Study Material for B.Com

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Dr.P.Sailaja

Guest Lecturer

Department of commerce

H.H.TheRajash College(Autonomous)

UNIT --I

INDIAN CONTRACT ACT 1872

Introduction:

Law is a basic necessity of every civilized society. Law is the bundle of rules and principles to be followed by the members of the society. When there is a law in a country, it brings uniformity and balance in human actions, and provides justice to the aggrieved persons. According to Holland, "Law is a rule of external human action enforced by the sovereign political authority." In the words of Blackstone," Law is a rule of civil conduct, prescribed by the supreme power of state, commanding what is right and prohibiting what is wrong."

INDIAN CONTRACT ACT 1872 The law relating contract in India is contained in the Indian contract Act, which came in to force on the first day of Sept 1872. The act is extended to the whole of India except the state of Jammu and Kashmir. The act as it now stands contains the general principles of contract, contract of indemnity, surety ship, Bailment, and Agency. The law of contract deals with those transactions or promises which create legal rights and obligations. In case of non performance of the promise by one party, it also provides legal remedies to an aggrieved party.

CONTRACT

Definition

Generally contract may be defined as an agreement which creates rights and obligations between the parties. These obligations and right s must be of such a nature that these can be claimed in the court of law.

According to Salmond, "A contract is an agreement creating and defining obligation between the parties." Section 8(h) of the Indian Contract Act defines contract as an agreement which is enforceable by law.

From the above definitions of contract, it is clear that a contract essentially consists of three elements: 1. An agreement 2. Obligation, and 3. Enforceability

1. Agreement:

An agreement involves a valid offer by one party a valid acceptance by the other party.

2. Enforceability:

It means contract must be legal in nature and which can be claimed in the court of law. For example, X invites Y to a party and Y accepts the invitation, then it is only a social agreement and not a contract. On the other hand A agrees to sell his house to B for Rs. 5, 00,000. This is a contract.

ELEMENTS OF CONTRACT

An agreement to be enforced in the court has to satisfy certain conditions. On satisfying these, the agreements become a contract, and those conditions become essentials of a valid contract. The essential elements of a contract are contained in the definition of contract given in sec. 10 of the contract Act. According to this Act, "all agreements are contracts if they are made by free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

The essential elements of a contract include:

1.Agreement: - There must be an agreement between the parties of a contract. It involves a valid offer by one party and a valid acceptance by the other party. Agreement is created by offer and acceptance. Therefore an agreement is = offer +acceptance. It is only by an agreement a contractual relation is established between the parties.

For example, A sends a proposal to B to purchase a property for Rs. 10 lakhs and B accept the same, then this result into an agreement.

2. **Lawful consideration:**

Consideration means something in return. An agreement is legally enforceable only when each of the parties to it give something and gets something. It may be past, present or future and must be real and lawful. A contract without consideration is not a contract at all. The consideration must be legal, moral and not against public policy.

3. Capacity of parties:

The parties to an agreement must be capable of entering into a valid contract. According to(sec. 11), the following persons are not competent to enter in to a contract. (a) Persons of unsound mind (Idiots, lunatic person etc.) (b) Persons disqualified by law to which they are subject. (c) Minors (Not completed the age of 18)

4. Free consent:

For the formation of a contract one person must give his consent to another person. The consent thus obtained must be a free consent. A consent is said to be free if it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. If the consent is obtained by unfair means, the contract would be voidable

. **5. Consensus ad idem:**

It means the two parties of the contract must agree upon the subject matter of the contract in the same manner and in the same sense. That is there must be identity of minds among the parties regarding the subject matter of the contract.

For example, A has two houses one at Calicut and another at Palakkad. He has offered To sell one house to B. B accepts the offer thinking to purchase the house at chennai, while A, when he offers; he has his mind to sell the house at Coiambatore. So there is no consensus ad idem.

6. Lawful object:

The object of an agreement must be lawful. It must not be illegal or immoral or opposed to public policy. If it is unlawful, the agreement becomes void.

7. Not declared to be void:

There are certain agreements which have been expressly declared void by the law. It includes: (a)Wagering agreement (b) Agreement in restraint to marriage (c) Agreement in restraint of trade etc. Thus an agreement made by parties should not fall in the above category.

8. Certainty and possibility of performance:

- The terms of the contract must be precise and certain. They should not be vague. The terms of agreement must be capable of performance. For example A agrees to sell one of his houses. A

has four houses. Here the terms of agreement are uncertain and the agreement is void. 9. An intention to create legal relationship:- There should be an intention between the parties to create a legal relationship. Mere informal promise is not to be enforced. Social agreements are not to be enforced as they do not create any legal obligations. An oral contract is a valid contract except in those cases where writing, registration etc. is required by some statute.

TYPES OF AGREEMENTS

Void agreements:

"An agreement not enforceable by law is said to be void". A void agreement has no legal significance from the beginning. No contract comes out from a void agreement ie it is void ab initio. The following agreements are examples of void agreements:- a) Agreement without consideration b) Agreement with persons like minors (sec.11) c) Agreement made without consideration (sec.25) d) Uncertain agreement (sec.29) e) Impossible agreements (sec.56) etc.

Illegal agreements: -

An agreement which is either prohibited by law or otherwise against the policy of law is an Illegal agreement. All illegal agreements are null and void but void agreements are not illegal. All collateral transaction to an illegal agreement are also illegal.

CLASSIFICATION OF CONTRACTS

Contracts made by the parties can be classified into different types on the following bases.

1. Formation of Contract

2. Performance of Contract

3. Extend of validity of Contract

On the basis of Formation:-On this basis, contracts may be grouped into three

a. Express contract: - These are the contracts, which are entered into between the parties, by words spoken or written. For example, A writes to B , " I am willing to sell my Car to you for Rs. 2,00,000." B accepts A's offer by another letter. This is an express contract.

b. Implied contract: - Implied contracts are formed on the basis of implied promises on the part of parties.

When the proposal or acceptance is made otherwise than in words, the contract formed is called implied contract. Thus in implied contract, making an offer and giving acceptance to it is manifested by the act on the part of party. For example, X gets into a public bus, and then he enters into an implied contract with the authorities of the bus that he wishes to travel in the bus

. **c. Quasi contracts:-**

In certain circumstances law itself creates legal rights and obligations against the parties. These obligations are known as quasi contracts. It is also known as constructive contract.

For example, the finder of lost goods is under an obligation to find out the owner and return the goods. Section 68 to 72 of Indian Contract Act deal with the cases of quasi contracts. B.

On the basis of Performance:-

a. Executed Contract:-

Executed contract is one that has been performed. If both parties of a contract have performed their respective obligations, contract is known as executed contract. For example, A sells a Car to B for Rs. 1,00,000. B pays the price. This is an executed contract.

b. Executory contract:-An executory contract is one in which both the parties have not yet performed their obligations either wholly or partly. For example, A makes an agreement for buying a car from a car dealer and has made payment. The car has been delivered, but the ownership is yet to be transferred.

c. Partly executed contract; An executory contract is one in which both the parties are yet to fulfill their respective obligations.

On the basis of extend of Validity: -

On this basis contract may be classified as under

a. Valid contract:- Contract is said to be valid if it satisfies all conditions required for its enforceability. In other words an agreement enforceable by law is a valid contract.For example, If A offers B to sell his car for Rs. 2,00,000 B agree to buy the car for this price, then it is a valid contract.

b. Void Contract: A contract which ceases to be enforceable by law become void. No party has right to claim it in the court of law. A void contract not necessarily be unlawful but it has no legal effects. A contract with alien friend becomes subsequently void when alien friend become alien enemy.

c. Voidable contract:- According to sec.2(i) " An agreement which is enforceable by law at the option of one or more parties, but not at the option of other or others is a voidable contract." Generally a contract becomes voidable when the consent of one of the parties to the contract is obtained by coercion, undue influence or misrepresentation. For example, if the consent of the party was caused by coercion the contract is enforceable at the option of the party whose consent was not free.

d. Illegal contracts: - The contract is said to be illegal, if its object is illegal. A contract arising out of an illegal agreement is illegal ab initio . For example, an agreement to commit murder is an illegal one.

e. Unenforceable contract: - It is a contract, which is valid, but not capable of being enforced in a court of law because of some technical defects. Technical reasons affecting validity of contract may be that contract is not in writing or is not registered or has no adequate stamp duty on it etc. For example, A make out promissory note in favour of B for Rs. 1000, It has stamp duty of Rs. 5 only. But as per law it must have stamp duty of Rs. 10, such promissory note is invalid. But if stamp duty is raised up to required level it may be allowed to be enforced.

