed by the Limitation Act, 1963. If it is **not performed** and if **no action is taken** by the promisee within the specified period of limitation, he is **deprived of remedy at law**.

v) **Discharge by operation of law**

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

vi) **Discharge by breach of contract**

- ✓ Breach of contract may be
a) **Actual breach** - If one party defaults in performing his part of contract on the due date.
b) **Anticipatory breach** - A person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one party to a contract breaks the promise, the party injured thereby has right of action for damages and also discharged from performing his part of the contract.

vii) **Promisee may waive or remit performance of promise (remission) (Sec 63)**

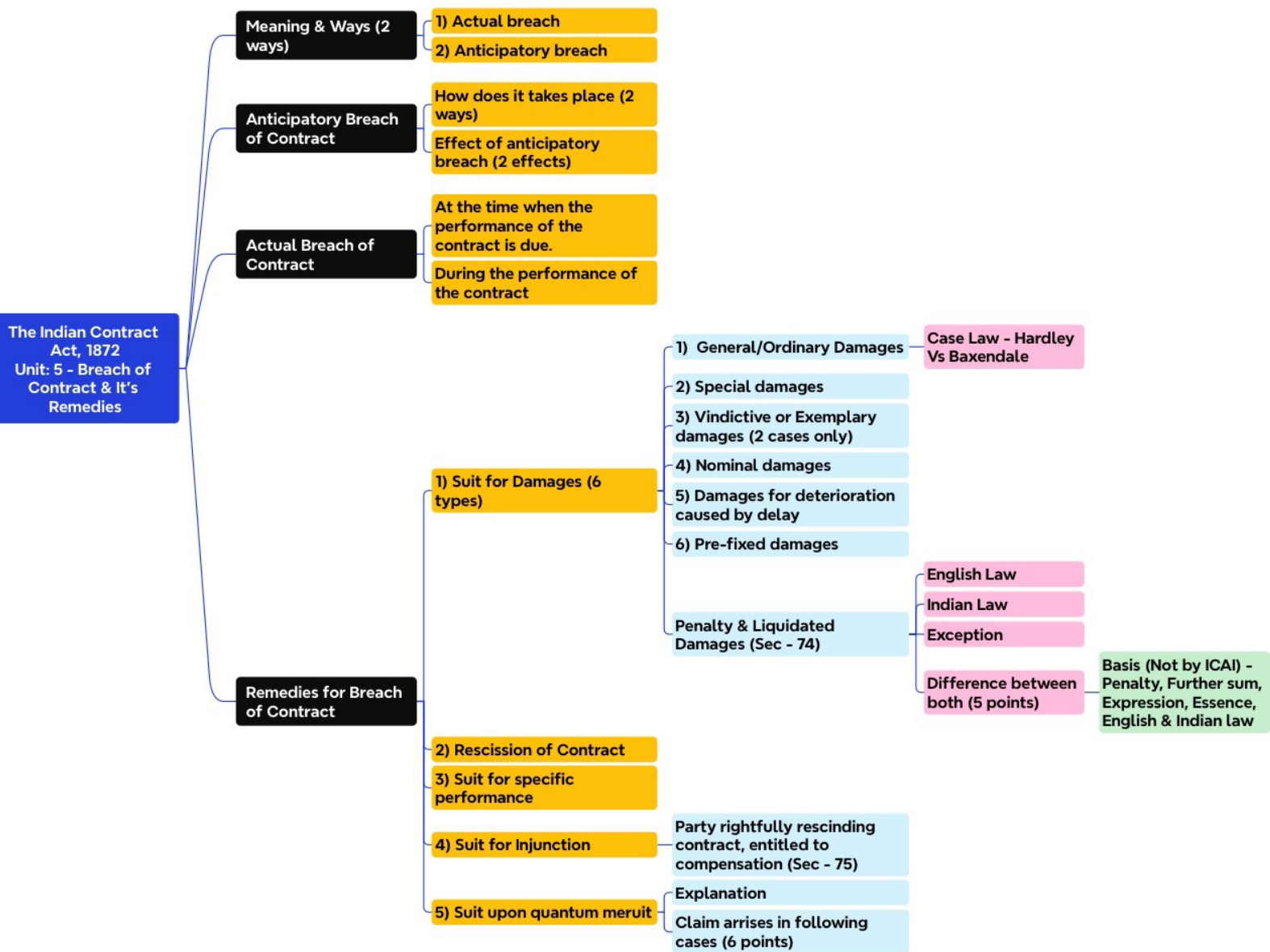
- ✓ Every promisee may **dispense with or remit, wholly or in part**, the **performance** of promise made to him, **or may extend** the time for such performance **or may accept** instead of it **any satisfaction** which he thinks fit.

viii) **Effects of neglect of promisee to afford promisor reasonable facilities for performance (Sec 67)**

- ✓ If any **promisee neglects or refuses to afford** the promisor **reasonable facilities** for performance of his promise, Promisor is excused.

ix) **Merger of rights**

- ✓ Sometimes, **inferior rights and superior rights coincide & meet** in one and the same person. In **such cases**, **inferior rights merge into superior rights**. On **merger**, **inferior rights vanish** and are not required to be **enforced**.



Breach of Contract \Rightarrow when one party fails or refuses to perform the promise or obligation entirely or show his/her unwillingness to perform, It is called as Breach of Contract.

**Breach & It's Types**

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

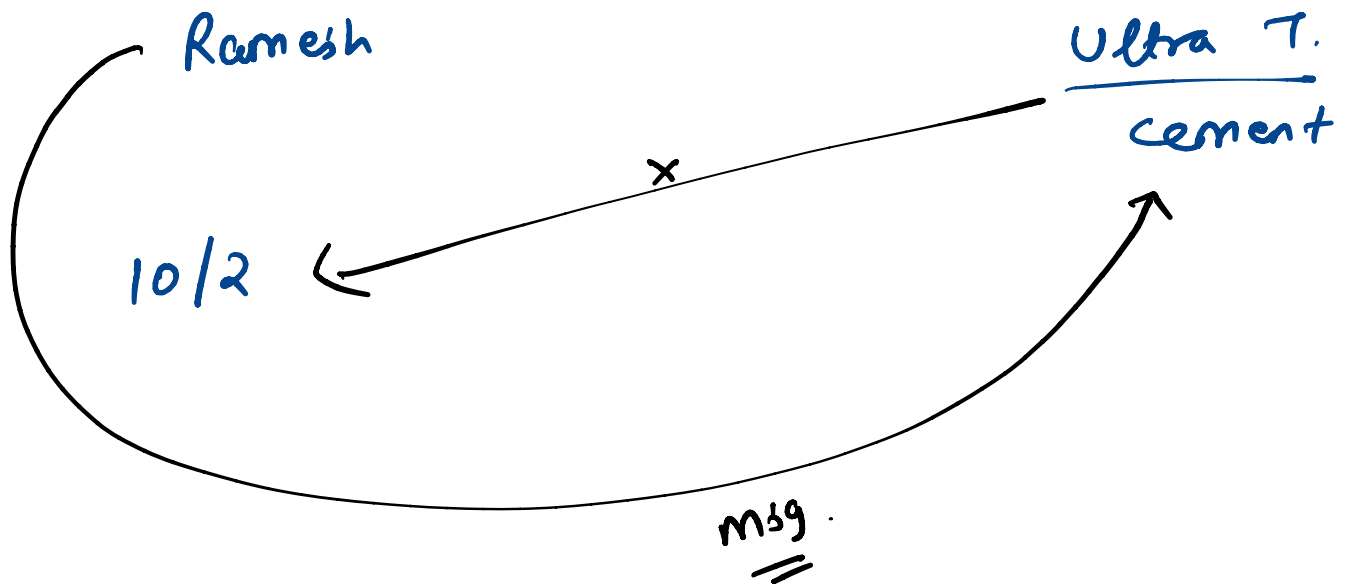
A) Anticipatory Breach of Contract

- ✓ **Meaning** - It is a **breach occurring before the time** fixed for performance has **arrived**. When **promisor refuses altogether** to perform his promise & signifies his **unwillingness** even **before the time** for performance has arrived, it is **called Anticipatory Breach**.
- ✓ **It may take either of following two ways:**
i) Expressly by words **spoken or written**, and
ii) **Impliedly** by the **conduct** of one of the parties.
- ✓ **Action of Promisee** - Promisee may put an **end to contract**, **unless** he has **signified**, but words or conduct, his acquiescence (assent) in its **continuance**."
- ✓ **Effect of Anticipatory Breach:**
Promisee is excused from performance or **further performance**.
Also he gets an **option**:
i) To **either treat** the contract as "**rescinded & sue** the **other party** for damages **immediately without waiting** until the **due date** of performance **OR**
ii) **Elect not to rescind** but to **treat** the contract as still **operative** & **wait** for the time of performance and then **hold** the other party **responsible** for **non-performance**.
But in **this case**,
• **He** will keep the **contract alive** for **benefit of other party** as well as his **own**, and
• **Guilty** party may **still perform** his part of contract if he **so decides**, and
• can **also take advantage** of any **supervening impossibility** which may have **effect** of **discharging** the contract.

B) Actual Breach of Contract

10/2

- ✓ **Meaning** - It is a case of **refusal to perform** the promise **on the scheduled date**. Parties are **bound to perform**, but when **one breaks** the contract **by refusing** to perform his promise, he is **said to have committed a breach**.
- ✓ **Actual breach of contract may be committed** -
i) **At the time** when the **performance** of the contract is **due**
ii) **During the performance** of the contract when **one party fails** or **refuses** to perform his obligation.



① → Sue 9mm + Cont card

② Ram. → Ultra T.

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1) Adv

2) Perf

3) S Im.



Remedies for Breach of Contract

| | | | | |
|---------------------|---------------------------|----------------------------------|------------------------|-----------------------------|
| 1) Suit for Damages | 2) Rescission of Contract | 3) Suit for specific performance | 4) Suit for Injunction | 5) Suit upon quantum meruit |
|---------------------|---------------------------|----------------------------------|------------------------|-----------------------------|

1) Suit for Damages

- ✓ On **breach** of contract, the **Party that suffers** is entitled to **receive compensation** for any **loss or damage** caused to them by the **breach**.
- ✓ **Compensation** can be claimed for any **loss or damage** which
 - i) **Naturally arises** in the **usual course** of **events** or which
 - ii) The **party knew** when they **entered into** contract it as **likely to result** from breach
- ✓ **Special damage** can be **claimed only** on a **previous notice**. But the **party suffering** is bound to **take reasonable steps** to **minimise** the loss.
- ✓ **No compensation** is payable for any **remote or indirect loss**.

Types of Damages

| | | |
|-------------|------------------|----------------------------|
| i) Ordinary | ii) Special | iii) Vindictive or Exempl. |
| iv) Nominal | v) Deterioration | vi) Pre-fixed |

i) Ordinary damages

- ✓ When **contract** has been **broken**, Party who **suffers** by such breach is **entitled to receive compensation** for any loss or damage which **naturally arose** in usual course of things or which **parties know**, when they made the **contract**, to be likely to result from breach of it.
- ✓ Such compensation is **not to be given** for any **remote and indirect** loss or damage.



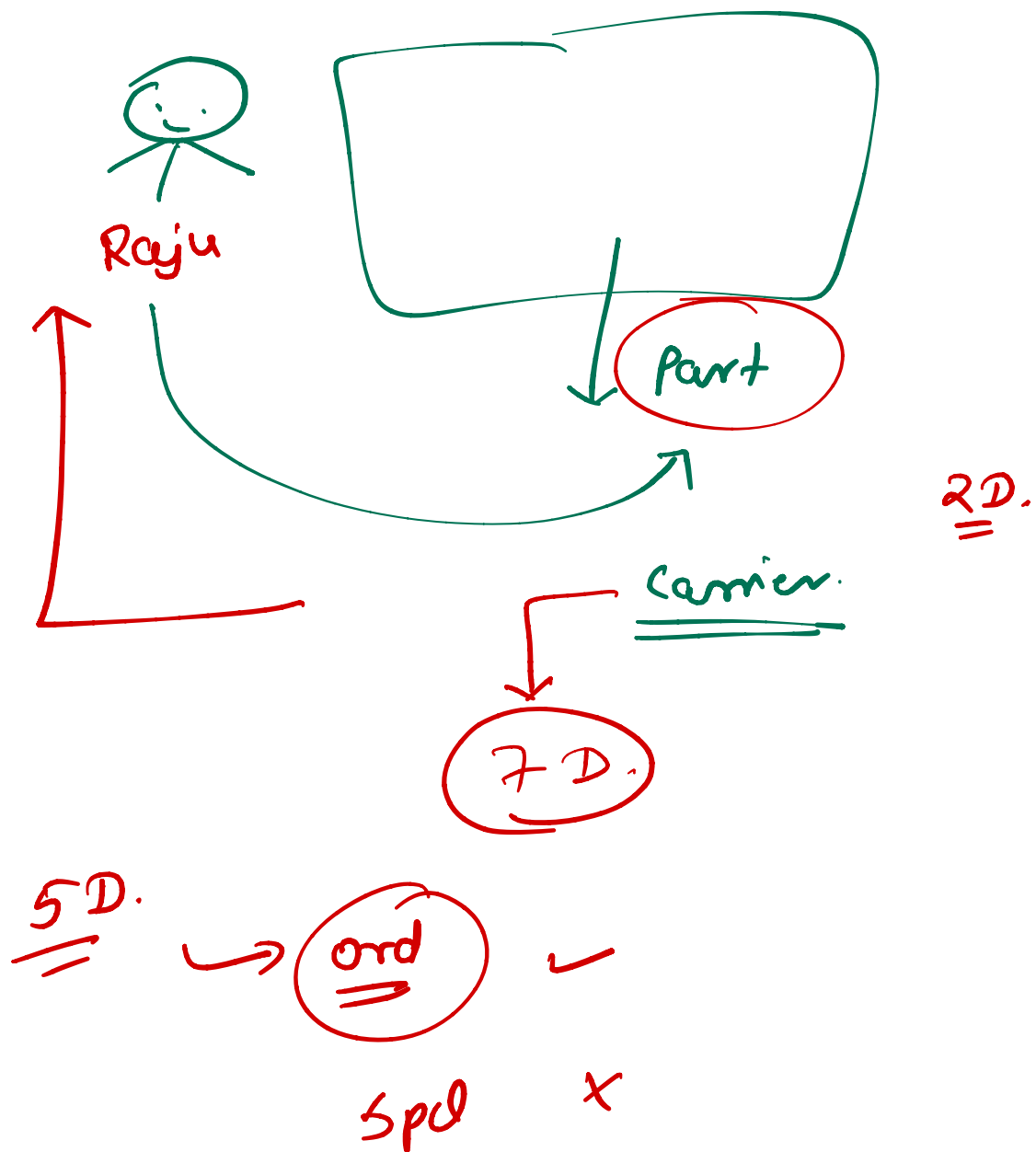
Case Law - Hadley vs. Baxendale

Facts - P's flour mill had a broken crankshaft. P handed it to D, a common carrier, to deliver it to a foundry for repairs within 2 days. D delayed the delivery, causing the mill to remain idle for 5 additional days. P sued D for ordinary damages (for delay) and also for loss of profits (as the mill couldn't operate). However, P did not inform D that the delay would lead to loss of profits.

Conclusion - Court held that D was **liable only for ordinary damages** (for delay in delivery). D was **not liable** for loss of profits, since P had **not communicated** that delay would cause such **special loss**. Hence, **special damages** cannot be claimed **unless** the **carrier** is made **aware** of the special **circumstances** at the **time of contract**.

ii) Special damages

- ✓ Where a **party** to a contract **receives a notice** of **special circumstances** affecting the **contract**, he will be **liable** not only for **damages arising naturally** and directly from the



2.5 Breach of Contract & Remedies

breach but also for special damages.

iii) Vindictive or Exemplary damages

- ✓ These damages may be awarded only in two cases -
 - a) For breach of promise to marry because it causes injury to his or her feelings; and
 - b) for wrongful dishonour by a banker of his customer's cheque.
 Businessman whose credit has suffered will get it even if has sustained no pecuniary (monetary) loss.
 But a non-trader cannot get heavy damages in like circumstances, unless proved as special damages. (Gibbons Vs West Minister Bank)

iv) Nominal damages

- ✓ It is awarded where plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage.
 Awarded just to establish right to decree. The amount may be a rupee or even 10 paise.

→ Quality

v) Damages for deterioration caused by delay

- ✓ In such cases, Damages can be recovered from carrier even without notice.
 'Deterioration' not only implies physical damages to goods but also loss of special opportunity for sale.

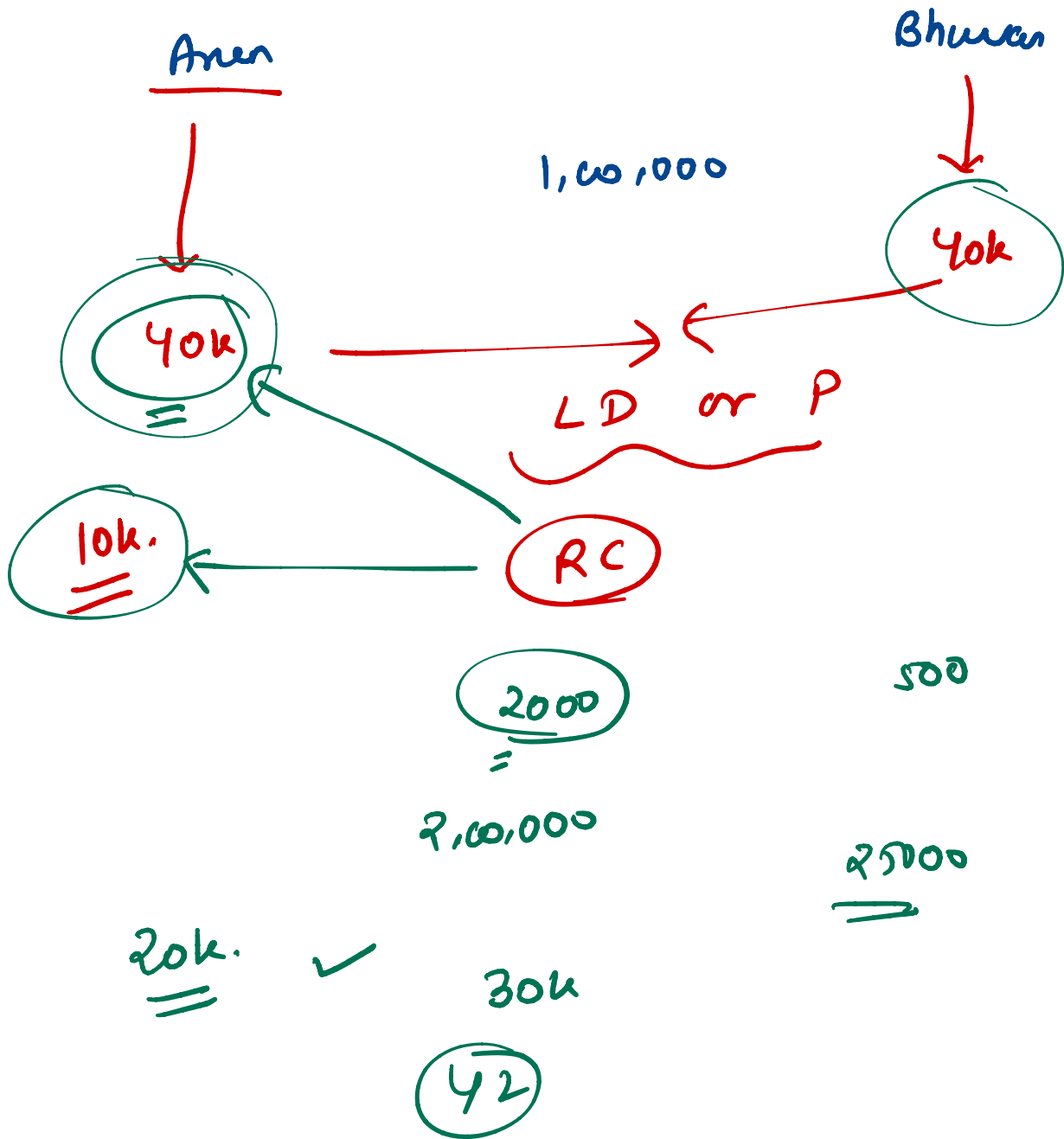
vi) Pre-fixed damages

- ✓ Parties to a contract stipulate at the time of its formation that on a breach, A certain amount will be payable as damages. It may be either liquidated damages or a penalty.
- ✓ The aggrieved party is entitled to receive reasonable compensation not exceeding the amount so named in case of breach from the party at fault. (Sec - 74)



Penalty And Liquidated Damages (Section 74)

- ✓ **Meaning** - Parties to a contract may provide, the amount of compensation payable in case of failure to perform the contract. It may be penalty or liquidated damages.
- ✓ **Liquidated Damages** - Sum fixed represents a genuine pre-estimate by parties of the loss, it is liquidated damages which in the opinion of parties will compensate for breach.
- ✓ **Penalty** - Sum fixed in the contract is unreasonable and is used to force the other party to perform the contract; it is penalty. Such a clause of disregarded and the injured party cannot recover more than the actual loss.



- ✓ **English Law** - Sum so fixed may be interpreted either as liquidated damages or penalty.
- ✓ **Indian Law** - No distinction between 'penalty' and liquidated damages.
- ✓ **Courts in India** award only a reasonable compensation not exceeding the sum so mentioned in the contract, But the court may allow less as well.
- ✓ **Exception** - Where any person gives any bond to Central or State government for performance of any public duty or act in which public are interested, on breach, he shall be liable to pay whole sum mentioned therein.

Difference between Penalty & Liquidated Damages

- ✓ **Common Point** - Both are payable on breach of contract.
It is very difficult to draw a clear line of distinction but there are certain principles:
 - i) If the sum so large as to be far in excess of the probable damage on breach, it is certainly a penalty.
 - ii) Where a sum is expressed to be payable on a certain date and a further sum in the event of default being made, the latter sum is a penalty because mere delay in payment is unlikely to cause damage.
 - iii) Expression used by the parties is not final. The court must find out whether the sum fixed in the contract is in truth a penalty or liquidated damages.
If the sum fixed is extravagant or exorbitant (unreasonable), Court will regard it as a penalty even if, it is termed as liquidated damages in the contract.
 - iv) Essence of a penalty is payment of money stipulated as a terrorem of the offending party. The essence of liquidated damages is a genuine pre-estimate of the damage.
 - v) English law makes a distinction between liquidated damages and penalty, but no such distinction is followed in India.
Courts in India must ascertain the actual loss and award the same which must not, exceed the sum so fixed in the contract.
The courts award reasonable compensation not exceeding the sum so fixed.

2) Rescission of contract

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

3) Quantum Meruit

- ✓ **Meaning** - If one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for, although no particular

2.5 Breach of Contract & Remedies

remuneration fixed, the Law will infer a promise to pay, i.e. as much as the party doing service has deserved.

✓ If party injured by breach had at time of breach done part but not all of work which he is bound to do under contract shall be compensated for the value of the work done.

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

- i) It is only available if the original contract has been discharged.
- ii) The claim must be brought by a party not in default.

✓ **Object of Quantum Meruit**

Recompensate the party or person for value of work which he has done.

Damages are compensatory in nature while quantum meruit is restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate.

✓ The claim for quantum meruit arises in the following cases:

- a) When an agreement is discovered to be void or when a contract becomes void.
- b) When something is done without any intention to do so gratuitously.
- c) Where there is an express or implied contract to render services but there is no agreement as to remuneration.
- d) When one party abandons or refuses to perform the contract.
- e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.
- f) When an indivisible contract for a lump sum is completely performed but badly, the person who has performed the contract can claim lump sum, but other party can make a deduction for bad work.

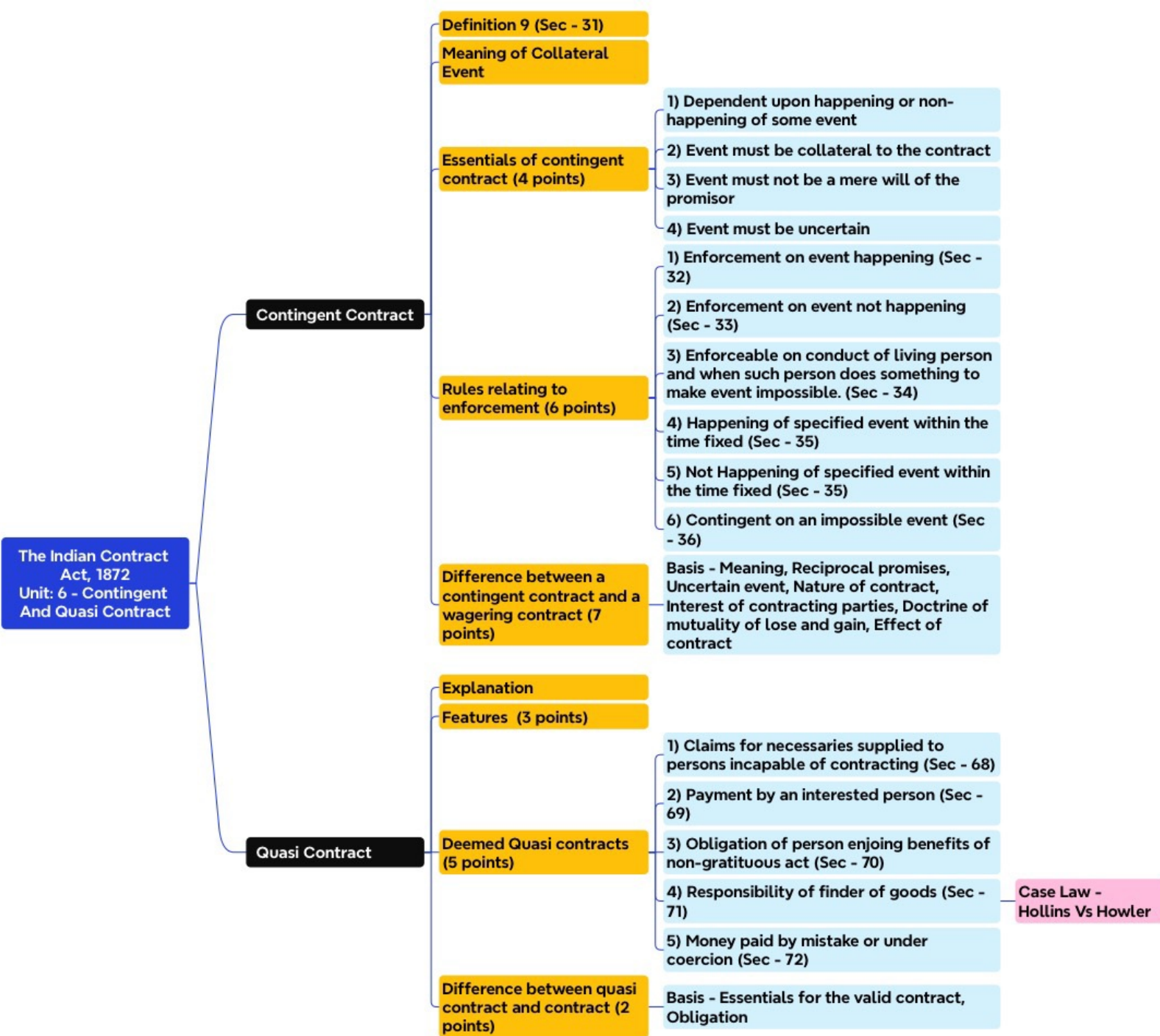
4) Suit for specific performance

✓ Where damages are not an adequate remedy, Court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to terms of contract.

5) Suit for injunction

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

✓ Party rightfully rescinding contract, entitled to compensation for any damage which he has sustained through non-fulfilment of the contract. (Sec 75)



**Contingent Contract (Section 31)**

- ✓ Contract may be **absolute** (complete) or **contingent**.
- ✓ An **Absolute** contract is one where the **promisor undertakes to perform** the contract in **any event without any condition**.
- ✓ "A contract **to do or not to do something**, if some **event, collateral** to such contract, **does or does not happen**" is known as **contingent contract**. *↳ Additional*
Contracts of **Insurance, indemnity and guarantee** fall under this category.
- ✓ Meaning of **collateral Event**: "An event which is **neither a performance directly promised** as part of contract, **nor** the whole of the **consideration** for a promise".

**Essentials of a contingent contract**

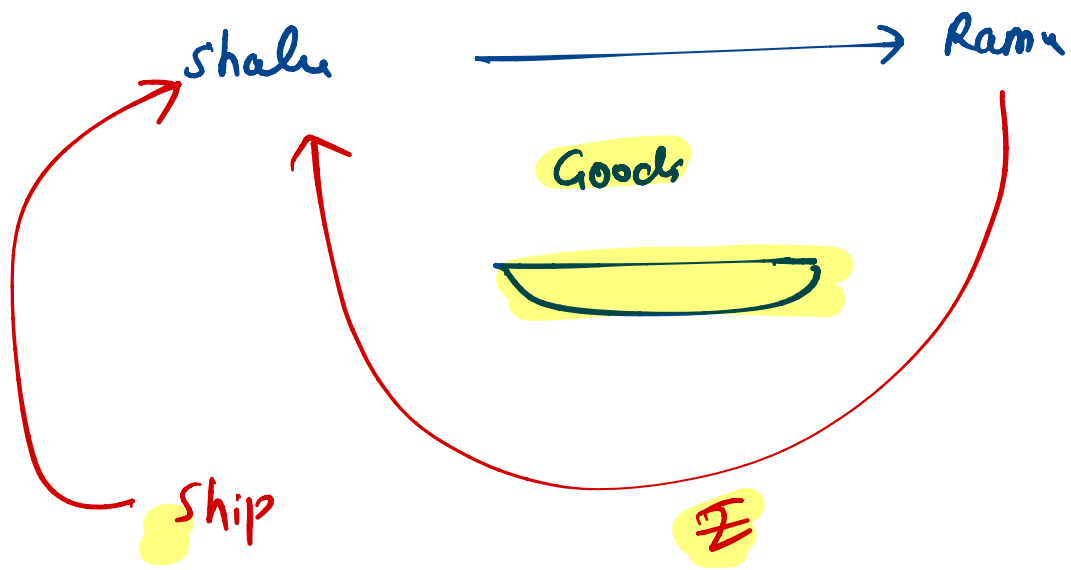
- a) The **performance** of a contingent contract would **depend** upon the **happening or non-happening** of some event or condition. The **condition** may be **precedent or subsequent**.
- b) The **event** referred to as **collateral to the contract**. The event is **not part** of the **contract**. The **event** should be **neither performance** promised **nor** a **consideration** for a promise.
- c) The contingent event should **not be a mere 'will' of the promisor**. The **event** should be **contingent** in addition to being the will of the promisor.
- d) The event must be **uncertain**. Where the event is **certain or bound to happen**, the **contract** is due to be **performed**, then it is a **not contingent contract**.

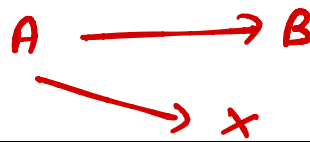
**Rules Relating to Enforcement (Section 32 to 36)**

| | | |
|----------------------|--------------------------|-----------------------------|
| a) Event Happening | b) Event non happening | c) Conduct of living person |
| d) Event within time | e) Event not within time | f) Impossible event |

- a) **Enforcement of contracts contingent on an event happening (Sec 32)**
 - ✓ **Enforceable** - Where a contingent contract is **made** to do or not to do anything if an **uncertain future event happens**.
It **cannot** be **enforced** by law **unless** and until that event has **happened**.
If the event becomes **impossible**, such contracts become **void**.
- b) **Enforcement of contracts contingent on an event not happening (Sec 33)**
 - ✓ **Enforceable** - Where a contingent contract is made to do or not do anything if an **uncertain future event does not happen**, it can be **enforced** only when the **happening** of that event becomes **impossible and not before**.
- c) A contract would cease to be enforceable (Unenforceable) if it is contingent upon conduct of a living person & when that living person does something to make the 'event' or 'conduct' as impossible of happening (Sec 34)

**Case law - Frost V. Knight**





2.6 Contingent & Quasi Contracts

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

Conclusion - It was held that it had become impossible that he should marry the plaintiff and she was entitled to sue him for the breach of the contract.

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

✓ **Enforceable** - Contingent contracts to do or not to do anything, if a specified uncertain event happens within fixed time.

If at the expiration of time fixed such event has not happened or becomes impossible before time fixed, it becomes void.