Offer and acceptance are the two basic elements which comprise an agreement. One person makes an offer to another person, when the other person accepts that offer, it becomes an agreement.

Offer or Proposal

According to sec. 2 (a) of the Contract Act, "When one person signifies to another his willingness to do or 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." Offer is one of the essential elements of a contract. The person making the offer or proposal is called the offeror proposer or promisor and the person to whom the proposal is made is called 'the propose' or offeree.

Elements of an Offer:

1. In an offer one party must express his willingness for doing or not doing a thing.2. It must be made to another person.3. Offer is made with a view to know the assent of the other person. 4. There must be an intention to create legal relationship. Example: X desire to sell his Car to Y for Rs. 3,00,000 _ it does not constitute offer, because X has merely expressed his desire. On the other hand if X asks Y would you buy my Car for Rs.3,00,000, this makes an offer, and here X is the offeror.

Classification of offer:

1. Specific offer: - When an offer is made to a specific person or class of persons, such offer is known as specific offer. The specific offer can be accepted only by that particular person or organization.

2. General offer: It is an offer which is made to a group of people or public at large. Such offer can be accepted by any member of that group.

3. Cross offer: - When two parties exchange identical offers with each other, in ignorance of each other's offer, the offers are cross offer.

4. Counter offer: Incomplete and conditional acceptance of an offer is known as counter offer. In other words, when an original offer is rejected and a new offer is made, it is known as counter offer.

5. Standing offer (Tender):- An offer for a continuous supply of a certain article at a certain rate over a definite period is called a standing offer.

ESSENTIALS OF VALID OFFER

The following characteristics are necessary to create a valid offer.

1. The terms of an offer must be clear and certain: - The terms of an offer should not be indefinite, vague or loose. The vagueness of an offer will not create any contractual relationship . For example, A says to B " I will sell you a Car" as A owns four cars, the offer is not definite.

2. Offer may be express or implied: - An express offer is one which may be made by words spoken or written. An implied offer is one which may be gathered from the conduct of the party or the circumstances of the case

3. The offer must be communicated to the offeree: - An offer must be communicated to the offeree. Until an offer is made known to the offeree, he does not know what he has to accept.

4. An offer must be made with an intention of creating legal obligations: - A proposal will not become a promise even after it has been accepted unless it was made with a view to create legal obligations. An offer to perform social or moral acts, without any intention of crating legal relations, will not be a valid offer.

5. Offer may be conditional: - An offer can be made subject to a condition. It can be accepted only subject to those conditions. If the condition is not accepted, the conditional offer lapses.

6. Offer must be made with a view to obtaining the assent of the other party

7. Invitation to an offer is not an offer: -Offer is different from invitation to an offer. Quotations, catalogues of goods, advertisement for tender etc are not actual offer. They are mere invitation to offer.

8. Offer may be specific or general: - The offer being made to a particular individual or organization is known as specific offer. On the other hand, if an offer has been made to a group of people or public at large, such offer is known as general offer.

9. Offer should not contain a term the on-compliances of which would amount to acceptance: While making the offer one cannot say that, if the offer is not accepted before a certain date, it will have presumed to have been accepted.

When Does an offer comes to an End? / Revocation of Offer/Lapses of Offer:-

The Offer must be accepted before it lapses. Sec. 6 of the contract act deals with various modes of revocation of an Offer.

1. **Revocation by Communication of notice (Sec. 6(1):-** A person who makes an offer can withdraw it at any time before acceptance. Such revocation may be express or implied. Notice of revocation will take effect only when it comes to the knowledge of the offeree
2. **By lapse of time (Sec.6 (2):-** An offer lapses if it is not accepted within the prescribed time. Where no time is fixed, it should be accepted within a reasonable time. Otherwise the offer will lapse after a reasonable time.
3. **Death or insanity of an offeror:-** An offer lapses by the death or insanity of the offeror, if the fact of his death or insanity comes to the notice of the acceptor before acceptance.
4. **Non fulfillment of pre requisite conditions:** - When the offeror has put some conditions, which are prerequisites to acceptance, such conditions must be fulfilled before accepting offer. Non fulfillment of such conditions will lead to revocation of an offer.
5. **By counter offer:** - The offer will be revoked if the offeree makes a counter offer.
6. **Offer not accepted according to the mode prescribed: -** Sometimes the offeror may prescribe particular mode in which offeree must send his acceptance. Non compliance of prescribed mode may lead to rejection of acceptance.
7. **Subsequent Illegality or destruction of subject matter**: - An offer lapses, if it becomes illegal after it is made but before it is accepted.

ACCEPTANCE

According to section 2(b) a proposal or offer is said to have been accepted when the person to whom the proposal is made, signifies his assent to the proposal. An offer when accepted becomes a promise. Offer and Acceptance in a contract are like two sides of a coin and the absence of any one will not create any contractual relationship between these parties.

According to William Anson, “acceptance is to offer what is a lighted match is to a train of gun powder.” An acceptance can be made by words spoken or written. It can be made by conduct also. It can be accepted only by the person to whom it is made.

ESSENTIALS OF A VALID ACCEPTANCE:-

1. Acceptance must be absolute and unconditional: - Partial and conditional or qualified acceptance will not be a valid acceptance. That is the acceptor either should accept the item of the offer in toto or should reject it in toto. There should not be any variation in terms while accepting the proposal.

2. Acceptance must be given in a prescribed mode or manner: - If the acceptance is not made according to the mode prescribed, the offeror may intimate to the offeree within a reasonable time that the acceptance is not according to the mode prescribed , and may insist that the offer must be accepted in the mode prescribed. But if still it is not followed, the offeror can reject that acceptance.

3. Time of Acceptance: - Acceptance must be made within the time allowed. When no time is specified, acceptance must be given within reasonable period of time.

4. Acceptance must be communicated: Acceptance to be legally effective must be communicated and brought to the knowledge of the offeror. Even if the acceptor has accepted the offer but if it is not communicated properly, it would not result into an agreement.

5. Acceptance may be express or implied: - When an acceptance is made by words spoken or written, it is an express acceptance. If it is accepted by conduct, it is an implied acceptance. For example when a person goes to a Restaurant and has some food, he impliedly accepts must be made before offer is revoked: to pay for it.

6. Acceptance - The acceptance of an offer must be done before the offer lapses or is withdrawn or cancelled. Once an offer is dead due to any reason it is dead for ever.

7. Acceptance must be made by the offeree: - Acceptance must be made only by the person to whom the offer is made and not by others.

8. Acceptance is not implied from silence of the party: - Generally, silence on the part of offeree regarding the offer in no case may amount to acceptance.

COMMUNICATION OF OFFER AND ACCEPTANCE

According to sec.3 of Indian Contract Act, "that the communication of proposal, the acceptance of proposal, and the revocation of proposal and acceptance respectively are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation or which has the effect of communicating it".

Thus, communication of offer and acceptance is necessary for forming a contract. The communication of an offer is complete as soon as it comes to the knowledge of the offeree. Communication of acceptance is complete –

1. as against the proposer, when it is put in a course of transmission to him as to be out of the power of the acceptor

2. as against the acceptor, when it comes to the knowledge of the proposer. For example, A proposes by a letter to sell a Car to B at a specified amount and B accepts A's proposal by letter sent by post. Here the communication of acceptance is complete as against A when the letter is posted and as against B when the letter is received by A.

Revocation of Offer and Acceptance:- An Offer may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. So an offer can be revoked at any time before the letter of acceptance has been posted by the accepter. An Acceptance may be revoked at any time before the communication of the acceptance is complete as against acceptor, but not afterwards.