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

✓ **Enforceable** - Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time may be enforced when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen".

f) Contingent on an impossible event (Sec 36)

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



Difference between a contingent contract and a wagering contract

| | Basis | Contingent contract | Wagering contract |
|-----------------------|---------------------------------|---|---|
| M R U N I | Meaning | A contingent contract is a contract to do or not to do something with reference to a collateral event happening or not happening. | A wagering agreement is a promise to give money or money's worth with reference to an uncertain event happening or not happening. |
| | Reciprocal promises | Contingent contract may not contain reciprocal promises. | A wagering agreement consists of reciprocal promises. |
| | Uncertain event | In a contingent contract, the event is collateral. | In a wagering contract, the uncertain event is the core factor. |
| | Nature of contract | Contingent contract may not be wagering in nature. | A wagering agreement is essentially contingent in nature. |
| | Interest of contracting parties | Contracting parties have interest in the subject matter in contingent contract. | The contracting parties have no interest in the subject matter. |

| | | | |
|---|--------------------------------------|---|--|
| D | Doctrine of mutuality of lose & gain | Contingent contract is not based on doctrine of mutuality of lose and gain. | A wagering contract is a game, losing and gaining alone matters. |
| E | Effect | Contingent contract is valid. | A wagering agreement is void. |

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Quasi Contracts

- ✓ A valid contract must contain certain essential elements, but sometimes the law implies a promise imposing obligations on one party and conferring right in favour of the other even in the absence of essential elements of valid contract.
- ✓ Such cases are not contract in the strict sense, but Court recognises them as relations resembling those of contracts and enforces them as if they were contracts. These are known as quasi contracts as they create same obligations as in the case of regular contract. It is also called as certain relation resembling those created by contracts.
- ✓ Quasi or Constructive contract are based on principles of equity, justice and good conscience.
- ✓ Maxims - "No man must grow rich out of another person's loss".

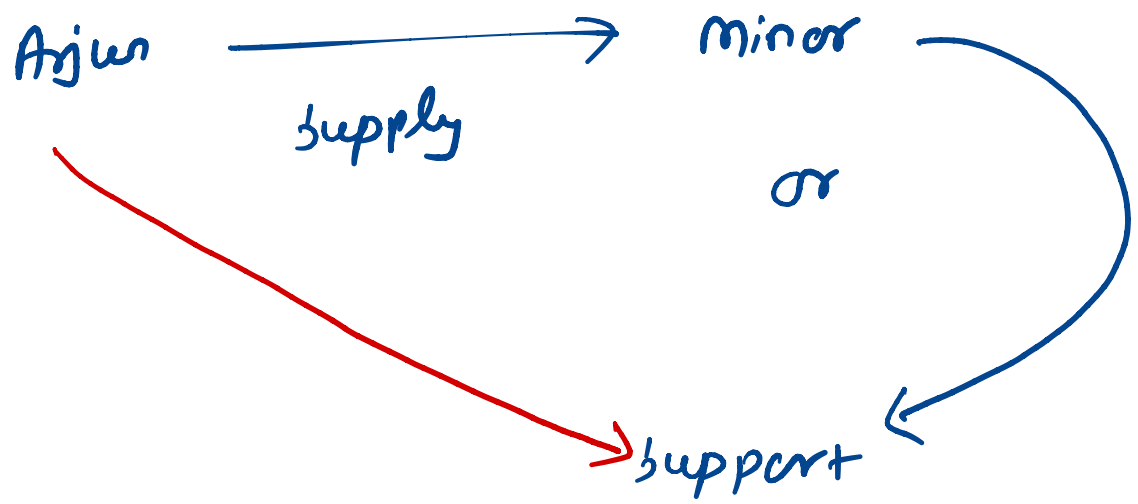
Salient features/ Principles of quasi contracts

- a) Such a right is always a right to money & generally to a liquidated (estimated) sum of money.
- b) It does not arise from any agreement of parties concerned, but is imposed by law &
- c) This right is available not against all world, but against a particular person or persons only.

Cases Deemed as Quasi Contracts

| | | |
|--------------------|------------------------|-----------------------|
| a) Necessaries | b) Interested Person | c) Non-Gratuitous Act |
| d) Finder of Goods | e) Mistake or Coercion | |

- a) **Claim for necessities supplied to persons incapable of contracting (Sec 68)**
 - ✓ If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from property of such incapable person.
 - ✓ To Establish the claim - Supplier must prove not only that the goods were supplied to the person who was minor or a lunatic but also that they were suitable to his actual requirements at the time of sale & delivery to establish his claim.



2.6 Contingent & Quasi Contracts

b) Payment by an interested person (Sec 69)

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

c) Obligation of person enjoying benefits of non-gratuitous act (Sec 70)

- ✓ If a person **lawfully does anything** for **another** or **delivers anything** to him **not intending** to do so **gratuitously** (free) & such **other person** **enjoys the benefit** thereof, Such other person is **bound to pay compensation** or to **restore** the thing so **done or delivered**.
- ✓ Plaintiff must prove that
 - a) that he had **done** the act or had **delivered the thing lawfully**;
 - b) that he did **not do so gratuitously**; and
 - c) that the other person **enjoyed the benefit**.

d) Responsibility of finder of goods (Sec 71)

- ✓ Person who **finds goods belonging** to **another** & **takes** them into his **custody** is subject to same **responsibility** as if he were a **bailee**.
- ✓ Thus, a **finder** of lost goods has
 - a) to take **proper care** of the property as man of **ordinary prudence** would take,
 - b) He has **no right** to **appropriate** the goods and
 - c) He must **restore** the goods if the **owner** is found.

Case Study ⇒ Hollins Vs Hawler

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

- ✓ Person to whom **money** has been **paid** or anything **delivered by mistake** or under **coercion** must **repay or return** it.
Every kind of payment of money or delivery of goods for every type of **'mistake'** is **recoverable**.



Difference between quasi contracts and contracts

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

In **Hollins vs. Howler L. R. & H. L.**, 'H' picked up a diamond on the floor of 'F's shop and handed over the same to 'F' to keep till the owner was found. In spite of the best efforts, the true owner could not be traced. After the lapse of some weeks, 'H' tendered to 'F' the lawful expenses incurred by him and requested to return the diamond to him. 'F' refused to do so. **Held**, 'F' must return the diamond to 'H' as he was entitled to retain the goods found against everybody except the true owner.

Example 22: 'P' a customer in 'D's shop puts down a brooch worn on her coat and forgets to pick it up and one of 'D's assistants finds it and puts it in a drawer over the weekend. On Monday, it was discovered to be missing. 'D' was held to be liable in the absence of ordinary care which a prudent man would have taken.

The Indian Contract Act, 1872
Unit: 7 - Contract of Indemnity and Guarantee

Contract of Indemnity

Meaning of Indemnity (Sec - 124)

Parties (2 parties)

Mode of contract of Indemnity (2 modes)

- 1) Express
- 2) Implied

Fire, Marine & Life Insurance

Rights of Indemnity holder when sued (Sec - 125) (3 Points)

- 1) All damages
- 2) All costs
- 3) All sums

When does liability of an indemnifier commence?

Definition

Parties (3 parties)

Tripartite Agreement

Essential features of a valid Guarantee (6 points)

- 1) Purpose
- 2) Consideration (Sec - 127)
- 3) Existence of a liability
- 4) No misrepresentation or concealment (Sec - 142 & 143)
- 5) Writing not necessary (Sec - 126)
- 6) Joining of other co-sureties (Sec - 144)

Types of Guarantee (2 Types)

- 1) Specific Guarantee
- 2) Continuing Guarantee

Distinguish between Contract of Indemnity & Contract of Guarantee (7 Points)

Basis - Number of parties, Nature of Liability, Time of liability, Time to Act, Right to sue third party, Purpose, Competency of contract

Nature & Extent of Surety's Liability (Sec - 128) (4 Points)

Liability of 2 persons, primarily liable, not affected by arrangement between them

Contract of Guarantee

Discharge of Surety (3 Modes)

1) By revocation (3 points)

- 1) Revocation of Continuing Guarantee by Notice (Sec - 130)
- 2) Revocation of Continuing Guarantee by Surety's death (Sec - 131)
- 3) By Novation

2) By conduct of the creditor (4 points)

- 1) By Variance in terms of contract (Sec - 133)
- 2) By release or discharge of principal debtor (Sec - 134)
- 3) Discharge, when creditor compounds or gives time or agrees not to sue PD (Sec - 135)
- 4) Discharge by creditor's act or omission or impairing surety's remedy (Sec - 139)

Surety not discharged (2 cases)

- 1) When agreement made with third party to give time (Sec - 136)
- 2) Creditor's forbearance to sue (Sec - 137)

3) By invalidation of contract of Guarantee (3 points)

- 1) Guarantee obtained by misrepresentation (Sec - 142)
- 2) Guarantee obtained by concealment (Sec - 143)
- 3) Guarantee on contract that, Creditor shall not act until co-surety joins (Sec - 144)

Rights of Surety (3 cases)

1) Rights against Principal Debtor (2 points)

- 1) Rights of Subrogation (Sec - 140)
- 2) Implied promise to indemnify surety (Sec - 145)

2) Rights against the creditor (3 points)

- 1) Surety's right to benefit of creditor's securities (Sec - 141)
- 2) Right to set off
- 3) Right to share reduction

3) Rights against co-sureties (2 points)

- 1) Co-sureties liable to contribute equally (Sec - 146)
- 2) Liability of co-sureties bound in different sums (Sec - 147)

**Contract of Indemnity (Section 124)**

- ✓ **Meaning of Indemnity** - "Security against loss (assurance)" or "to make good the loss (restore)" or "to compensate the party who has suffered some loss".
- ✓ **Meaning of Contract of Indemnity** - "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person."
- ✓ **Parties in case of Contract of Indemnity**
 - a) Party who promises to indemnify/ save the other party from loss- "indemnifier",
 - b) Party who is promised to be saved against the loss- "indemnified" or "indemnity holder".
- ✓ The definition of indemnity restricts the scope as it covers only the loss caused by:
 - a) the conduct of the promisor himself, or
 - b) the conduct of any other person.
 Thus, loss occasioned by an accident, or an act of God/ natural event is not covered.
- ✓ As per English Law - Indemnity means promise to save another harmless from the loss. It covers every loss whether due to negligence of promisee or by natural calamity or accident.
- ✓ **Mode of Contract of Indemnity:**
 - a) **Express** - When a person expressly promises to compensate the other from loss.
 - b) **Implied** - When it is to be inferred from conduct of parties or from circumstances
 Contract of indemnity must fulfil all the essentials of a valid contract.
 Contract of Fire Insurance or Marine Insurance is always a contract of indemnity.
 But there is no contract of indemnity in case of contract of Life Insurance.

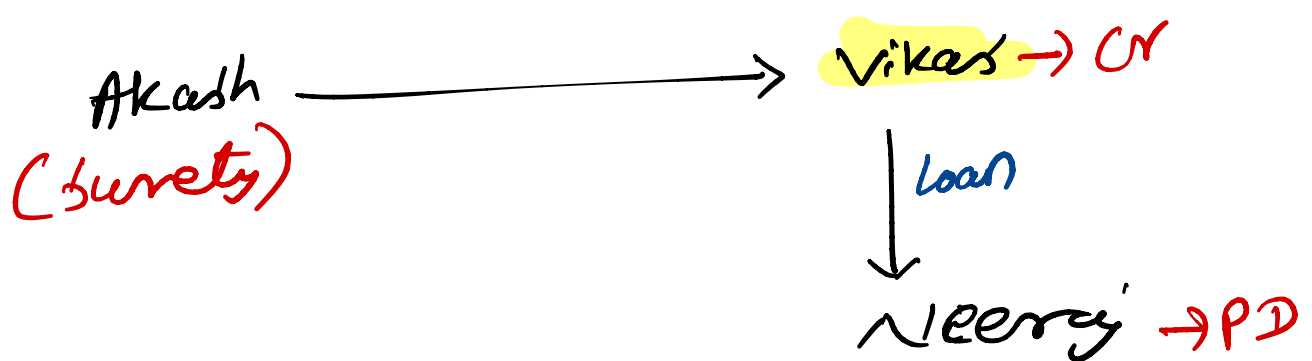
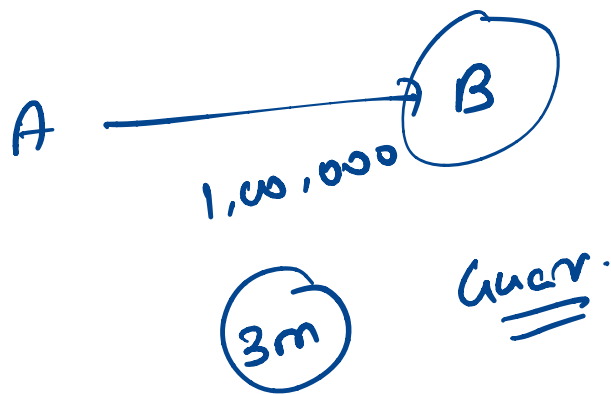
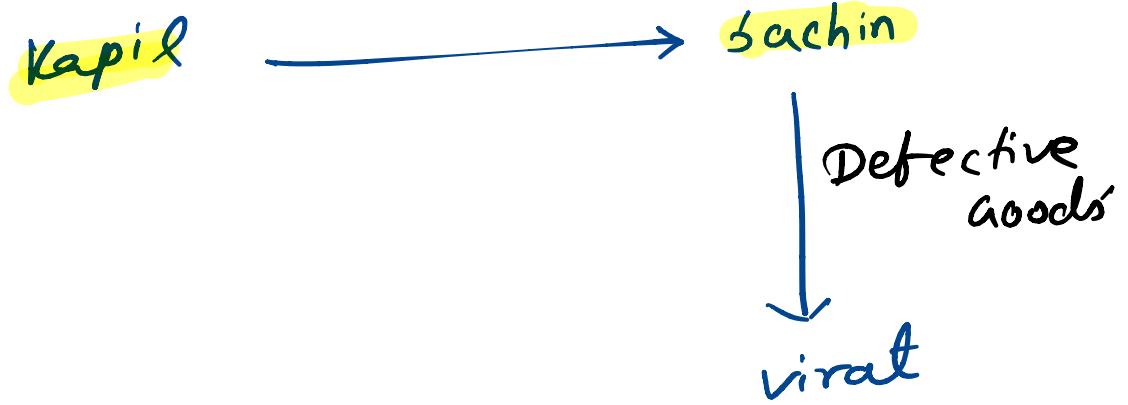
Rights of Indemnity-holder when sued (Section 125)

- ✓ **Promisee** acting within the scope of his authority is entitled to recover from promisor/indemnifier
 - a) all damages which he may be compelled to pay in any suit
 - b) all costs which he may have been compelled to pay in bringing/ defending the suit and
 - c) all sums which he may have paid under the terms of any compromise of suit.

When does the liability of an indemnifier commence?

- ✓ Indian Contract Act, 1872 is silent on this.
 However, based on judicial pronouncements - Liability of an indemnifier commences as soon as the liability of the indemnity-holder becomes absolute and certain.

**Contract of Guarantee (Section 126)**



2.7 Indemnity & Guarantee

- ✓ **Meaning** - It is a contract to **perform** the promise **made or discharge** the liability, of a **third person** in case of **his default**.
- ✓ **Parties involved in a Contract of Guarantee**
 - a) **Surety** - Person who **gives the guarantee**
 - b) **Principal debtor** - Person in respect of whose **default** the **guarantee is given**
 - c) **Creditor** - Person **to whom** the guarantee is given
- ✓ Contract of guarantee is a **tripartite agreement** between principal debtor, creditor and surety.
 - a) A **principal contract** between the **principal debtor and the creditor**.
 - b) A **secondary** contract between the **creditor and the surety**.
 - c) An **implied contract** between the **surety and the principal debtor** whereby principal debtor is under an **obligation** to indemnify **surety**; if surety is made to **pay or perform**.

Essential Features/Requisites of a Valid Guarantee

1. Purpose

- ✓ Guarantee being to **secure the payment** of a debt, And existence of **recoverable debt** is necessary. If there is **no principal debt**, there can be **no valid guarantee**.

2. Consideration

- ✓ Contract of guarantee should be **supported by consideration**.
Without consideration it is **void**.
- ✓ However, there is **no need for a direct consideration** between **surety & creditor**. Consideration **received by principal debtor** is **sufficient consideration** to surety for giving the guarantee, but **past consideration is no consideration**. (Sec 127)
- ✓ Even if the **principal debtor is incompetent** to contract, guarantee is **valid**. But, if **surety is incompetent** to contract, the guarantee is **void**.


3. Existence of a liability

- ✓ There must be an **existing liability** or a **promise** whose **performance is guaranteed** which shall must be **enforceable by law** and **not time-barred**.

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

- ✓ Guarantee if **obtained using misrepresentation** made by **creditor**, or with his **knowledge & assent**, concerning a **material part** of the transaction, is **invalid** (Sec 142)
- ✓ Guarantee which the **creditor has obtained** by means of **keeping silence** as to material circumstances, is **invalid** (Sec 143).