CONSIDERATION

Consideration is one of the essential elements of valid contract. According to sec. 25 of the Indian Contract Act, an agreement made without consideration is void. Every agreement must be supported by consideration to become a contract. In true sense consideration means "something in return" to the promisor (quid proquo).

The term consideration is defined in sec.2 (d) of the Indian Contract Act as,"when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or promise

to do or to abstain from doing something, such act, abstinence or promise is called a consideration for the promise."

Essentials of Consideration:-

1. Consideration must move at the desire of the promisor: - It is essential that promisee should perform his part of the promise only at the desire of the promisor. The desire of the promisor may be express or implied. For example, 'A' buys a book for his friend 'B'. Later on 'B' promises to pay Rs. 75 to 'A'. Since 'A' has bought the book voluntarily without the desire of 'B', it cannot be valid consideration for the promise of 'B'.

2. Consideration may move from the promisee or any other person:-According to Indian law, the consideration may proceed either from the promisee or any other person. Under the English law, consideration must move from the promisee.

3. Consideration may be past, present or future: - If the promisor had received the consideration before the date of the promise, it is known as past consideration. If the promisor receives consideration simultaneously with his promise, it is known as present consideration. When the consideration on both sides is to move at a future date, it is called future consideration. However, according to English Mercantile law, consideration may be present or future only.

4. Consideration need not be adequate:-According to Indian contract Act, it is not necessary that the value of promise should be equal to the value of consideration. Even if the value of consideration is less than the value of promise, the contract is valid.

5. Consideration must be real and not illusory: - Consideration must have some value in the eyes of law. It must not be illusory, fictitious, fraudulent and uncertain.

6. Consideration must be lawful:- Consideration is said to be unlawful if

1. If it is forbidden by law.
2. It is fraudulent
3. It involves or implies injury to the person or property of another person.
4. It is regarded by court as criminal
5. It is regarded by the court as being against the public policy.

A stranger to a contract/ Privity of contract

A stranger to a contract is a person who is not a party to the Contract. Such a party neither makes nor accepts any offer. Privity of contract states that the contract confers right and obligations on contracting parties only. Therefore stranger to a contract cannot sue on the contract. A stranger to consideration/ Privity of consideration: When consideration is furnished not by the promisee but by a third person, the promisee becomes a stranger to consideration. Under the Indian contract Act, consideration may move from the promisee or any other persons. So in India, a consideration made by the stranger is lawful and enforceable.

Exceptions to the rule that a stranger to a contract cannot sue:

1. Beneficiary of a trust: - Trust is an arrangement whereby some property is handed over to trustee by the owner. This property isis to be managed by the trust for the benefit of the party known as beneficiary. Here the beneficiary can sue to enforce his rights under the trust, though he is not a party to a contract.

2. Contracts through an agent: - Contracts which are entered into through an agent can be enforced by his principal. Here the principal can file suit against third party or can be sued by third party.

3. Marriage settlement, partition or other family arrangement: - If an agreement has made for the above purpose, in such agreement provision may be made for the benefit of a particular member. Such person, who is beneficiary in the agreement, can maintain a suit.

4. Estoppels to acknowledgment:-When a party admits liability in a contract to third party, then if he denies it on any ground, he will be stopped from doing so. His liability would continue towards third party.

5. Charges created on immovable property: - Agreement creating charge on immovable property in favour of third party for his benefit can be enforced by third party. Exception to the rule 'No consideration No Contract'

Generally a promise without consideration is null and void. It is a 'naked promise' or 'Nudum Pactum' . But sec. 25 of the contract Act given some exceptions to this rule.

1. Agreement based upon love and affection:- Here the essentials of the agreements includes:

a. It must be expressed in writing

b. It should be registered under the law for the time being in force

c. It should be made on account of natural love and affection, and

d. The parties should stand in a near relation to each other. If an agreement fulfils the above conditions, it is valid and enforceable even though it is not supported by consideration.

2. Promise to compensate for Past voluntary services: - If a person has already voluntarily done something for the promisor and the promisor agrees to compensate wholly or in part, the agreement is valid even though it is without consideration. For example 'A' find 'B's purse and hand it over to him. B, in return promise to give A Rs. 50. It is a valid contract.

3. Agreement to pay time barred debt:- A promise by a debtor to pay a time barred debt is enforceable provided it is made in writing and is signed by the debtor or by his agent authorized in that behalf. An oral promise to pay a time barred debt is unenforceable.

4. Agency: - According to sec 185 of the Indian Contract Act, no consideration is necessary to create an agency.

5. Completed gifts: - Gift once made cannot be recovered on the ground of absence of consideration.

CAPACITY OF PARTIES

According to section 10 of the contract Act, parties making an agreement must have the contractual capacity. Section 11 of the Act states that "every person is competent to contract who is of a gage of majority according to law to which he is subject, and who is of a sound mind and is not declared disqualified from contracting by law to which he is subject." Thus every person is competent to enter into a contract if,

a. he has attained the age of majority

b. he is of sound mind, and

c. he is not disqualified by any law from contracting

MINOR

A person who has not attained the age of majority is a minor. According to the Indian Majority Act 1875, a person who has not completed his 18th year of age is considered to be a minor. But if a minor is under the care and custody of the court and a guardian is appointed by the court for the minor, then the minor becomes major only on the completion of the age of 21 years.

Law regarding Minor's Agreement:-

1. An agreement with a minor is void ab initio: A minor does not have the contractual capacity and when he makes agreements, such agreements are void and cannot be enforced in the court of law.

2. Minor can be a promisee or beneficiary: - A minor cannot be stopped from getting benefits in an agreement. If in a contract, minor is a beneficiary or suffered loss or he is a promisee, he can demand the enforcement of agreement.

3. Ratification on attaining the majority is not allowed: A minor cannot ratify a promise entered into during his minority, after attaining majority.

4. Minor is not bound to return the benefits received: - If a minor retained any benefit under the agreement, he is not liable for repay or compensate the same. The reason is that the original contract is void in the beginning itself.

5. The principles of estopel is not applicable to minor: - The general principle of estopel is not applicable to a minor.

6. A minor is liable for necessaries supplied: According to sec 68, "if a person, incapable of entering into a contract or any one whom he is legally bound too support, is supplied by another person with necessaries suited to his condition in his life, the person who has furnished such supplies, is entitled to be reimbursed from the property of such incapable person.

7. Minor can be an agent: A minor can act as an agent and bind his principal by his acts.

8. He cannot be adjudged insolvent: A minor cannot adjudged insolvent as he is not competent to enter into contracts for debts.

9. Minor- as partner: A minor cannot be a partner, but he may be admitted to the benefit of a partnership. His liabilities are limited to the extend of his interest in the partnership.

PERSONS OF UNSOUND MIND

In order to be competent to contract, a person must be of sound mind. A person who is usually of unsound mind and occasionally of sound mind may make a contract when he is of sound mind. A person who is usually of sound mind but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Types of persons of Unsound Mind:

1. Idiots: A person who has completely lost his mental powers and incapable of forming a rational judgment is called an idiot. All agreements other than of necessaries of life, with idiots are absolutely void.

2. Lunatic: A lunatic person is a person who suffers a serious mental disorder due to some mental strain or mental shock or any highly tragic event. A lunatic is not liable for agreements entered into during the period of his madness.

3. Drunken persons: A drunken person suffers from temporary incapacity to contract. An agreement by a drunken person is void because during his drunkenness he cannot understand the business and its implications.

PERSONS DISQUALIFIED BY OTHER LAWS

1. Alien enemies: - A person who is not a citizen of India is called alien. The following rules will apply in respect of an alien enemy:

a. No contract can be made with an alien enemy during the subsistence of war

b. Performance of the contract made before the outbreak of war will be suspended during the course of war.

2. Foreign sovereigns, and ambassadors:- In the case of Ambassadors and foreign sovereigns, according to sec 86 of the civil procedures, previous sanction of the central government is to be obtained .

3. Insolvents: When a debtor is adjudged as insolvent his property vests in the official Receiver and thereby he cannot enter into a contract. This disqualification is automatically removed after he is discharged.