A **Cash Collection** > B [Gadbad] **Guarantee of** C [A ne na hi bataya]



5. Writing not necessary (Section 126)

- ✓ Guarantee may be either oral or written.

6. Joining of the other co-sureties (Section 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.
Guarantee by a surety is not valid if a condition imposed by a surety is that some other person must also join as a co-surety, but such other person does not join as a co-surety.

Types of Guarantees

1. Specific Guarantee

- ✓ Guarantee which extends to a single debt/ specific transaction.
Surety's liability comes to an end when the guaranteed debt is duly discharged or the promise is duly performed.

2. Continuing Guarantee [Section 129]

- ✓ Guarantee which extends to a series of transaction.
Surety's liability continues until the revocation of the guarantee.
✓ Essence - It applies to any number of transactions and makes the surety liable for unpaid balance at the end of guarantee.

Distinction between a Contract of Indemnity and a Contract of Guarantee

| Basis | Contract of Indemnity | Contract of Guarantee |
|---|---|--|
| Number of party/parties to the contract | There are only two parties namely the indemnifier [promisor] and the indemnified [promisee] | There are three parties- creditor, principal debtor and surety. |
| Nature of liability | The liability of the indemnifier is primary and unconditional. | The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor. |
| Time of liability | The liability of the indemnifier | The liability arises only on the |

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2.7 Indemnity & Guarantee

| | | |
|--------------------------|--|---|
| | arises only on the happening of a contingency. | non-performance of an existing promise or non-payment of an existing debt. |
| Time to Act | The indemnifier need not act at the request of indemnity holder. | The surety acts at the request of principal debtor. |
| Right to sue third party | Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour. | Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts. |
| Purpose | Reimbursement of loss | For the security of the creditor |
| Competency to contract | All parties must be competent to contract. | In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid. |



Nature And Extent of Surety's Liability (Section 128)

1. Liability of surety is co-extensive with principal debtor unless otherwise provided in contract.
2. Liability of surety is of secondary nature as he is liable only on default of principal debtor.
3. If debtor can't be liable on account of any defect in document, Liability of surety also ceases.
4. Creditor may choose to proceed against a surety first, unless agreement to contrary.



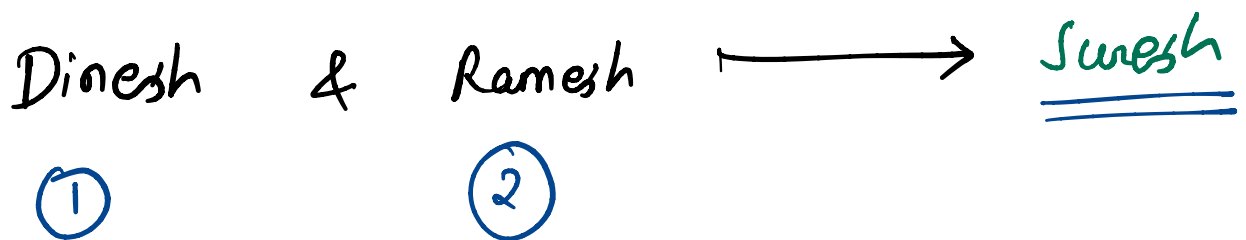
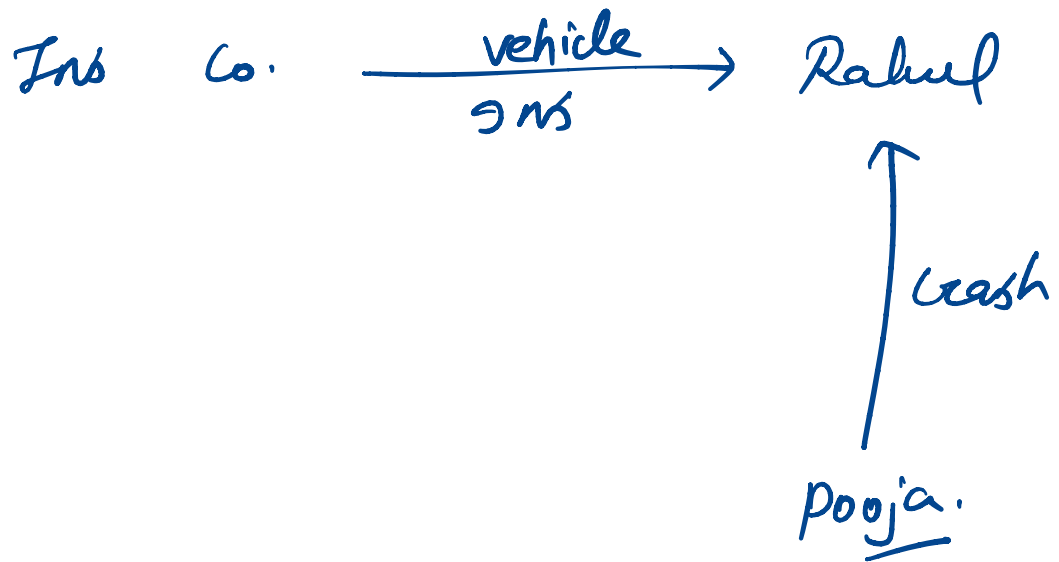
Liability of Two Persons, Primarily Liable, Not Affected By Arrangement Between them that one shall be surety on other's default (Section 132)

- ✓ Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on default of other, the liability towards third person is not affected even if third party is aware about its existence.



Discharge of a Surety

- ✓ Surety is said to be discharged when his liability as surety comes to an end.
- Modes of discharge of surety are discussed below



A) By revocation

1. By Notice
2. By Death
3. By Novation

B) By conduct of creditor

1. By Variance in terms
2. By release of Prin Debtor
3. By compounding

Surety not discharged

1. Agreement with 3rd party
2. Forbearance
3. Impairing surety remedy

C) By invalidation of guarantee

1. Misrepresentation
2. Concealment
3. Co-surety joins

A. By revocation of the Contract of Guarantee
1. Revocation of continuing guarantee by Notice (Section 130)

- ✓ Continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors.
Once revoked, surety is not liable for any future transaction.
- ✓ However, surety is liable for all transactions that happened before notice was given.
- ✓ Specific guarantee can be revoked only if liability to the principal debtor has not accrued.

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

- ✓ Death of surety operates as revocation of continuing guarantee as to future transactions taking place after death of surety unless contract to contrary.
- ✓ However, Surety's estate remains liable for past transactions taken place before death.

3. By novation (Section 62)

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

B. By conduct of the creditor
1. By variance in terms of contract (Section 133)

2.7 Indemnity & Guarantee

Where there is any **variance in terms** of contract between **principal debtor & creditor** **without surety's consent**, it would **discharge surety for all transactions subsequent to such variance**.

2. By release or discharge of **principal debtor** (Section 134)

- ✓ Surety is **discharged** if creditor
- **enters** into a **fresh/ new contract** by which **principal debtor is released**, or
 - does any **act or omission legal consequence** of which is **discharge of principal debtor**.

3. Discharge of surety when creditor compounds or gives time or agrees not to sue (Section 135)

- ✓ A **contract between the creditor & principal debtor**, by which **creditor** makes a **composition**, or promises to **give time**, or promises **not to sue**, the **principal debtor**, **discharges surety**, unless surety **assents** to such contract.
- i) **Composition**: Creditor makes a **composition** with the **principal debtor** **without consulting surety**, the **latter is discharged**. Composition involves **variation of the original contract**; therefore, surety is discharged.
- ii) **Promise to give time**: When the **time for payment comes**, the Surety has the **right** to **require the principal debtor to pay off** the guaranteed debt.
It is a **duty** of the **creditor** **not to allow the principal debtor more time** for payment.
- iii) **Promise not to sue**: If the **creditor** under an agreement with the **principal debtor** **promises not to sue him**, Surety is **discharged**.
Reason - Surety is **entitled to call upon creditor** at any time for payment of **debt** when it is **due & this right is positively violated** when creditor promises not to **sue principal debtor**.

4. By creditor's **act or omission** impairing **surety's eventual remedy** (Section 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 the **eventual remedy** of surety against principal debtor is **thereby impaired (damaged)**, the surety is **discharged**.

Cases where surety is not discharged (Section 136 & 137)

- i) Surety not discharged when **agreement made with third person to give time to principal debtor** (Sec 136)
- ii) **Mere forbearance** on the part of **creditor to sue or to enforce any other remedy does not discharge the surety** unless contract to **contrary**. (Sec 137)

Bank $\xrightarrow[\text{[on the security of stock]}]{\text{loan}}$ X

↓
Also have
Guarantee.
of 'A'

↓
Goods lost
↓
Negligence
of Bank
officials.

'A' discharge to the extent of
value of the stock so lost.

C. By the invalidation of contract of guarantee (Explanation same as before, already covered)

1. Guarantee obtained by **misrepresentation** (Sec 142)
2. Guarantee obtained by **concealment** (Sec 143)
3. Guarantee on contract that **creditor shall not act on it until co-surety joins** (Sec 144)



Rights of a Surety

Following rights are available to a surety:

A) Against Creditor

1. Benefit of Cr. Security
2. Set off
3. Share reduction

B) Against Principal Debtor

1. Subrogation
2. Indemnification

C) Against Co-Sureties

1. Equal Contribution
2. Different Contribution

A. Right against the Creditor

1. Surety's right to benefit of creditor's securities (Section 141)

- ✓ Surety is entitled to the **benefit of every security** which the **creditor has against principal debtor** at the time when **contract of suretyship is entered into, whether surety knows** of existence of such security or not.
- ✓ If **creditor loses** or **without consent** of surety, **parts** with such security, **Surety is discharged** to the extent of the **value of security**.

2. Right to set off

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

3. Right to share reduction

- ✓ Surety has **right to claim proportionate reduction** in his liability if **principal debtor becomes insolvent**.

B. Right against the Principal Debtor

1. Rights of subrogation (Section 140)

- ✓ Where, a **guaranteed debt** has **become due**, or in case of default by **principal debtor** to

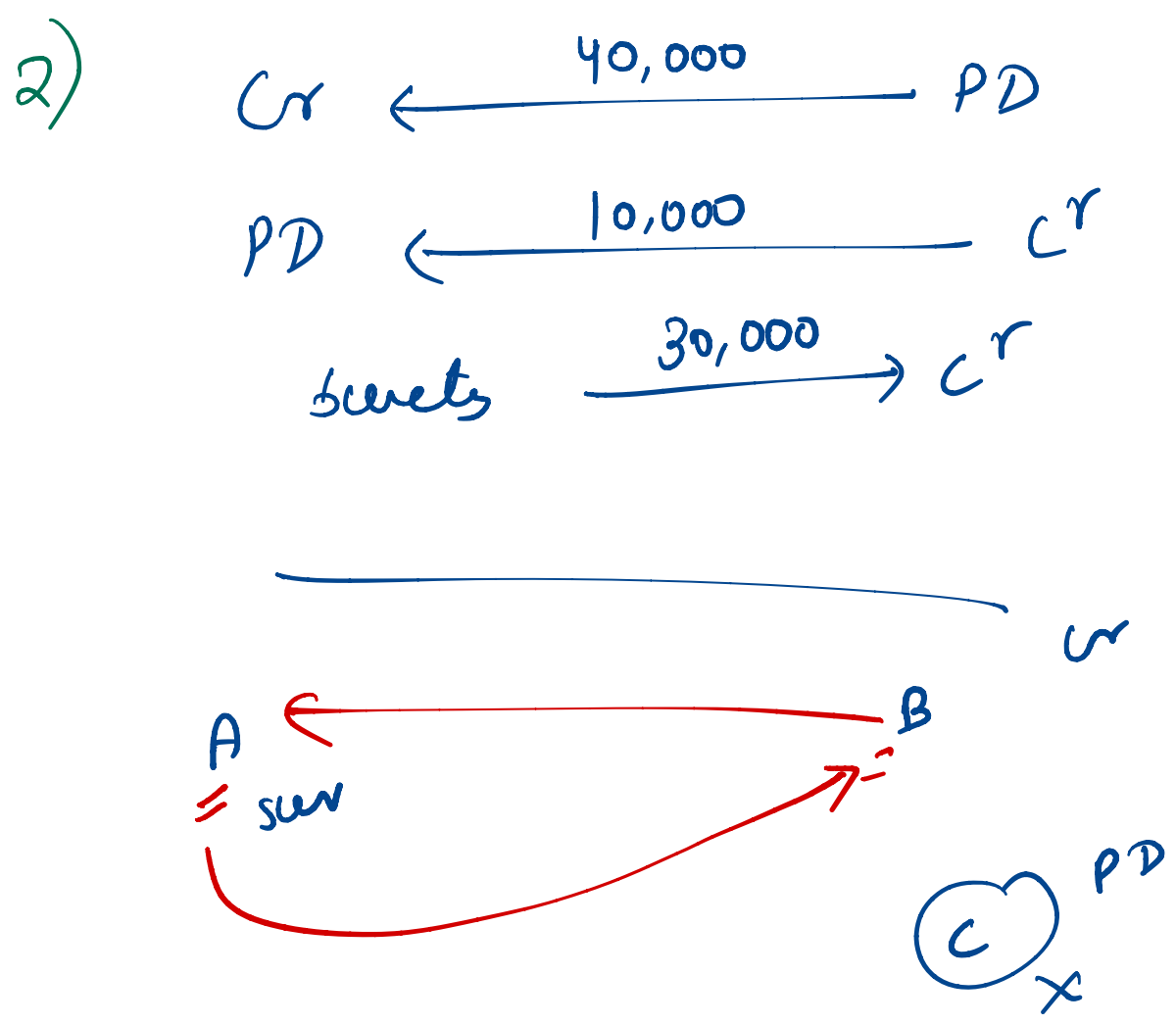
1) $C \xrightarrow[\text{on Guarantee of 'A'}]{\text{Advance of 2L}} B$

↓

Also have 2L furniture as mortgage

C cancels mortgage of B

A is discharged.



2.7 Indemnity & Guarantee

perform, Surety, upon payment or performance, is invested with all the rights which the creditor had against the principal debtor.

- ✓ This right is known as right of subrogation. The surety steps into the shoes of creditor.

2. Implied promise to indemnify surety (Section 145)

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

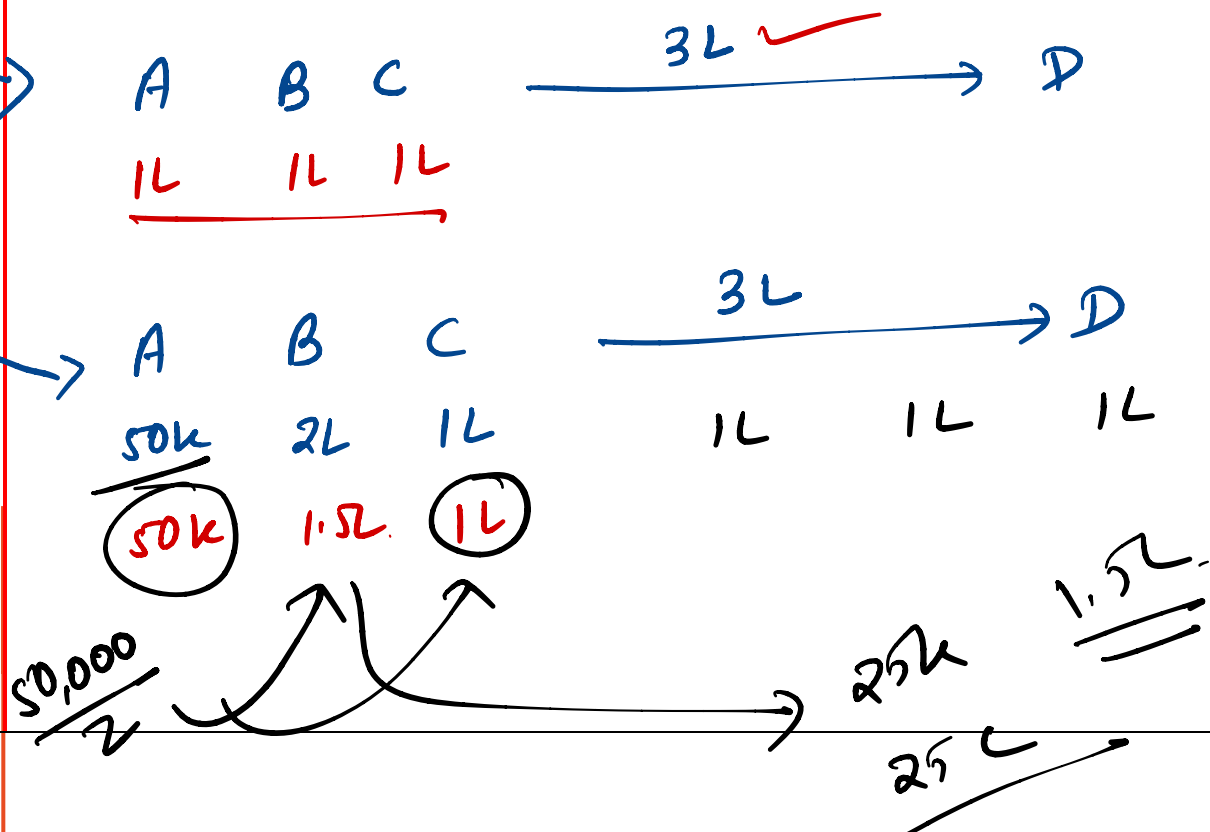
C. Rights against co-sureties

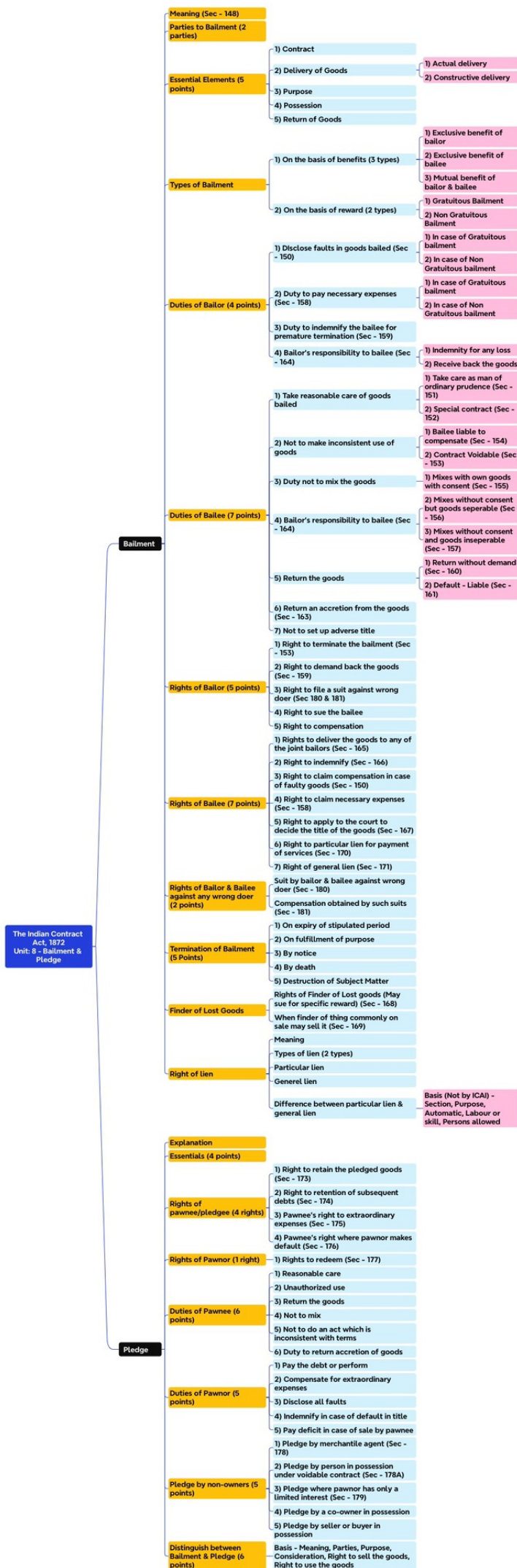
1. Co-sureties liable to contribute equally (Section 146)

- ✓ When same debt or duty is guaranteed by two or more persons are called co-sureties" Co-sureties liable to contribute equally (Sec 146)
- ✓ Each surety is liable to contribute equally for discharge of whole debt or part of debt remains unpaid by debtor, unless otherwise agreed.

2. Liability of co-sureties bound in different sums (Section 147)

- ✓ Principal of equal contribution is subject to 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.





**What is Bailment (Section 148)**

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

✓ **Parties to Bailment:**

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

Essential Elements: [All → P]**1. Contract**

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

2. Delivery of goods

- ✓ It involves **delivery** for **some purposes**.
Bailment is **only for moveable goods** and **never** for **immovable** goods or money.
- ✓ **The delivery of the possession of goods is of the following kinds:**
i) **Actual Delivery**: When goods are **physically handed** over to the bailee **by the bailor**.
ii) **Constructive Delivery**: Delivery is made by **doing anything** that has **effect** of **putting goods** in the **possession of bailee** or **person authorized** to **hold** them on his behalf.

3. Purpose

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

4. Possession

- ✓ In bailment, **possession** of goods **changes** either by **physical** or **constructive** delivery but it **doesn't lead** to change of **ownership** and **bailor** continues its **ownership**.
Change of **possession** does not lead to change of **ownership**.
Where a person is in **custody without possession**, he **does not become a bailee**.
Note: In case of **custody**, there is **no control**, But in case of **possession**, there is **controls** of the goods available with the bailee.

5. Return of goods

- ✓ **Bailee** is obliged to **return the goods** physically to the bailor.
- ✓ Returned in **same form** as given or may be **altered as per bailor's direction**.
- ✓ **Exchange** of goods should **not be allowed**, even **not** those of **higher value**.

Custody ✓

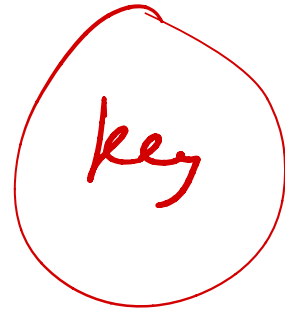
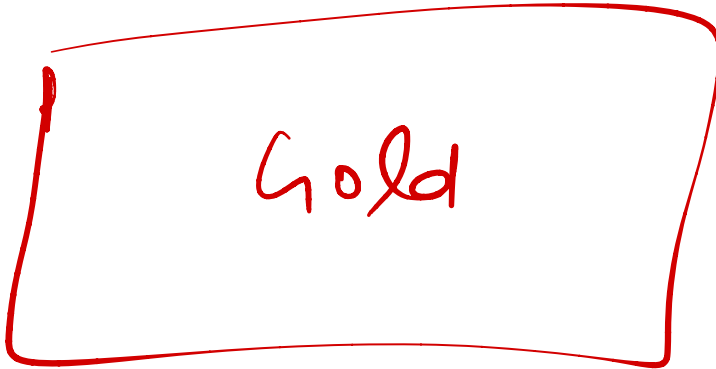
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Poss ✓

Control



Purse.



2.8 Bailment & Pledge



Types of bailment

- ✓ On the basis of **benefit**, bailment can be classified into **three types**
 - i) For the **exclusive** benefit of **bailor**
 - ii) For **exclusive** benefit of **bailee**:
 - iii) For **mutual** benefit of **bailor and bailee**
- ✓ On the basis of **reward**, bailment can be classified into **two types**
 - i) **Gratuitous Bailment**: Gratuitous means **free of charge**.
It is one when the **provider of service** does it **gratuitously** i.e. free of charge for the **exclusive benefits** of bailor or bailee.
 - ii) **Non-Gratuitous Bailment**: Non gratuitous bailment means where **both the parties** get **some benefit** i.e. bailment for the benefit of both bailor & bailee



Duties of A Bailor [Section 150, 158, 159, 164]

| | | | |
|--------------------|---------------------------|---------------------------|-------------------|
| 1) Disclose Faults | 2) Pay necessary expenses | 3) Pre-mature termination | 4) Responsibility |
|--------------------|---------------------------|---------------------------|-------------------|

1. Bailor's duty to disclose **faults** in goods **bailed** (Section 150)

- ✓ a) **Gratuitous bailment**: **Bailor** is **bound** to **disclose faults** in goods bailed, of which the **bailor is aware** and which **materially interfere** with use of them or **expose** the bailee to **extraordinary risks**;
If he **doesn't disclosure** - **Responsible for damage** arising to **bailee directly** from faults.
- ✓ b) **Non- gratuitous bailment**: If goods are **bailed for hire**, **Bailor** is responsible for such **damage**, whether he **was or was not aware** of existence of such faults.



Case Law - Hyman & Wife v. Nye & Sons (1881)

Facts - A hired from B a carriage along with a pair of horses and a driver for a specific journey. During the journey a bolt in the under-part of the carriage broke away. As a result of this, the carriage became upset and A was injured.

Conclusion - It was held that B was liable to pay damages to A for the injury sustained by him. The court observed that it was the bailor's duty to supply a carriage fit for the purpose for which it was hired.

- ✓ Sometimes, **goods bailed** are of **dangerous** nature, In such cases it is the **duty** of the **bailor** to **disclose the nature** of goods.

2. Duty to pay necessary expenses (Section 158)

- ✓ a) **Gratuitous bailment** - Bailor shall **repay** to bailee the **necessary expenses** incurred by him **and any extraordinary expenses** incurred by him for the **purpose** of bailment.

- ✓ b) **Non-gratuitous bailment** - Bailor is liable to pay **extraordinary expenses only**.

3. **Duty to indemnify the Bailee for premature termination (Section 159)**

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

4. **Bailor's responsibility to bailee (Section 164)**

- ✓ a) **Indemnify for any loss** - Bailor to **indemnify bailee** for any loss which **bailee** may **sustain** by reason that the **bailor was not entitled** to make the bailment, or to **receive back** the goods or to **give directions**, respecting them (**defective title** in goods).
- ✓ b) **Receive back the goods** - Bailor must **receive back the goods** when the bailee **returns** them **after the time** of bailment has **expired or purpose** of bailment has been **accomplished**.
If **bailor refuses** to take delivery when offered at **proper time** - **Bailee can claim compensation for all necessary expenses** incurred for the **safe custody**.

Duties of a Bailee

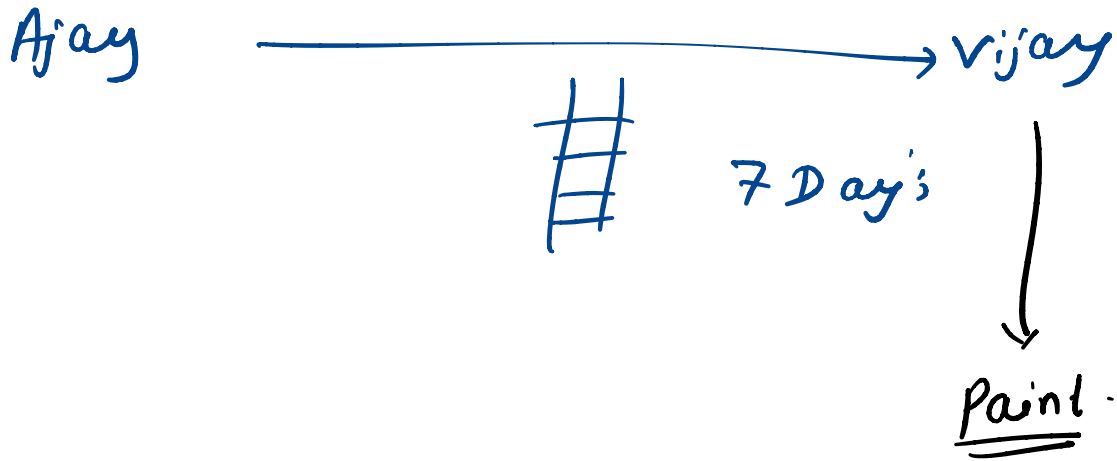
| | | |
|---------------------|-------------------------------------|------------------|
| 1) Reasonable Care | 2) No unauthorized use | 3) No mixing |
| 4) Return the goods | 5) Return any extra profit accruing | 6) Adverse title |

1. **Take reasonable care of the goods (Section 151 & 152)**

- ✓ **Bailee** is bound to **take as much care** of the goods bailed to him as a **man of ordinary prudence** would, under **similar circumstances**, take care of his **own goods** of the same bulk, quality and value, as the **goods bailed**. (Sec 151)
- ✓ **Exception:** Bailee when **not liable for loss**, etc., of thing bailed (Sec 152)
Bailee is **not responsible** for **loss, destruction or deterioration** of the thing bailed, if he has **taken reasonable care** as required under section 151 **unless special contract made**.

2. **Not to make inconsistent use of goods (Section 153 & 154)**

- ✓ If bailee **makes any use** of goods bailed which is **not according to terms** & conditions of bailment, he is liable to **compensate bailor** for any loss or destruction of goods. (Sec 154)
- ✓ Contract of bailment is **voidable** at the option of the **bailor**, if the **bailee does not use** the goods according to the **terms and conditions** of bailment. (Sec 153)



After 2 days \rightarrow Demanded back.

7 Days Advance \rightarrow 3500

2 Days Ladder benefit \rightarrow 600

₹ 2900

Gold $\xrightarrow{\quad\quad\quad}$ self locker X

Bank locker ✓

2.8

Bailment & Pledge

3. Not to mix the goods (Section 155, 156 and 157)

- ✓ If Bailee, **mixes the goods** bailed with his **own goods**, with the **consent** of bailor, **both** the parties shall have an **interest in proportion** to their **respective shares** in the mixture thus produced (Sec 155).
- ✓ If **mixes without consent** of bailor but the goods **can be separated or divided**, **property** in the goods remains in the **parties respectively**; but **bailee is bound to bear the expense of separation or division and any damage** arising from the mixture (Sec 156).
- ✓ If **mixes without consent** of bailor and in such a **manner** that it is **impossible** to **separate** the goods bailed from other goods and to **deliver them back**, **Bailor is entitled** to be **compensated** by bailee for **loss** of the goods (Sec 157).

4. Return the goods (Sec 160 & 161)

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

5. Return an accretion from the Goods (Section 163)

- ✓ **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 **unless contract** to contrary.

6. Not to setup Adverse Title

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

Rights of a Bailor

- ✓

| | | |
|-------------------|-----------------|----------------------------|
| 1) Termination | 2) Demand Back | 3) Suit against wrong doer |
| 4) Sue the bailee | 5) Compensation | |

1. Right to terminate the bailment (Section 153)

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

2. Right to demand back the goods (Section 159)

✓ In **Gratuitous** bailment - Bailor can **demand back** the goods at **any time even before the expiry** of the **time fixed or achievement** of the object.

✓ Due to **premature return** of goods, if bailee suffers any **loss**, which is **more than** the **benefit actually obtained** by him, bailor has to **compensate** the bailee.

3. **Right to file a suit against a wrong doer (Section 180 & 181)**
(Discussed further)

4. **Right to sue the bailee**

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

5. **Right to compensation**

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

Rights of a Bailee

| | | | | |
|---|----------------------------|--------------------|----------------------------------|-----------------------------|
| ✓ | 1) Deliver to joint bailor | 2) Indemnity | 3) Compensation for faulty goods | 4) Claim necessary expenses |
| | 5) Apply court for title | 6) Particular Lien | 7) General Lien | |

1. **Right to Deliver the Goods to any one of the joint bailors (Section 165)**

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

2. **Right to indemnity (Section 166)**

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

✓ If bailor has **no title** to goods & **bailee delivers them back in good faith**, or according to **directions** of bailor, **bailee shall not be responsible** to owner for such delivery.

✓ Bailee can also **claim all necessary expenses** incurred for **gratuitous** bailment.

3. **Right to claim compensation in case of faulty goods (Section 150)**

2.8 Bailment & Pledge

✓ Bailee is entitled to **receive compensation** for any loss caused to him **due to failure** of bailor to **disclose any faults** in the goods known to him.

✓ If bailment is for **hire**, bailor will be **liable**, even though **not aware** of existence of **faults**.

4. Right to claim necessary expenses (Section 158)

✓ **Gratuitous** bailment, bailor shall **repay the necessary expenses** incurred by him **and any extraordinary** expenses incurred by him for the purpose of bailment.

5. Right to Apply to Court to Decide the Title to the Goods (Section 167)

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

6. Right of particular lien for payment of services (Section 170) (Discussed in next pages)

7. Right of general lien (Section 171) (Discussed in next pages)

Rights of Bailor and Bailee Against any wrong doer (Third party) (Section 180 & 181)

✓ **Suit by bailor & bailee against wrong doers (Sec 180)** - If a **third person wrongfully deprives** the bailee of the **use or possession** or does any **injury** to goods bailed, Bailee is **entitled to use such remedies** as the **owner** might have used in the like case if **no** bailment had been made.
Either **bailor or bailee** may bring a **suit** against a **third person** for such deprivation or injury.