4. Convicts:-A convict when undergoing imprisonment is incapable of entering in to a contract. When the period of sentence expires, the incapacity to contract disappears.

5. Corporations: A company or corporation can enter into contracts only through its agents, such as Board of Directors, Managing Directors etc in accordance with its Memorandum of Associations. Any contract beyond the Memorandum is not valid.

6. Married women: They are competent to enter into a contract with respect to their separate properties. But she cannot enter into contracts with respect to their husbands' property.

FREE CONSENT

According to Sec13 of the Contract Act defines,Consent as, "two or more persons are said to consent when they agree upon the same thing in the same sense." Without free consent of the parties, an agreement does not acquire legal sanctity and consequences.

Section 14 of this act states that, 'Consent is said to be free when it is not caused by,

1. Coercion 2. Undue influence 3. Mis representation 4. Fraud 5. Mistake In the first four cases, the contract is voidable, but in the last case, the contract is void ab initio

ELEMENTS OF FREE CONSENT

COERCION

Coercion implied use of some kind of physical force by doing some act forbidden law to seek consent of the other party. If the consent to an agreement is obtained by coercion, the contract is voidable at the option of the party whose consent is so obtained.

It includes: a. The committing of any act forbidden by the Indian Penal Code

b. The unlawful detention of any property of another person

c. Threatening to detain the property of another person.

UNDUE INFLUENCE: It is the improper use of any power possessed over the mind of the contracting party. Section 16(1) of the Contract Act defines undue influence as follows:- " A contract is said to be induced by undue influence, where the relations subsisting between the parties are such that one of the parries is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other".. Effect of Undue influence: - An agreement caused by undue influence shall be voidable at the option of the party whose consent has been so obtained. In such cases the court may either set aside the contract absolutely or it may direct the person, who wants to avoid the contract to refund the benefit which he actually obtained.

Difference between Coercion and Undue influence:

1. Coercion implies the use of physical force or threat to cause consent. While undue influences involve use of moral or mental pressure to cause consent.

2. Coercion involves a criminal act while there is no criminal act in undue influence.

3. When the consent of the promisor is obtained by coercion the contract is voidable at the option. When the consent is obtained by undue influences the contract is voidable or the court may set aside it.

4. In case of coercion, the threat may come from a third party who is a stranger to the contract. While on the other hand, the undue influence must be exercised by or against a person who is a party to the contract.

FRAUD: When a wrong representation is made by a party with the intention to deceive the other party or to cause him to enter in to a contract, it is said to be fraud. According to Sec.17,

Fraud includes any of the following acts,

a. A false suggestion as to a fact known to be a false

b. A promise made without any intention of performing it.

c. Doing any act filled with deceive

d. The active concealment of fact with knowledge of the fact, and

e. Doing any such act as the law specially declares to be fraudulent.

Effect of fraud:

If the consent to an agreement is caused by fraud, the contract is voidable at the option of the party, whose consent was so caused.

In case of fraud, the aggrieved party has the following remedies:-

a. He can cancel the contract within a reasonable time.

b. He can sue for damage

c. He can insist on specific performance of the contract on the condition that he shall be put in the position in which he would have been if the representation made had been true.

Silence as fraud:

Mere silence or non disclosure of facts normally does not constitutes fraud unless party keeping silence is under legal obligation to speak or his silence is equivalent to speech..

But this rule has certain exceptions. Under these situations, silence maintained by the party will amount to fraud. These situations are as follows:-

1. Party keeping silence is under duty to speak

2. Silence maintained by the party is equivalent to speech

3. Disclosure of Half truth

MISREPRESENTATION:

It is a misstatement of material facts. The party making untrue statement believes that the statement is true, but in reality statement turns to be incorrect. It also includes non disclosure of material facts and facts without any intention to deceive the other party.

According to sec.18 of the Act, misrepresentation means and includes:

1**. The positive assertion** in a manner not warranted by information of the person making it which is not true, though he believes it is to be true.

2**. Any breach of duty** which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, or

3**. Causing, however innocently**, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

Effects of Misrepresentation:

When consent of the party is caused by the misrepresentation made by another party, the contract is voidable at the option of the aggrieved party whose consent was caused by misrepresentation. He has the following rights:

1. May avoid or rescind the contract

2. May insist on the misrepresentation being mad good or

3. May rely upon the misrepresentation as a defence to an action or the contract.

.MISTAKE

A mistake means that parties intending to do nothing have by intentional error done something else. If the agreement is made under a mistake, it means that there is no consent and when the consent is nullified by such mistake, and then the agreement has no legal effect.

Classification of Mistake:

1. Mistake of fact and

2. Mistake of law

1.. Mistake of Fact**:-**Mistake relating to terms and conditions or any facts essential to the agreement is known as mistake of facts. Mistake of facts may be a. Bilateral mistake:- A bilateral mistake is one where both the parties are under a mistake.

Section 20 of the Act lays down that," where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void." Therefore two conditions must be fulfilled for bilateral mistakes:

a) Mistake must be committed by both the parties, and

b) The said mistake must relate to some essential fact.

b. Unilateral mistake: - In this case only one party is under a mistake. In other words, if there is a mistake on the part of one party alone and the other party does not know the mistake, then it is called unilateral mistake. According to section 22, "a contract is not voidable merely because it was caused by one of the parties to it being under a mistake regarding a matter of fact." In the following case unilateral mistake make contracts void:-i. Unilateral mistake relate to the nature of contract, the contract itself is void. ii. Unilateral mistakes is as to identity of the person contracted with, the contract is void.

2. Mistake of Law:-

Mistake of law may be of two types:

1. Mistake of Indian Law

2. Mistake of foreign law

UNIT --II

LEGALITY OF OBJECT

What is object?

The contract to be legally valid must contain lawful object. According to section 10 of the act, "all agreements are contract if they are for lawful consideration and with a lawful object. Lawful object means, intention to do something permissible within the provisions of law". For example, A in consideration of Rs. 10 lac from B agrees to Kill C.

The object of this agreement is killing, which is illegal and punishable under Indian Penal Code. Unlawful Consideration and Unlawful Object: Under the following circumstances an agreement would be unlawful:

1. It is forbidden by law:-If the object or consideration of an agreement is forbidden by law, the agreement is void. For example, A agrees to sell certain goods to B after knowing very well the goods are to be smuggled out of the country. Here the object is forbidden by law.

2. It defeats the provisions of any other law:-Where the enforcement of a particular is of such a nature that it would defeat the provisions of any statutory law which is in force, the agreement is void.

3. It is fraudulent: - Fraud is punishable under the provisions of the law. Thus an agreement made with an object of defrauding or deceiving another will be void.

4. It involves an injury to a person or property of other:- Agreements made with an object of putting some person in to criminal or wrongful harm or damaging his property or reputation is void.

5. It is Immoral: - If the object of an agreement is considered as immoral in the opinion of the court, such agreement will be void on account of unlawful object

6. It is against public policy: - Any agreement which goes against public policy and adversely affect public welfare public decency and public interest will be void. The court has declared the following agreements oppose to public policy. a. Trading with alien enemy b. Trafficking in public office c. Interfering with course of justice d. Marriage brokerage agreements e. Agreement creating interest against professional duty. f. Agreement in restraint of parental duty. g. Agreement in restraint of Trade

WAGERING AGREEMENT

According to Anson," wager means promise to give money or money's worth upon the determination of an uncertain event in which the parties have no material interest and with mutual chances of gain or loss." Thus in simple words, Wagering agreement is one in which money is to be paid by one to another party or vice versa on the happening or non happening of future uncertain event.

Essentials of Wagering Agreement:

1. Mutual gain or losses: - There are two parties in wagering agreement. One of the parties will win and another party will lose.

2. Uncertain event: - The performance of wagering agreement depends on happening or non happening of a future uncertain event.

3. Interest of the parties: - The parties must not have any other interest in the happening of the event except the sum of money which either of them will win or lose.