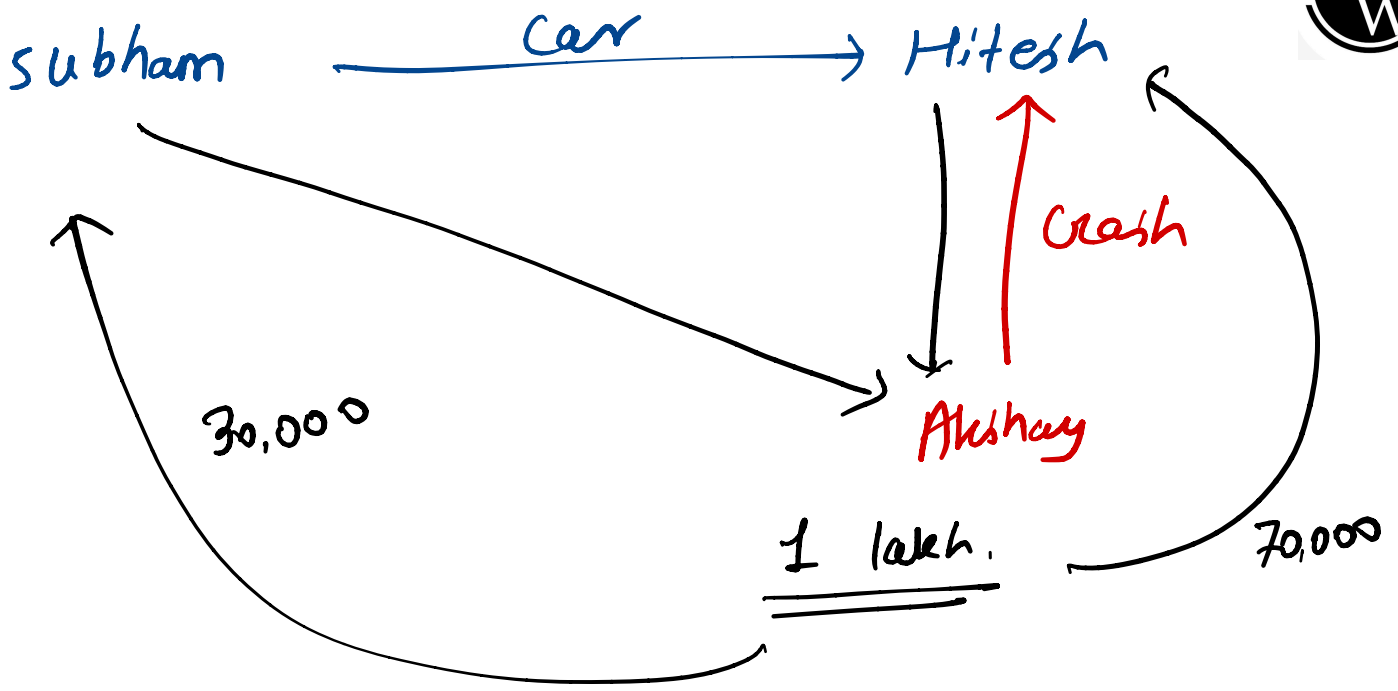
✓ **Apportionment of relief or compensation obtained by such suits (Section 181)**
Whatever is obtained by way of **relief or compensation** in such suit shall be **dealt** with according to the **respective interests** of bailor & bailee.

Termination of Bailment

| | | | |
|---|---------------------|----------------------------------|--------------|
| ✓ | 1) Expiry of period | 2) Fulfillment of purpose | 3) By Notice |
| | 4) By death | 5) Destruction of subject matter | |

1. On expiry of stipulated period (Specified period over)

✓ If the **goods** were given for a **stipulated period**, the contract of **bailment** shall



terminate after the expiry of such period.

2. On fulfilment of the purpose (Specific purpose fulfilled)

- ✓ If the goods were delivered for a specific purpose, a bailment shall terminate on the fulfillment of that purpose.

3. By Notice

- ✓ a) If bailee acts in a manner which is inconsistent with the terms of bailment - Bailor can terminate the contract of bailment by giving a notice to bailee.
- ✓ b) Gratuitous bailment can be terminated - At any time by giving a notice to bailee. However, termination should not cause loss to bailee in excess of benefit derived by him. In case loss exceeds the benefit, Bailor must compensate bailee for such a loss (Sec 159)

4. By death

- ✓ Gratuitous bailment terminates upon the death of either bailor or bailee.

5. Destruction of the subject matter

- ✓ Bailment is terminated if the subject matter of bailment is destroyed or there is a change in the nature of goods which makes it impossible to be used for bailment.

Finder of Lost Goods (Section 168 & 169)

- ✓ **Right of finder of lost goods - may sue for specific reward offered (Sec 168)**
A person who finds some goods which do not belong to him, is called finder of the goods.
It is the duty of finder of goods to find the true owner and surrender the goods to him.
Finder has no right to sue the owner for compensation for trouble and expense voluntarily incurred in finding the owner and preserving the goods found.
But he has a right to retain the goods until he receives such compensation;
If the owner has offered a specific reward on the lost goods, finder may sue the owner for such reward, and may retain the goods until then.
- ✓ **When finder of thing commonly on sale may sell it (Sec 169)**
a) If the owner cannot be found with reasonable diligence, or if he refuses to pay the

2.8

Bailment & Pledge

lawful charges of the finder, the finder may sell it -

- b) when the thing is in danger of perishing or of losing the greater part of its value or
- c) when the lawful charges of finder in respect of the thing found amount to two thirds of its value.



Right of Lien

- ✓ Lien is the right of a person to retain the goods belonging to another until his claim is satisfied or some debt due to him is repaid.

Types of Lien

- i) Particular Lien
- ii) General Lien

Particular Lien:

- ✓ It is a right to retain only the particular goods in respect of which the claim is due.
- ✓ If bailee has rendered any service involving exercise of labour or skill in respect of the goods bailed, he has right to retain them until he receives due remuneration for services rendered for goods bailed unless contract to contrary. (Sec. 170)

General Lien:

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

Difference between Bailee's General and Particular Lien

| General lien | Particular lien |
|--|--|
| Section 171 of the Indian Contract Act, 1872 confer on Bailee the right of General Lien. | Section 170 of the Indian Contract Act, 1872 confers on the Bailee, the right of particular lien. |
| General lien alludes to the right to keep possession of goods belonging to other against general balance of account. | Particular lien implies a right of the bailee to retain specific goods bailed for non-payment of amount. |
| A general lien is not automatic but is recognized through an agreement. It is | It is automatic. |

A $\xrightarrow{1000}$ Bank

$\xrightarrow{2000}$ Gold

exercised by the bailee only by name.

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

Only such persons as are specified under section 171, e.g., Bankers, factors, wharfingers, policy brokers etc. are entitled to general lien.

It comes into play only when some labor or skill is involved has been expended on the goods, resulting in an increase in value of goods.

Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc. are entitled to particular lien.



Pledge (Section 172 to 182)

✓ Meaning - Bailment of goods as security for payment of a debt or performance of a promise is called "pledge". (Sec. 172)

✓ Parties in case of pledge:

a) Pawnor - The bailor is in this case called the "pawnor".

b) Pawnee - The bailee is called the pawnee/pledgee.

Essentials of Contract of Pledge

✓ Since pledge is a special kind of bailment, therefore all the essentials of bailment are also the essentials of the pledge. Apart from that, the other essentials of the pledge are

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

b) The subject matter of pledge is goods,

c) Goods pledged for shall be in existence,

d) There shall be the delivery of goods from pledger to pledgee

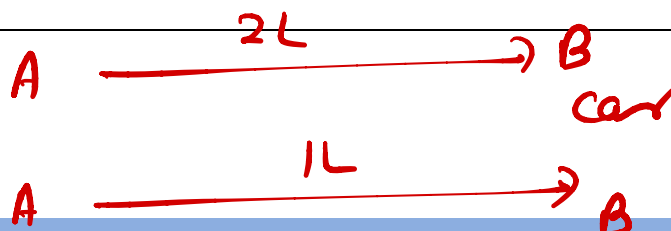


Rights of Pawnee/Pledgee

✓ 1) Retain 2) Subsequent debts 3) Extraordinary exp 4) Rights in default

1. Right to retain the pledged goods [Section 173]

✓ Pawnee may retain the goods pledged for payment or interest of debt or performance of promise and for all necessary expenses incurred for possession or preservation of goods.



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Bailment & Pledge

2. Right to retention of subsequent debts [Section 174]

- ✓ Pawnee can retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged only if there is a contract to this effect.

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

- ✓ Pawnee is entitled to receive extraordinary expenses incurred for preservation of goods.
However, he does not have the right to retain the goods for such expenses, but he can sue the pawnor for such expenses.

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

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



Rights of a pawnor

- ✓ As the bailor of goods, pawnor has all the rights of the bailor. Along with that he also has;

1. Right to redeem [Section 177]

- ✓ If pawnor makes default in payment of debt or performance of promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them, but he must pay in addition any expenses which have arisen from his default.



Duties of the Pawnee

1. Duty to take reasonable care of the pledged goods.
2. Duty not to make unauthorized use of pledged goods.
3. Duty to return the goods when the debt has been repaid or the promise has been performed.
4. Duty not to mix his own goods with goods pledged.
5. Duty not to do any act which is inconsistent with the terms of the pledge.
6. Duty to return accretion to the goods, if any.



Duties of a Pawnor

1. Pawnor is liable to **pay** the **debt or perform** the promise as the case may be.
2. To **compensate pawnee** for any **extraordinary expenses** incurred for preserving the goods.
3. To **disclose** all the **faults** which may put the **pawnee under extraordinary risks**.
4. **Indemnify** the pawnee for **loss** occurred to pawnee **due to defect in pawnor's title** to goods.
5. If the **pawnee sells** the good due to **default** by the **pawnor**, the **pawnor must pay the deficit**.



Pledge by Non-owners

- ✓ Meaning - Ordinarily, **Owner or any person authorized** by him can **pledge** the goods. But law has recognised certain **exceptions**.

| | | | | | |
|---|---------------------|----------------------|---------------------|-------------|---------------|
| ✓ | 1) Mercantile Agent | 2) Voidable Contract | 3) Limited Interest | 4) Co-owner | 5) Possession |
|---|---------------------|----------------------|---------------------|-------------|---------------|

1. Pledge by mercantile agent (Section 178)

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

2. Pledge by person in possession under voidable contract (Section 178A)

- ✓ When **Pawnor** has obtained **possession** of goods pledged by him under a **voidable contract**, but the **contract** has **not been rescinded** at the time of **pledge**, the **pawnee** acquires a **good title** provided he acts in **good faith** and **without notice** of pawnor's defect of title.

3. Pledge where pawnor has only a limited interest (Section 179)

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

4. Pledge by a co-owner in possession

→ A → watch Repair 2000

2.8

Bailment & Pledge

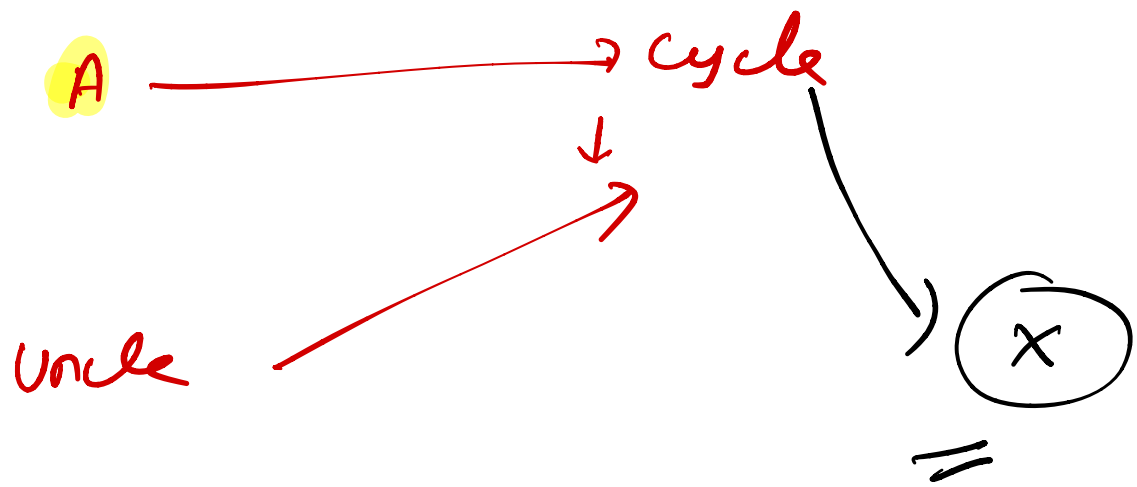
- ✓ Where goods are **owned by many person** & with the **consent of other owners**, goods are **left in possession** of one of the **co-owners**. Such a co-owner may make a **valid pledge**.

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 seller**, **obtains possession before sale**, can make a **valid pledge**, provided pawnee acts in **good faith** and has **no knowledge** of **defect** in title of pawnor.

Difference between Bailment And Pledge

| Basis | Bailment | Pledge |
|--------------------------------|---|---|
| Meaning | Transfer of goods by one person to another for some specific purpose is known as bailment. | Transfer of goods from one person to another as security for repayment of debt is known as the pledge. |
| Parties | The person delivering the goods under a contract of bailment is called as "Bailor" . The person to whom the goods are delivered under a contract of bailment is called as "Bailee" . | The person who delivers the good as security is called the "Pawnor" . The person to whom the goods are delivered as security is called the "pawnee" . |
| Purpose | Bailment may be made for any purpose (as specified in the contract of bailment, eg: for safe custody, for repairs, for processing of goods). | Pledge is made for the purpose of delivering the goods as security for payment of a debt, or performance of a promise. |
| Consideration | The bailment may be made for consideration or without consideration . | Pledge is always made for a consideration . |
| Right to sell the goods | The bailee has no right to sell the goods even if the charges of bailment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed. | The pawnee has right to sell the goods if the pawnor fails to redeem the goods |
| Right to use of goods | Bailee can use the goods only for a purpose specified in the contract of bailment and not otherwise. | Pledgee or Pawnee cannot use the goods pledged. |



Mini Summary

Duties of Bailor

| | | | |
|--------------------|---------------------------|---------------------------|-------------------|
| 1) Disclose Faults | 2) Pay necessary expenses | 3) Pre-mature termination | 4) Responsibility |
|--------------------|---------------------------|---------------------------|-------------------|

Rights of Bailor (Rights of Pawnor)

| | | |
|-------------------|-----------------|----------------------------|
| 1) Termination | 2) Demand Back | 3) Suit against wrong doer |
| 4) Sue the bailee | 5) Compensation | |

Duties of Bailee (4 points similar to Duties of Pawnee except point 5th & 6th)

| | | |
|---------------------|-------------------------------------|------------------|
| 1) Reasonable Care | 2) No unauthorized use | 3) No mixing |
| 4) Return the goods | 5) Return any extra profit accruing | 6) Adverse title |

Rights of Bailee

| | | | |
|----------------------------|--------------------|----------------------------------|-----------------------------|
| 1) Deliver to joint bailor | 2) Indemnity | 3) Compensation for faulty goods | 4) Claim necessary expenses |
| 5) Apply court for title | 6) Particular Lien | 7) General Lien | |

Duties of Pawnor

| | | |
|--|--|---|
| 1. Pay the debt or perform the promise | 2. Compensate for extraordinary exp | 3. Disclose all faults under extraordinary risk |
| 4. Indemnify for loss due to defect in title | 5. Pawnee sells, pay the deficit to pawnor if any. | |

Rights of Pawnor - (All rights of bailor +)