4. Control over the event:-Neither of the parties should have any control over the event.

5. Payment of money: - The two person agree that dependent on the determination of that event in one way, one shall pay money to the other and vice versa. For example, X and Y agree that, If it rains on a particular day, X will give Y Rs. 1000 and if it does not rain on that day Y will give X Rs. 1000.

Effect of Wagering Agreements:

1**. Wagering agreements are void.**Therefore the winner cannot recover amount which other party had to pay.

2. Agreement by way of wager is just void and unenforceable. The collateral transactions based on such agreement are not affected and thus are valid.

The following transactions are included in the wagering agreement:

1. Speculative transactions

2. Transactions of lotteries

3. Horse race and gambling transactions

4. Crossword puzzles Contract of Insurance: Insurance contract is a contract whereby the insurance company in consideration of payment of premium from the insured promises to compensate his losses arising out of insured cause. These contracts are valid.

The differences between Insurance contract and Wager are given below:

a. Contract of insurance is a contract of indemnity while a wagering contract is not a contract of indemnity.

b. In insurance contract there is insurable interest, but in wagering contract there is no insurable interest.

c. A wager will arise only if one party losses and another gains while in insurance contract no winning or losing.

d. A contract of insurance is legal and enforceable while a wagering contract is void. e. In insurance contract the amount of premium is determined scientific way, but in a wagering agreement, to determine amount of loss or gain has no basis at all

CONTINGENT CONTRACT

Contract is mutual exchange of promise between the parties. A contract may be absolute or contingent. An absolute contract is one in which the promisor must perform the contract in all events.

What is Contingent Contract?

A contract is said to be contingent when its performance depends upon the happening or non happening of a future event. According to section 31 of the Indian Contract Act, "a contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen."

Contingent contract are called conditional contracts in English law. Contract of indemnity and guarantee is a contingent contract. For example, X agrees to pay a sum of Rs. 20,00,000 to Y, if his house gets a fire. Here the contract between X and Y is a contingent contract. The performance of it depends on breaking of fire in Y's house.

Essentials of a Contingent Contract:-

1. The performance of a contingent contract will depend upon a future event.

2. The happening of the event must be uncertain

3. The happening or non happening of such future events should not form an essential part of the contract, but it should only be collateral to it.

4. The happening or non happening of such future event must be beyond the powers of the contracting parties.

Rules regarding contingent contract:

1. Contingency on Happening of an event: The performance of the contract is conditional on the happening of an event. It cannot be enforced unless such event occurs. If it does not occur, such contract becomes void.

2. Contingency on non-happening of an event: - When the performance of contingent contract depends upon non-happening of future uncertain events; on the occurrence of that event, agreements become void.

3. Contingency on the happening of an event within stipulated time: - When a contract is made on the happening of a specified uncertain event within a fixed time, it becomes void if at the expiration of the time so fixed, specified event does not happen.

4. Contingency on non happening of an event within the stipulated time: - When the performance of a contract depends on non happening of some event within stipulated period of time, if the event occurs within that, contract becomes void.

5. Contingency on the non happening of impossible event:-Contingent agreement, which depends on the happening of an impossible event are void, whether the impossibility of the event is known or not known to the parties to the agreement at the time when it is made.

Difference between Wager and Contingent Agreement:

1. There are mutual promises in a wagering agreement. While it is not necessary in a contingent contract. 2. Wagering agreements are void. But contingent contracts are valid subject to conditions. 3. In wagering agreements parties do not have any interest on the happening or non- happening of that event. But in contingent contract, one or both the parties may may have some interest on the event. 4. In wagering agreement future event is determining factor, but in contingent contract future event is collateral to a contract.

QUASI CONTRACTS

The obligations which are created and imposed by law in the absence of any contract to that effect are called quasi contracts. Quasi contracts are based on the maxim, ”nemodebetlocuplatari ex lienajustua”, that is “ no man must grow rich out of another person’s cost.” Quasi contracts are also called constructive contracts.

For example A has forgotten his bag containing certain goods at B’s shop by mistakes. B is under legal obligation to return them to A. The obligations created by quasi contracts can be enforced in the court in similar manner as in case of a formal contract. In other words, when the

person fails to discharge his obligation arising out of quasi contracts, another party will get legal remedies as if the contract is broken.

Types of Quasi-Contracts:

The Indian Contract Act provides for five types of quasi-contracts, which are as follows:

1. Supply of necessaries to the person having no contractual capacity or to his dependent:-An agreement made by the person who has no contractual capacity are void. But agreements made by such person to procure necessaries for him or his dependent is legally entitled to recover the cost of such supplies.

2. Reimbursement of payment made by a person who is interested but which another person is legally bound to pay:- In certain cases it happens that one party makes a payment, because he is interested in that payment. But liability for making that payment lies on another person. Thus on making such payment, the person liable to pay has to reimburse it to the person who has made the payment.

3. Obligation to pay for non gratuitous act or service:-Some times a person may render services voluntarily with an intention of getting its return. The person who gets benefit of such acts or services is liable to compensate the person doing such act or rendering services.

4. Rights and duties of the finder of lost goods: - A person who finds goods lost by another person. On his being taken custody of those goods, certain rights and obligations are created on his part without any formal contract. Such rights and obligations resemble with that of a formal contract and can be enforced in a similar manner.

5. Liability of persons to whom money is paid or things delivered by mistake or under coercion: - Where the person has delivered some goods or has made payments of money to another person either by mistake or under coercion. Such person is under legal obligation to return it to the person delivering.

PERFORMANCE OF CONTRACT:

After formation of contract, the next stage is the performance of the contract. A contract creates legal obligations. Performance of a contract means the carrying out of these obligations.

Every person who is bound by an obligation must be ready to perform it at the time when he has promised to do, and in the manner in which he has promised to do.

Who must perform the Contract?

The liability of performing a contract basically lies on the promisors. Sec. 37 to 41 of this Act lays down the basic rules regarding the legal status of the person who is to perform the contract. The contract may be performed by:-

1. Promisor himself: It is very clear that a person who makes a promise must perform it. If a contract involves the exercise of personal skill and qualification of the promisor then it must be performed by the promisor himself and not by any other person and in case of death of such promisor, his heirs are not liable to perform the contract. For Example, X is a painter who promise to paint a picture for Y. In this case X alone must perform the contract personally. If X dies, his heirs are not liable to perform the contract.

2. By the agent of promisor: When the personal skill of the promisor is not necessary, and the work could be done by any one, the promisor or his representative may employ a competent person to perform it. He acts as an agent of the promisor.

3. By legal representative:-If the promisor dies before the performance of the contract, his legal representative like son and daughter who inherit the property of the deceased promisor are bound to perform it.

4. Third person:-If the promisee accepts performance of the promise from third party, there is discharge of the contract and the promisor is thereby discharged.

Time and Place of Performances:

Ordinarily a person who is bound to perform a contract must be ready to perform it at the time when he has undertaken to do the same.

The following rules are applicable regarding the time and place of performance of a contract:

a. **Where time is not fixed:** Where the contract is to be performed without any demand by the promisee and where no time for performance is fixed then the contract must be performed within a reasonable time.

b. Where time is fixed: - When a promise is to be performed on a certain day and the promisor has undertaken to perform it without application by the promisee the promisor may perform it at any time during the usual hours of business on such a day and at the place at which the promise ought to be performed.

c. Place of performance:-If the contract mentions a place, the contract must be performed at the place mentioned in the contract. If no place is mentioned, the promisor must ask the promisee to fix a reasonable place to perform the contract.

d. The performance of any promise may be made in any manner or at any time which the promisor prescribes or sanctions. (sec. 50)

Performance of Joint promises:

When two or more individuals are bound to perform a contract together, it is called a joint promise. When a joint promise is made, then unless contrary intention appears from the contract, all such persons must jointly with the surviving promisors fulfill the promise.

The following are the rules regarding the performance of Joint Promises:

1. Joint liability: When two or more persons make joint promises for doing or not doing something, both the promisors are jointly liable to perform it. In case of death of any one of them, his legal representative along with remaining promisors will perform the promise.

2. Individual liability: - When two or more joint promisors make promise and there is no express contract contrary to it, both of them are individually liable to perform them. Here the liability of joint promisors is 'Joint and several'.

3. Right of contribution: Joint promisors have joint and several liabilities. When one of the joint promisors has been compelled to perform entire promises, he has a right to claim contribution or share of other promisors, unless contrary intention appears from the contract.

4. Release of one of the joint promisors: According to section 44 of this act, "a release by the promisee of any one of the joint promisors does not discharge other joint promisors from liability. The released joint promisor also continues to be liable to other joint promisors.

DISCHARGE OF CONTRACT

Meaning

Discharge of contract means terminations of the contractual relationship between the parties. On the termination of such relationship the parties are released from their obligations in the contract.

Modes of discharging Contract:

A contract may be discharged in any one of the following ways. A. Discharge of contract by performance: - This is the most popular and usual way of discharging contracts. When the parties to a contract fulfill their obligations arising under the contract within the time, and in the manner prescribed, it is known as discharge of performance.

Performance of contract may be of two types:-

i) Actual performance and
ii) attempted performance

a. Actual performance: - In order to claim performance, the parties to a contract must have actually performed their part of contract. It is actual performance

b. Attempted performance or tender: - A person who is bound to perform a promise will be ready to perform and will also offer to perform his promise but sometimes the other party may refuse to accept that performance. This is known as "attempted performance". All attempted performance is legally treated as equivalent to actual performance except in case of payment of money.

For example, A has borrowed sum of Rs. 15000 from for three months. On the due date, a makes payment, But B does not accept it. In this case A will not be released from his liability of making that payment to B; however, he will not be liable for paying any interest on that after three months

Discharge of Contract by Mutual Agreement: -

A contract is formed when the parties are mutually agreed. In the same way the parties of a contract by a mutual agreement can discharge that contract.

Contract may be discharged by agreement in the following ways:

1. By Novation (Substitution of a new contract):-Under the method of novation, existing contract is replaced by new one either between same parties or between new parties. It discharges an existing contract and brings new contract into existence. The new contract must be capable of being enforced at law. The consideration for the new contract is the discharge of the old contract. The essentials of novation are: a. There must be mutual consent of all the parties for the novation. b. The new contract must be one capable of enforced by law c. New contract is made before the expiry of the period of original contract.

2. By alteration:-Alteration of contract may take place when one or more of the terms of the contract altered by the mutual consent of the parties to the contract. In novation, there may be change in parties, but in alteration, original parties exist; only the terms are altered. Alteration discharges the original obligations.

3. By Rescission:-Rescission means cancellation of the contract. If the parties to a contract agree to rescind it, the original contract need not be performed. Rescission may either be total or partial. If all the terms of the contract are cancelled, it is called total rescission. While, some of the terms of the contract are cancelled, some new terms are added to it, and then it is called partial rescission.

4. By remission: - Remission means acceptance of lesser performance than what was actually due under the contract. For example, A owes to B Rs. 50000. A pays to Rs. 25000 and B accepts the amount in settlement of the whole debt. In this case A is discharged from his liability of Rs. 50000.

5. By waiver: - When both parties, by mutual consent, agree to abandon their respective rights, the contract need not be performed and the same is discharged. It is called waiver

Discharge by lapse of Time: - When a period is specified for the performance of the contract, it is known as period of limitation. If the contract is not performed and the promisee fails to take any

action within the period of limitation, then the contract is terminated or discharged by lapse of time. In case of contracts, the period of limitation is three years. After the expiry of this period the court will not allow to enforce the contract and it will be discharged.

Discharge by Operation of Law:-

A contract may be discharged by the operation of law in the following cases:

a. By Death:-Where performance of a contract is required to be made in person and the personal skill and qualification of the promisor are important, the death of the promisor discharges the contract.

b. By insolvency: When a person is adjudged insolvent, he is discharged from all the liabilities incurred before the adjudication

. c. By Merger: This is a condition by which, an inferior rightcontract merges into a superior right contract. In this case, the inferior right contract stand discharged automatically.

Discharge by Impossibility of Performance:

-The impossibility of performance of a contract may be initial impossibility and subsequent impossibility.

1. Initial impossibility or impossibility at the time of formation of contract:- When both the contracting parties are aware of impossibility of performance of the contract even at the time of formation of the contract itself, then the agreement becomes void ab initio. If they are aware about the impossibility of the contract at the time of performance, in such a case the contract is void when such impossibility is discovered.

2. Impossibility which arises subsequent to the formation of contract or Supervening impossibility): In certain cases, the contract at the time of formation is capable of being performed. Subsequently after the formation, its performance becomes impossible or illegal. Such impossibility may arise due to the reasons beyond the control of both the parties. This kind of impossibility is known as Supervening impossibility and such contract becomes void.

For example, A agrees to sell his Motor Bike to B for a specific price. Later on they came to know that motor bike already been stolen. Here the contract is void. A contract is discharged due to supervening impossibility under the following situations:-

a. **Destruction of subject matter:** - If the subject matter of the contract is destroyed or perished subsequent to the formation of the contract without the fault of either parties to the contract, the contract need not be performed and it is discharged. For example, X agrees to sell his Scooter to Y. Before the transfer, the Scooter is destroyed by an accident; the contract is discharged by impossibility of performance.

b. Death or personal incapacity of the promisor:-A promise requiring personal skill and ability may become physically incapable of performance by reasons of the death or incapacity of the same person. Such impossibility discharges the promisor from liability.

c. Change of Law: - Change of law, after the formation of a contract, if renders performance of contract unlawful; such contract is discharged on the ground of supervening impossibility.

d. Discontinuation of particular state of thing, which is essential for performance: - When the contract is made by the parties, on the ground that, certain state of things will continue till the performance of a contract. But that state of things gets changed or discontinued due to any reason beyond the control of the parties; such contract becomes void on the basis of supervening impossibility.

e. Declaration of war: When a war is declared after the formation of a contract, all pending contracts with the residents of enemy country remains suspended.

Exceptions to the Doctrine of supervening impossibility: In the following cases doctrine of supervening impossibility is not applicable:-

1. Difficulty of performance: - Difficulty is no excuse for performance. If the performance of the promise becomes more expensive, difficult and cumbersome die to any reason; the promisor has to perform it.

2. Commercial impossibility: - When the performance of a promise becomes costlier, non profitable and more risky, such contract will not be discharged. This may arise due to sudden change in price, economic policies of the govt. etc.

3. **Strikes, lock-outs, riots and civil disturbances:-** A contract is not discharged automatically on the ground of supervening impossibility due to strike, or a lockout by the owners, or a civil disturbances coming in the way of performance of the contract.

4. Impossibility due to failure of third party: - Failure of third party or his inability will not be considered sufficient ground for discharging a contract.

5. Partial impossibility: When a contract is entered into for several objectives, failure of one of the objects does not terminate the contract.

Discharge by Breach of Contract:

A contract can be discharged by not performing it. Breach of contract means refusal of performance on the part of the parties. If the contract is unilateral, the only remedy for the other contracting party is to claim relief for breach against the promisor. If the contract is bilateral, the party who is not in breach, is not only entitled to claim relief for breach, but also exonerate from liability to perform his part of contract. Breach of contract may be of two types, actual breach and anticipatory breach.

BREACH OF CONRACT

Formation of a contract imposes obligation on both the parties to perform their respective promises. When one of them fails to neglect or refuses to perform his promise, he is said to have committed a breach of contract. Breach of contract may of two types; actual breach and anticipatory breach. Actual breach of contract takes place when the promisor fails to perform his obligation or refuses to do so on the due date of performance. In anticipatory breach of contract, the promisor either refuses to perform or makes himself unable to perform a promise before due date of performance. The various remedies available to an injured are:

A. **Rescission of the Contract:** - Where one of the parties to a contract commits breach, the other party treats the contract as rescind or cancelled and refuses the further performance. It is the way by which a contract may be discharged. When a contract is broken by one party, the other

party may sue to treat the contract as rescinded and refuse further performance. For example, A promises to sell his Car to B for a Price. A does not sold the Car , B is discharged from his liability to pay the Price. The court may grant rescission if the contract is voidable on the part of the aggrieved party.