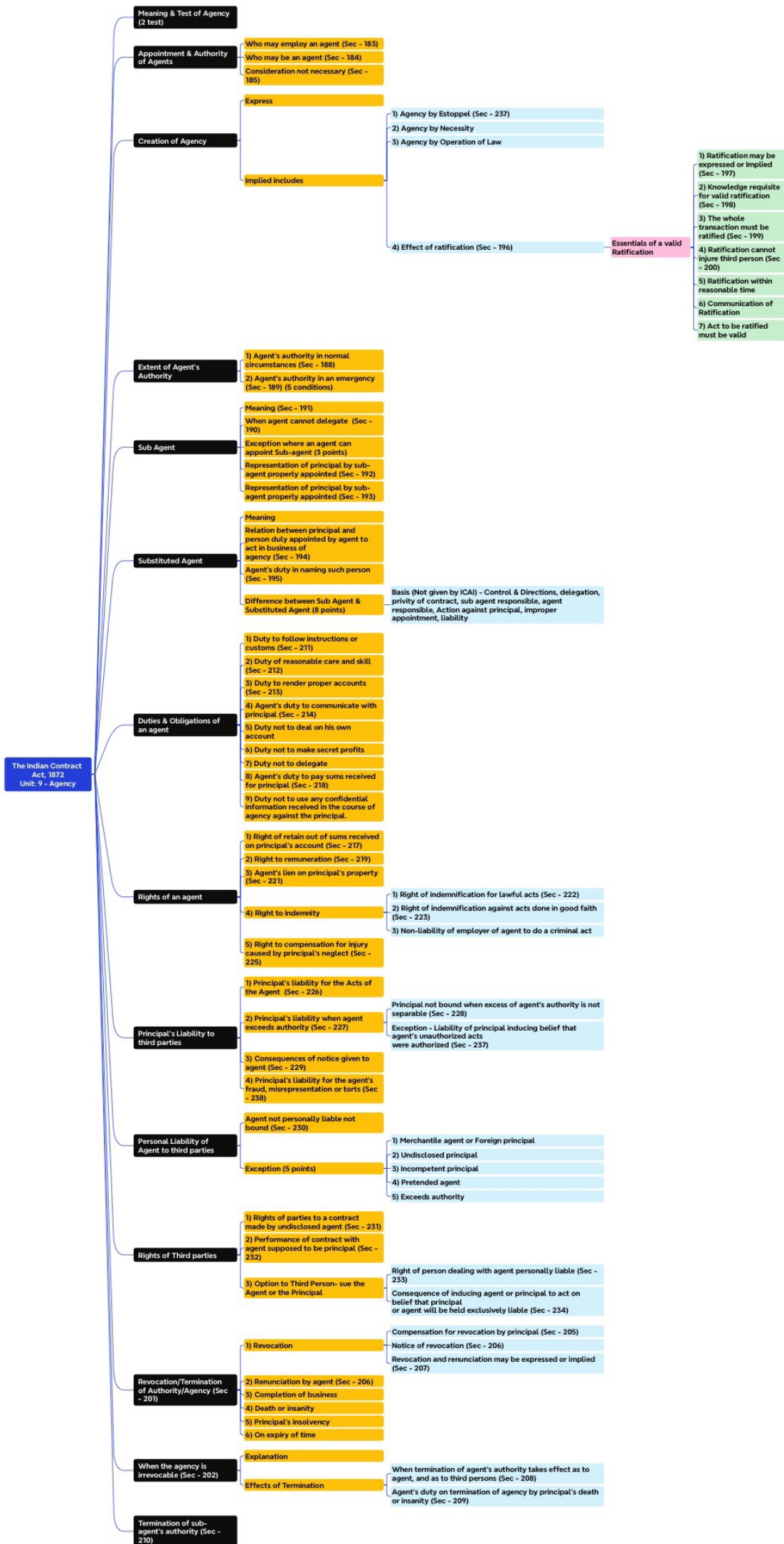
Right to redeem

Duties of Pawnee (Point 5th & 6th different from Duties of Bailee)

| | | |
|--------------------|------------------------|---------------------|
| 1. Reasonable Care | 2. No unauthorized use | 3. Return the goods |
| 4. Not to mix | 5. No inconsistent act | 6. Return accretion |

Rights of Pawnee

| | | | |
|-----------|---------------------|----------------------|----------------------|
| 1) Retain | 2) Subsequent debts | 3) Extraordinary exp | 4) Rights in default |
|-----------|---------------------|----------------------|----------------------|





What is Agency

- ✓ The Indian Contract Act, 1872 does not define the word 'Agency', but Section 182 defines
 - Agent** - A person employed to do any act or to represent another in dealing with third persons
 - Principal** - A person for whom such act is done or who is so represented.
- ✓ **Test of Agency (If answer is yes, relation of agency exist)**
Whether, person has capacity to bind the principal & make him answerable to third party.
Whether he can establish privity of contract between principal and third parties.
- ✓ Rule of Agency is based on the maxim "Qui facit per alium, facit per se" i.e., he who acts through an agent is himself acting.



Appointment And Authority of Agents

Who may employ an agent (Section 183)

- ✓ Any person who has attained majority according to the law to which he is subject, and who is of sound mind, may employ an agent.
Thus, a minor or a person of unsound mind cannot appoint an agent.

Who may be an agent (Section 184)

- ✓ Any person may become an agent i.e. even a minor or a person of unsound mind.
- ✓ But as a rule of caution, a minor or a person of unsound mind should not be appointed as an agent because he is incompetent to contract and in case of his misconduct or negligence, principal shall not be able to proceed against him.
- ✓ Consideration not necessary (Sec. 185) - No consideration is necessary to create an agency. Acceptance of office of an agent is regarded as a sufficient consideration.



Creation of Agency

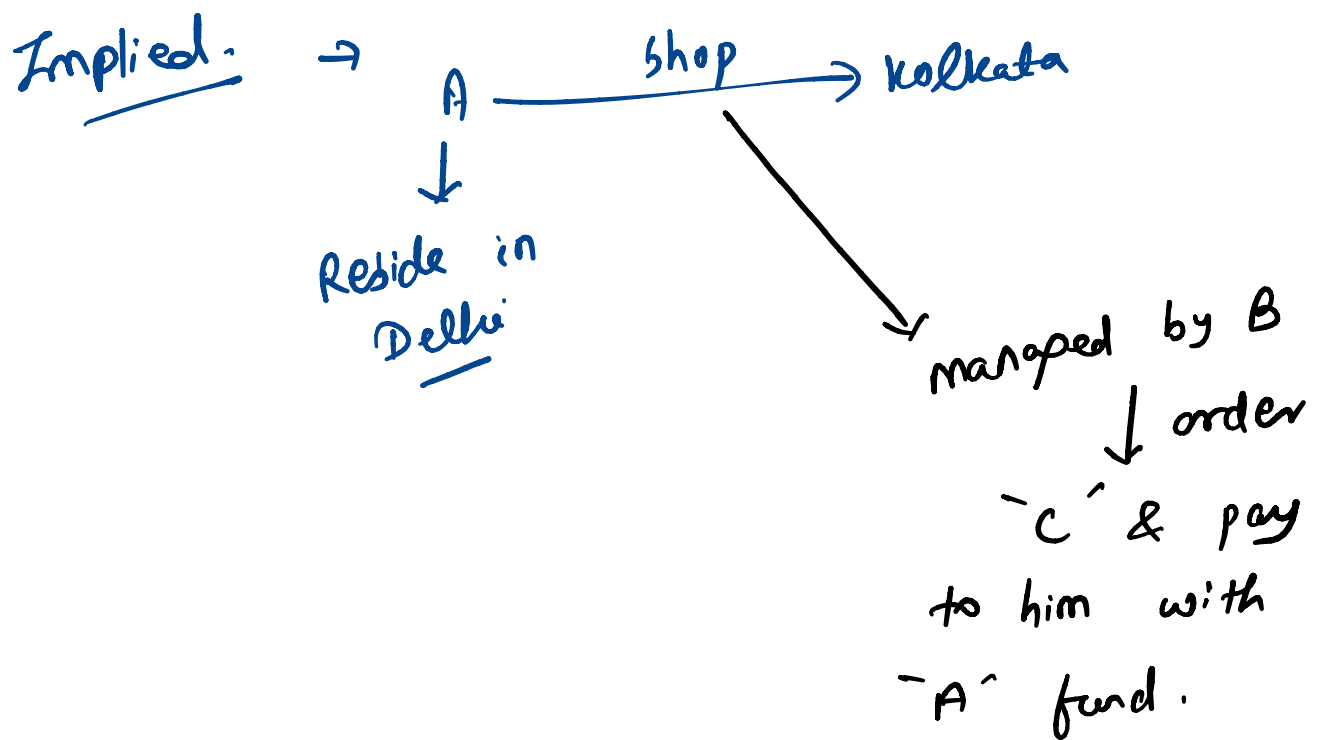
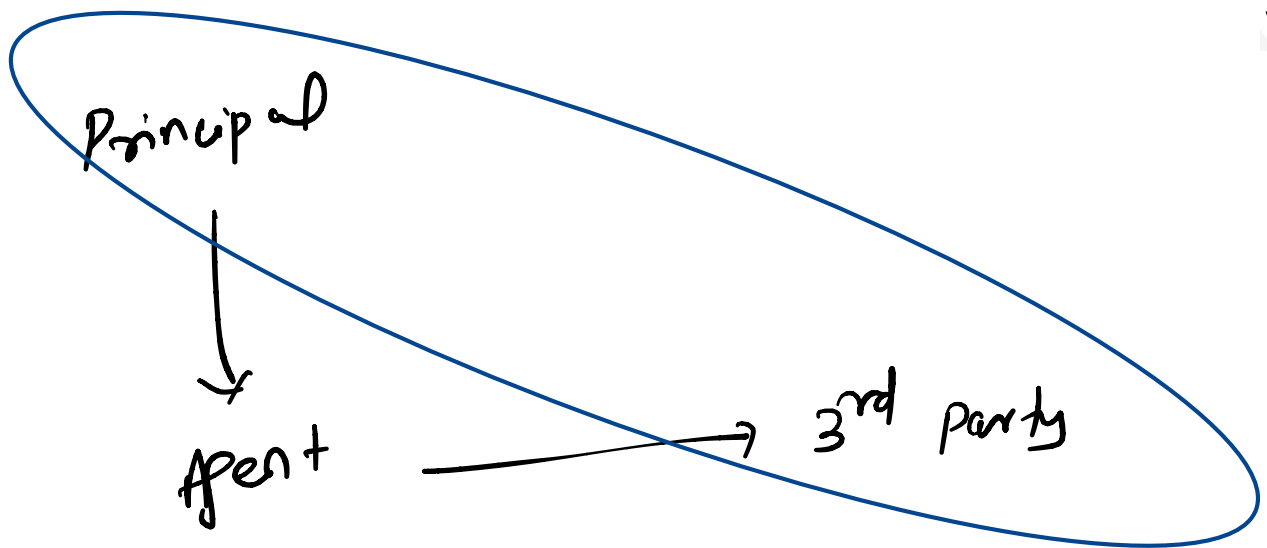
- ✓ Relation of agency arises whenever one person called the agent has authority to act on behalf of another called the principal and consents to act.
- ✓ Relationship of principal and agent may be created in any of the following ways - (Sec. 186)
 - i) **Express Authority** - Authority by words spoken or written.
 - ii) **Implied Authority** - Authority by circumstances, conduct of parties, or in the ordinary course of dealing, may be accounted from the circumstances of the case.



Implied Agency includes: -

- ✓

| | | | |
|-------------|--------------|---------------------|-----------------|
| 1) Estoppel | 2) Necessity | 3) Operation of law | 4) Ratification |
|-------------|--------------|---------------------|-----------------|



1. Agency by Estoppel [Section 237]

- ✓ Principal by his **conduct or statement willfully induces another person to believe**, a **certain person** is his **agent**, he is **subsequently prevented or estopped** from **denying fact of agency**.
- ✓ Agency by **estoppel** may be **created** when **following essentials** are fulfilled:
 - a) Principal must have made a **representation**;
 - b) Representation may be **express or implied**;
 - c) It must state, **agent has an authority to do certain act although really he has no authority**;
 - d) Principal must have **induced the third person** by such representation; and
 - e) **Third person** must have **believed the representation and made the contract** on that belief.

2. Agency by Necessity

- ✓ Agency of **necessity** arises **due to some emergent circumstances**.
In **Emergency**, A person is **authorised** to do **what he cannot do in ordinary circumstances**. Thus, agent **acquires extra-ordinary or special authority to prevent** his principal from **loss**.

3. Agency by Operation of Law

- ✓ When **law treats** one person as an **agent** of other.

4. Rights of person as to **acts done for him without his authority**, i.e ratification [Sec. 196]

- ✓ 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.
- ✓ If he **ratifies** - **Same effects** will follow as if they had been **performed** by his **authority**.
- ✓ Ratification means **approving a previous act or transaction**. It may be **express or implied** by the conduct of persons on **whose behalf the act was done**.

Essentials of a valid Ratification

- ✓
 - a) Ratification may be **expressed or Implied** (Sec 197)
 - b) **No valid ratification** can be made by a person **whose knowledge** of the **facts** of the case is **materially defective**.
 - c) There can be **ratification** of an act in **entirely** or its **rejection in entirety**. The

Est.

A $\xrightarrow{\text{Goods for sale with instruction not to sell below } \pounds 1000.}$ B

Contract to buy at $\pounds 850$

C

(ignorance)

Bound by contract.

Payal

permitted

Junil

Buy Goods on credit

paid.

Later on,
Can't refuse.

Ramesh

principal cannot ratify a part of the transaction which is beneficial to him and reject the rest.

- d) When the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.
- e) Ratification must be made within a reasonable period of time.
- f) Ratification must be communicated to the other party.
- g) Act to be ratified should not be void or illegal, for e.g. payment of dividend out of capital, forgery of signatures, any other criminal offence, or anything which is not permitted under law.



Extent of Agent's Authority

a) Agent's authority in normal circumstances (Section 188)

- ✓ Agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.
- ✓ 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.

Agent's authority in an emergency (Section 189)

- ✓ Agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.
- ✓ To constitute a valid agency in an emergency, following conditions must be satisfied.
 - i) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.
 - ii) There should be actual & definite commercial necessity for agent to act promptly.
 - iii) Agent should have acted bonafide and for the benefit of the principal.
 - iv) Agent should have adopted the most reasonable and practicable course under the circumstances, and
 - v) Agent must have the possession of principal's goods which are subject of contract.



Sub - Agents

- ✓ When agent cannot delegate (Section 190) - Agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade or from nature of agency a sub-agent must be employed.
- ✓ Sub-agent [Sec 191] - He is a person employed by, and acting under control of original

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Agency

agent.

- ✓ **General Rule:** Agent is a **delegatee** and a **delegatee cannot further delegate**. This is based on the **Latin principle "delegatus non potest delegare"**. Contract of agency is of a **fiduciary character**. It is based on the **confidence** reposed by the **principal** in the **agent** and that is why a **delegatee cannot further delegate**.
- ✓ **Exception where an agent can appoint Sub-agent:**
 - i) Appointment would be **valid** if the **terms of appointment originally contemplated it**.
 - ii) Sometimes **customs** of the trade may provide for **appointment** of sub agents.
 - iii) Where in the **course** of the agent's employment, **unforeseen emergency** arise making it **necessary** for him **to delegate the authority** that was **given to him by the principal**.



Representation of principal by sub-agent properly appointed (Section 192)

- ✓ Where a sub-agent is **properly appointed**,
 - i) **Principal is liable** to **third parties** for the **acts of the sub-agent**.
 - ii) **Agent is responsible** to the **principal** for the **acts of the sub-agent**.
 - iii) **Sub-agent is responsible** for his acts to the **agent**, but **not to the principal**, except in case of **fraud or willful wrong**.



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

- ✓ Where an **agent, without authority** has appointed a **person** to act as a sub-agent,
 - i) **Agent is responsible** for his acts **both to the principal and to third persons**;
 - ii) **Principal is not responsible** for the acts of the **sub agent**,
 - iii) **Sub agent is not responsible** to the **principal** at all. He is **answerable only** to the **agent**.



Substituted Agent

- ✓ **Meaning:** Substituted Agent is a **person appointed by agent** to **act for principal**, with the **knowledge & consent** of **principal**. Substituted agents are **not sub agents**. They are **agents of the principal**.

Relation between principal and person duly appointed by agent to act in business of agency (Section 194)

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

Agent's duty in naming such person (Section 195)

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



Difference Between a Sub-Agent And a Substituted Agent

| Sub Agent | Substituted Agent |
|--|---|
| A sub-agent does his work under the control and direction 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 the agent alone and is not generally responsible to the principal. | A substituted agent is responsible to the principal and not to the original agent who appointed him |
| The agent is responsible to the principal for the acts of the sub agent. | The agent is not responsible to the principal for the acts of the substituted agent. |
| 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 Obligations of an Agent

| | | | | |
|----------------|---------------|------------------|----------------------|----------------|
| 1) Follow Inst | 2) Care/Skill | 3) Proper A/cs | 4) Communicate | 5) Own account |
| 6) Secret Pft | 7) Delegation | 8) Sums received | 9) Confidential Info | |

1. Duty to follow instructions or customs (Sec 211)

- ✓ Agent is bound to conduct business according to the direction given by principal,
- ✓ Absence of any such directions - Follow customs in doing business of the same kind.
- ✓ Acts otherwise - Indemnify the principal if any loss is sustained and if any profit

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Agency

accrues, he must account for it.

2. Duty of reasonable care and skill (Sec 212)

- ✓ Agent is bound to conduct business with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill.
- ✓ Agent is always bound to act with reasonable diligence and to use skills as he possesses;
- ✓ He must compensate to his principal in respect of direct consequences of his own neglect, want of skill or misconduct, but not in respect of indirect or remote loss of damage.