The court may refuse to grant rescission in the following cases:

a. When the aggrieved has ratified the contract

b. Owing to change of circumstances parties cannot be restored to their original position.

c. During the subsistence of the contract, third parties have acquired rights in good faith and for value.

d. When only part of the contract is sought to be rescinded and such part is not severable from rest of the contract.

B. Suit for Damages: - When a contract is broken, the injured party can claim damages from the other party. The object of awarding damages for the breach of a contract is to put the injured party in the same financial position as if the contract had been performed. No compensation is to be given for any indirect or remote loss on account of breach.

There are different types of damages

a. Compensatory damages: These damages include the direct loss suffered by the aggrieved party, and it is calculated as on the date of breach, taking into consideration, the prevailing circumstances.

b. Special damages: - These damages are those which arise from the breach of contract under special circumstances. If there is a breach of contract under special circumstances, special damages can be claimed. Special damages can be recovered only if it stipulated in the contract.

c. Exemplary damages or vindictive damages: - These damages are awarded with a view to punish the defaulting party who injured the feelings of the othrs and not solely with the idea of awarding compensation to the injured party.

d. Nominal damages: Nominal damages are awarded in cases where the injured party is able to prove a breach of contract, but he has not suffered any real and substantial loss. The basic idea of granting such damages is to bring the party making breach of contract to record and to recognize the right of aggrieved party.

Penalty and Liquidated Damage:

Sometimes, the parties while making a contract, may fix the amount of damage, which may be either Liquidated damage or penalty depending upon the manner of fixing it. Liquidated damages represent a sum fixed or ascertained by the parties in the contract.

C. Suit for Specific Performance:

In certain cases, damages are not an adequate remedy for the breach of the contract. In such circumstances, the court directs the defaulting party, to carry out the performance of the contract specifically. This is known as specific performance. Specific performance of a contract cannot be claimed as a matter of right, and the courts are always at discretion to grant the relief by specific performance or not. The order of specific performance, at the discretion of the court may be granted in the following cases:

a) Where monetary compensation is not an adequate remedy for breach of contract.

b. Where there is no standard for ascertaining the actual damage, caused by non performance of promise by the party.

c. When it is probable that monetary consideration on non-performance of the act cannot be obtained.

D. Suit for Injunction: - In a contract if the party has made a promise for not doing something, and the party makes a breach of contract by doing that thing. To prevent such party from doing that act an order of injunction may be claimed by an aggrieved party. Injunction is a preventive relief and is generally issued in cases where the compensation in terms of money is not an adequate relief.

E. Suit upon Quantum Meruit:-The quantum meruit literally means 'as much as earned' or 'in proportion to work done'. That is when a person had done some work under a contract and the other party repudiated the contract, or some event happens which makes the further performance of the contract impossible, then the party who has performed the work can claim remuneration for the work has already done.

Claim for quantum meruit: Claim for quantum meruit arises in the following cases:

a. When a contract is found to be void: When a contract is discovered to be unenforceable for some technical reasons, any person who has received any advantage under such contract is bound to restore it.

b. When something is done without any intention to do so gratuitously: - According to section 70 of the act, when a person does some work for or delivers something to another person with the intention of receiving payment for the same then such other person is bound to make payment if he accepts such services or goods or enjoys their benefit.

c. When a contract is divisible: When a contract is divisible and the party no in default has enjoyed the benefit of the part performance, the party in default may sue on quantum meruit.

d. When one party abandons or refuses to perform the contract:- When a party of a contract performs a part of the contract, abandons it without completing or refuses to perform the remaining part, then, the other party can claim, compensation for the work done on the basis of quantum meruit.

e. When an indivisible contract is performed badly: - When an indivisible contract for lump sum has been completely performed but badly, the person performing it is entitled to claim the whole amount; but the other party can make a deduction for a bad work.

UNIT --III

CONTRACT OF INDEMNITY AND GUARANTEE

Definition

A contract of indemnity is a contract in which one party promises to compensate or protect the other party from the losses arising in future. According to section 124 of Indian Contract Act," a contract of indemnity is a, contract by which one party promises to save the other from loss caused to him either by the conduct of the promisor himself or buy the conduct of any third party."

The object of a Contract of Indemnity is essentially to protect the promise against anticipated loss. A contract of fire insurance and marine insurance is a contract of indemnity. The person who promises to save the other from the loss is called indemnifier. The person to whom the promise is made, is called indemnified or indemnity holder.

A valid contract of indemnity must have the following ingredients:

1. One party promises to save the other from loss caused to the latter
2. The loss is caused to him by the conduct of the promisor, and
3. The loss is caused by the conduct of any other third person.

Object of contract of indemnity:-The object of indemnity is essentially to protect the indemnified from the anticipated loss.

Features of Indemnity contract:

1. Express contract of indemnity: - Where the terms of the contract of indemnity are either in oral or in written, it is called an express contract of indemnity.

2. Implied contract of indemnity: -Where the contract of indemnity inferred from the circumstances of the case, or from the relationship of parties, is called an implied contract of indemnity.

3. Compensation of loss: - In the case of contract of indemnity, there is a compensation for the loss suffered by the indemnified.

4. Essentials of a valid contract: A contract of indemnity is also required to possess all the essentials of a valid contract.

Rights of an Indemnity Holder:-According to sec.125, the following are the rights of an indemnity holder:

1. Right to recover damages: - All damages which he may be compelled to pay in any suit of any matter to which he promise to indemnify applies.

2. Right to recover cost: - All costs he may be compelled to ay in any such suit. But the indemnity holder can recover such cost only if he had acted prudently and did not contravene the orders of the indemnifier or only if the indemnifier authorized him to bring or defend the suit.

3. Right to recover all sum paid: - He is entitled to recover all the sums which he may have paid under the terms of any compromise of any such suit, provided such compromise is not contrary to the orders of the promisor and was one which it would have been prudent for the indemnity holder to make.

4. Suit for specific performance: - An indemnity holder is entitled to sue the indemnifier even before he has suffered any damage, provided an absolute liability has been incurred by him.

Rights of an Indemnifier:

1. Right to Subrogation: - On payment of the amount of loss or liability to the indemnified the indemnifier is subrogated to all the rights of indemnified.

2. Right to Equities: - After making payment to the indemnified for the loss, indemnifier is entitled for all equities which indemnified could have enforced against the third party liable for loss.

3. Right to Refuse Indemnity: The indemnifier has the right to refuse indemnity provided the loss caused to the indemnity holder is beyond the scope of the contract.

CONTRCT OF GUARANTEE

Where a person gives a guarantee to another person, either to

(a) performing a promise or

(b) discharging the liability of a third person, there arises a “Contract of Guarantee”

According to section 126 of the Contract Act, "A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default." The person who gives the guarantee is called the surety or guarantor, and the person in respect of whose default the guarantee is given is called the principal debtor, and the person to whom the guarantee is given is called the creditor.

For example, A lends Rs. 5000 to B on C's promise to pay the same if B fails to pay within a year. This is a contract of guarantee.

A contract of guarantee may be either oral or written. It may be expressed or implied and may even be inferred from the conduct of the parties concerned.

Essential features of a Contract of Guarantee:-

The essential features of a contract of guarantee are as follows:-

1. Three parties: - There must be three parties in ca contract of guarantee, namely the principal debtor, the creditor and the surety.

2. Three contracts: There are three contracts in a contract of guarantee, namely, contract between principal debtor and creditor, contract between principal debtor and surety, and contract between creditor and surety.

3. Capacity to contract: In a contract of guarantee, the principal debtor may not be a person competent to contract, but his incapacity should be in the knowledge of the surety. In such case, the surety is regarded as the principal debtor and is personally liable to pay the debt, although the principal debtor is not liable to pay.

4. Concurrence: The contract of guarantee requires concurrences of all the three parties ie, creditor, Principal debtor and the surety. It may be either express or implied by the circumstances of the case.

5. Liability: A contract of guarantee pre supposes a liability enforceable by law. That is in a contract of guarantee, the surety undertakes to pay a debt or discharge a liability of a third person, in case of his default.