3. Duty to render proper accounts (Sec 213)

- ✓ Agent is bound to render proper accounts to his principal on demand.
- ✓ Rendering accounts doesn't mean showing accounts but accounts supported by vouchers.

4. Agent's duty to communicate with principal (Sec 214)

- ✓ Duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

5. Duty not to deal on his own account

- ✓ Agent should not deal on his own account without first obtaining the consent of the principal, otherwise the principal may -
 - a) repudiate the transaction
 - b) claim from the agent any benefit which may have resulted to him from the transaction.

6. Duty not to make secret profits

- ✓ Duty of an agent not to make any secret profit as his 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.

7. Duty not to delegate (Sec 190)

- ✓ Agent cannot lawfully employ to perform acts which he has expressly or impliedly undertaken to perform personally, unless by ordinary custom of trade or nature of agency sub-agent, must be employed.

8. Agent's duty to pay sums received for principal (Sec 218)

- ✓ Agent is bound to pay principal all sums received on his account subject to deductions.

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



Rights of an Agent

| | | | | |
|---------------|-----------------|---------|--------------|-----------------|
| 1) Retain Sum | 2) Remuneration | 3) Lien | 4) Indemnity | 5) Compensation |
|---------------|-----------------|---------|--------------|-----------------|

1. Right of retain out of sums received on principal's account (Sec 217)

- ✓ Agent to retain out of any sums received on account of principal for following payments:
- a) all moneys due to himself in respect of advances made
 - b) in respect of expenses properly incurred by him in conducting such business
 - c) such remuneration as may be payable to him for acting as agent.

Note: This right can be exercised on any sums received in business of agency.

2. Right to remuneration (Sec 219)

- ✓ Agent is entitled for remuneration in the normal course as per the contract.
- ✓ Absence of agreed amount - Entitled for usual remuneration which is custom in business.
- ✓ However, an agent who is guilty of misconduct is not entitled to any remuneration in respect of that part of the business which he has misconducted (Sec. 220)

3. Agent's lien on principal's property (Sec 221)

- ✓ Agent is entitled to retain goods, papers & other property whether movable or immovable, of principal received by him until amount due to himself for commission, disbursement & services has been paid or accounted for him unless contract to contrary.
- ✓ The conditions of this right are:
- a) Agent should be lawfully entitled to receive a sum of money by way of commission earned or disbursement made or services rendered in proper execution of business.
 - b) Property over which, lien is to be exercised should belong to principal & received by agent in his capacity during the course of his ordinary duties as an agent.
- If agent obtains possession by unlawful means, he cannot exercise particular lien.

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Agency

- ✓ The agent's right to **lien is lost** in the following cases:
 - a) When **possession** of property is **lost**.
 - b) When **agent waives** his **right**. Waiver may arise out of **agreement express or implied**.
 - c) The agent's lien is **subject to a contract to** contrary.

4. Right to indemnity

a) Right of indemnification for **lawful acts (Sec 222)**

- ✓ Principal is **bound to indemnify agent** against **all consequences of lawful acts** done in exercise of his authority.

b) Right of indemnification against **acts done in good faith (Sec 223)**

- ✓ Where **agent acts in good faith** on the **instruction of principal**, he is entitled for **indemnification** of any **loss or damage from the principal**.
- ✓ However, **agent cannot claim any reimbursement or indemnification** for any **loss etc. arising out of acts done** by him in **violation** of any **penal laws of the country**.

c) Non-liability of **employer of agent to do a criminal act (Sec 224)**

- ✓ Where one person **employs another** to do an act which is **criminal**, **Employer is not liable** to agent, either **express or implied** to indemnify him against the **consequences** of that act.

5. Right to compensation for **injury** caused by principal's neglect (Sec 225)

- ✓ Principal must **compensate** his agent in respect of **injury caused** to such agent due to **principal's neglect** or want of **skill**.
- ✓ Every principal **owes the duty of care**, and not to **expose agent to unreasonable risks**.



Principal's Liability To Third Parties

- ✓ **Agent does all acts** on behalf of the principal but **incurs no personal liability**, liability remains with **principal unless contract to contrary** because there is **no privity of contract** and **no consideration** between **agent and third party**. **Agent also cannot personally enforce** contracts entered into by him on behalf of principal.

1. Principal's liability for the Acts of the Agent which are **within authority** of agent (Sec 226)

- ✓ Principal **liable** for the acts of agents which are **within the scope** of his authority.

2. Principal's liability when agent **exceeds authority (Sec 227)**

- ✓ When an **agent does more** than he is **authorised** to do, and when the **part** which is within

his authority can be separated from the part which is beyond his authority, is binding between him and his principal.

✓ Principal not bound when excess of agent's authority is not separable (Sec 228)
Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

✓ Exception: Liability of principal inducing belief that agent's unauthorized acts were authorized (Sec 237)
When agent has without authority done acts or incurred obligations on behalf of principal, the principal is bound if he has by his words or conduct induced third persons to believe that such acts and obligations were within the scope of agent's authority.

3. Consequences of notice given to agent (Section 229)

✓ Any notice given to or information obtained by agent in the course of business transacted by him for principal, shall have same legal consequence as if it had been given to or obtained by principal against third party.

4. Principal's liability for the agent's fraud, misrepresentation or torts (Sec. 238)

✓ Misrepresentations made, or frauds committed, by agents acting in the course of business for principals, have same effect as agreements made by the principals but do not affect their principals if done in matters which do not fall within the agent's authority.



Personal Liability of Agent To Third Parties

✓ Agent cannot personally enforce nor be bound by contracts on behalf of principal unless contract to contrary. (Sec. 230)

✓ Following are the exceptions where agents is presumed to have agreed to be personally bound:

1. Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal, the presumption is that the agent undertakes to be personally liable for the performances of such contract.

2. Where the agent does not disclose the name of his principal or undisclosed principal, there arises a presumption that he himself undertakes to be personally liable.

3. Non-existent or incompetent principal: Where the principal, though disclosed, cannot be sued, the agent is presumed to be personally liable.

4. Pretended agent - If the agent pretends but is not an actual agent, and the principal

2.9 Agency

does not rectify the act but disowns it, the pretended agent will be himself liable (Sec. 235).

5. When agent exceeds authority or misleads the third person in believing that the agent he has the requisite authority in doing the act, then agent can be made liable personally for breach of warranty of authority.



Rights of Third Parties

1. Rights of parties to a contract made by undisclosed agent (Sec 231)

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

2. Performance of contract with agent supposed to be principal (Sec 232)

- ✓ When agent does not disclose that he is acting as an agent and the principal requires the performance of contract then the principal can obtain such performance subject to the rights and obligations subsisting between agent and other party to contract.

3. Option to Third Person- sue the Agent or the Principal:

a) Right of person dealing with agent personally liable (Sec 233)

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

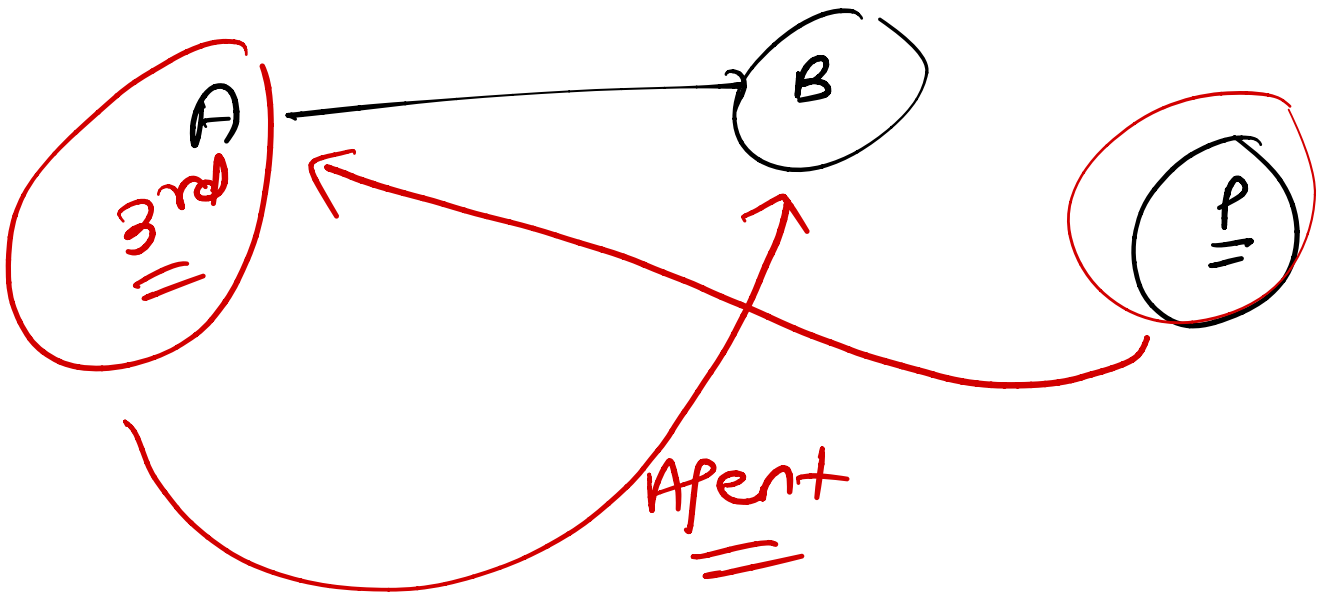
b) Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable (Sec 234)

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



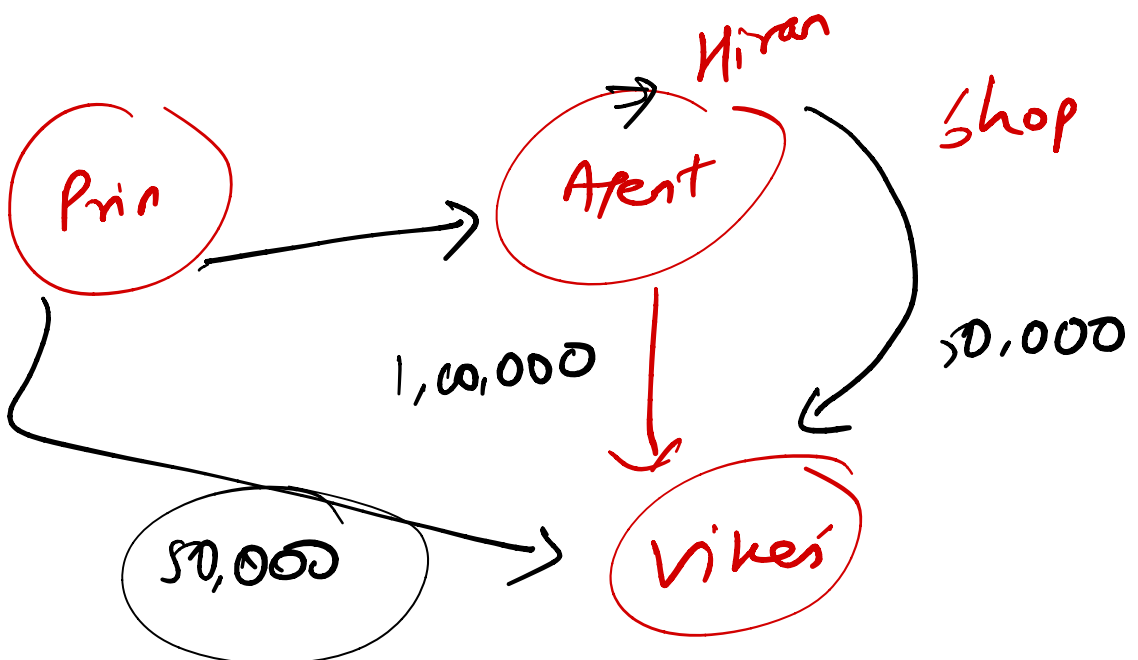
Revocation of Authority

- ✓ Termination of agency (Sec 201) - Means putting an end to the legal relationship between principal and agent.



X \longrightarrow Stadium

Y



Modes of termination are as follows

- | | | | |
|---|----------------------|---------------------------|---------------------------|
| ✓ | 1) Revocation | 2) By Agents | 3) Completion of business |
| | 4) Death or Insanity | 5) Principal's Insolvency | 6) Expiration of time |

1. Revocation (Sec 203 & 204)

- ✓ Agency may be terminated by principal revoking the authority of agent at any time before the authority has been exercised so as to bind the principal.
- ✓ However, It can't be revoked after the authority has been partly exercised by agent.

Compensation for revocation if there is premature revocation without sufficient cause by principal. (Sec 205)

- ✓ Notice of revocation (Sec 206) - When principal revokes the authority, he must give reasonable notice of such revocation to agent, otherwise, he can be liable to pay compensation for any damage caused to agent.
- ✓ Revocation & renunciation may be expressed or implied in the conduct of principal. (Sec. 207)

2. Renunciation by agent (Sec 206)

- ✓ Agent may renounce in the same manner in which the principal has the right of revocation.
- ✓ If agency is for a fixed period, agent would have to compensate for any premature renunciation without sufficient cause to principal. (Sec 205)
- ✓ Reasonable notice of renunciation is necessary and the length (time period) of notice is to be determined by the same principles which apply to revocation by the principal.
- ✓ If agent renounces without proper notice - Make good any damage resulting to principal.

3. Completion of business

4. Death or insanity

- ✓ Agency is determined automatically on the death or insanity of principal or agent.
- ✓ Winding up of a company or dissolution of partnership has the same effect.
- ✓ Acts done by agent before death would remain binding.

5. Principal's insolvency - Agency ends on the principal being adjudicated insolvent.

6. On expiry of time



When the agency is irrevocable?



When the agent is **personally interested** in the **subject matter** of agency the agency becomes **irrevocable** in the **absence** of an **express contract**. (Sec 202)



Effects of Termination (Sec 208)

Termination of agent's authority takes effect as to agent & as to third persons (Sec 208)



Termination **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**.

Agent's duty on termination of agency by principal's death or insanity (Sec 209)



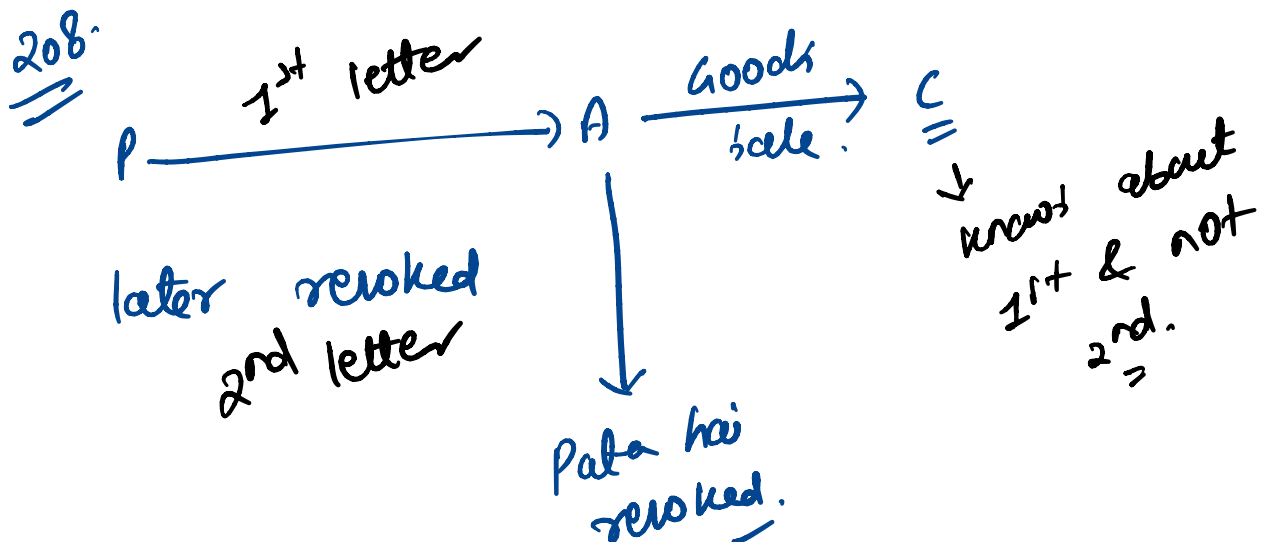
When an **agency is terminated** by the **principal dying** or becoming of **unsound mind**, agent is bound to take **all reasonable steps** for the **protection and preservation** of **interests entrusted** to him on behalf of the **representatives** of his **late principal**.



Termination of sub-agent's authority (Sec 210)



Termination of authority of **agent** causes termination of **authority** of **all sub-agents** appointed by him (subject to rules).





**THANK
YOU**