6. Consideration:-Like all other contracts, the contract guarantee must be supported by a lawful consideration. It is not necessary that the surety must get some consideration directly from the creditor. Rather the benefit enjoyed by the principal debtor is considered a sufficient consideration to support the promise of the surety.

7. Disclosure of facts: Though, the contract of guarantee is not a 'contract of utmost good faith'. But it is a duty of the creditor that, he must disclose to the surety, all those facts likely to affect the degree of his responsibility.

Distinction between a Contract of Indemnity and Contract of Guarantee:

The following are the differences between contract of indemnity and guarantee:

Basis of Distinction Contract of indemnity Contract of guarantee

1. Definition

2. Number of parties

3. Nature of liability

4. Number of contract

5. Liability

6. Request of the debtor

7. Right to sue

8. Object

9. Capacity of contract

10. Consideration

A contract by which one party promise to save the other from loss caused by him by the conduct of the promisor himself or by the conduct of any other party, is called contract of indemnity.

In a contract of indemnity there are only two parties. Indemnifier and indemnified or indemnity holder. In a contract of indemnity, the liability of the indemnifier is primary and

independent. There is only one contract in a contract of indemnity, i.e. between the indemnifier and the indemnified. The liability of the indemnifier arises only on the happening of a contingency. It is not necessary for the indemnifier to act at the request of the indemnity holder. The indemnifier cannot sue third parties for loss, in his own name unless there is an agreement in his favor. The object of a contract of indemnity is to save the promisee form loss. Both the parties must have contractual capacity.

A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. In a contract of guarantee, there are three parties, viz; the creditor, the principal debtor and the surety. The liability of the surety is secondary and dependent in a contract of guarantee. In a contract of guarantee, there are three contracts, ie, between the principal debtor and creditor, between creditor and surety and between surety and principal debtor. There is usually an existing debt or duty, the performance of which is guaranteed by the surety. It is necessary that the surety should give the guarantee at the request of the debtor. A surety, on discharging the liability of the principal debtor is entitled to sue against the principal debtor in his own name.

The object of a contract of guarantee is to provide an assurance as to performance of promise or discharge the liability. In case of contract of guarantee, consideration is a must. Principal debtor need not necessarily be competent to contract. Consideration in a contract between Principal debtor and creditor is deemed to be sufficient consideration for a contract between creditor and surety.

Kinds of guarantee:

Guarantee may be classified in the following ways:

1. On the basis of purpose: There are three types of guarantees on this basis

a. For Payment of debt:-A guarantee may be for payment of debt or loan. This may either be for an existing debt or for a future debt. Guarantee for an existing debt is a retrospective guarantee, and for a future debt is a prospective guarantee.

b. For price: A guarantee may be for the payment of price of the goods to be sold on credit.

c. For honesty: A guarantee given for the honesty or good conduct is known as fidelity guarantee. This is generally given when a person is employed as an agent or servant.

2. On the basis of transaction:

It may be

a. Simple or specific guarantee: - When a guarantee is given in respect of a single debt or specific transaction, it is called a specific or simple guarantee.

b. Continuing guarantee: When a guarantee extends to a series of transactions, it is called a continuing guarantee (sec.129). The surety's liability in this case will continue till all the transactions are completed or till the guarantee is revoked by him for further future transactions.

Revocation of a Continuing Guarantee:

A continuing guarantee as regards future transaction may be revoked under the following circumstances.

1. By notice of revocation by the surety: - Section 130 of the Act provides that where a guarantee is continuing it is open to the surety to terminate the same after due notice to the creditor in respect of any future transactions. In such a case the surety would not be responsible for future transactions which may be made by the principal debtor after surety has revoked the contract of guarantee.

2. By the death of the surety:- As per sec.131, in the absence of any contract to the contrary, the death of the surety revokes a continuing guarantee so far as regards future transactions. It is not necessary that, notice of death should be given to the creditor.

3. By novation: - Novation means substitution of a new contract in the place of an old one. If a new contract of guarantee is substituted in the place of an old one either between the same parties or between different parties the original contract of guarantee is revoked.

4. By altering the terms of contract: Sec 133 of the Contract act provides that when the terms of the contract between the creditor and the principal debtor are altered

without the consent of the surety, the surety will be discharged as to transactions subsequent to alteration. Accordingly a continuing guarantee may be revoked if any alteration takes place in terms of the contract without the consent of the surety.

5. By release of Principal debtor: -If there is any contract between the creditor and the principal debtor, by which the principal debtor is released, the continuing guarantee of the surety is also revoked and surety is discharged by any act or omission of the creditor.

6. By creditors act of omission: Any act or omission of the creditor which results into eventual remedy of the surety against the debtor amounts to revocation of the Contract of Guarantee.(Sec.139)

Rights of Surety:

A surety has certain rights against (1) the creditor (2) the debtor (3) the co-sureties

1. Rights against creditor:-

a. Before payment of the debt: - A surety after the guaranteed debt has become due and before he is called upon to pay, to require the creditor to sue the principal debtor. But he shall have to indemnify the creditor for any expenses or loss resulting there from.

b. On payment of the debt: On payment of the guaranteed debt, the surety is subrogated to all the rights of the creditor and gets the right to demand from the creditor at the time of payment all the securities.

c. Right to be set-off: On being sued by the creditor the surety may plead any set of or counter claim which the debtor has against the creditor.

2. Rights against principal debtor:-

a. Right to be relieved from liability: - Before making any payment under the guarantee, the surety can compel the principal debtor to relieve him from liability by paying off debt.

b. Right of subrogation: - Where a guaranteed debt has become due and the surety has paid all that he is liable for, he is invested with all the rights which the creditor had against the principal debtor.

c. Right to indemnity: In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety and the surety is entitled to recover from the principal debtor all payments properly made.

3. Rights against co-sureties: When a debt is guaranteed by two or more sureties, they are called co-sureties. The co- sureties are liable to contribute, as agreed, towards the payment of the guaranteed debt.

a. Co-sureties liable to contribute equally: - Where there are two or more co-sureties for the same debt and the principal debtor has committed a default, the co-sureties in the absence of any contract to the contrary, are liable to contribute equally to the extent of default.

b. Liabilities of co-sureties bound in different sums (sec.147): Where the co-sureties have agreed to guarantee different sums, they have to contribute equally subject to the maximum amount guaranteed by each one.

c. Release of co-surety: Where there are co-sureties, a release by the creditor of one of them does not discharge the others, nor does it free the surety so released from his responsibility to the other sureties.

Discharge of Surety from liabilities: The following are the circumstances under which a surety is discharged from his liability.

1. Revocation by giving notice: - In the case of continuing guarantee, by giving notice of revocation by the surety, he can be relieved from his liability with respect to future transactions.

2. Revocation by death of surety: - In the case of continuing guarantee the death of a surety discharges him from all liabilities as regards transactions after his death. But in British law, the death of surety revokes continuing guarantee only when it comes to the notice of the debtor.

3. Variance in terms of Contract: - Any variance made without the surety's consent in the terms of the contract, between the principal debtor and the creditor discharges the surety as to transactions subsequent to the variance.

4. Novation: A surety is discharged when a new contract of guarantee is substituted for an old one.

5. Release or Discharge of the Principal Debtor: - The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor; the legal consequences of which is the discharge of the principal debtor.

6. Impairing Surety'sRemedy:- If the creditor does any act which is inconsistent with the rights of the surety or omits to do any act which is required of him as his duty towards the surety, and due to such act or omission the eventual remedy available to the surety against the principal debtor is impaired then the surety is discharged.

7. Variation in terms of Contract: A surety will be discharged from his entire liabilities if the terms of original contract between the principal debtor and the creditor have been altered in any way without his consent.

8. Loss of securities. If the creditor losses or parts with the securities belonging to the principal debtor without the consent of the surety, then the surety will be discharged to the extent of the value of the surety.

9. Guarantee obtained by misrepresentation: If the surety's consent to guarantee is obtained by the creditor by his misrepresentation then the contract becomes invalid and the surety gets discharged.

10. Guarantee obtained by concealment-: The surety is discharged if the guarantee is obtained by the creditor by means of keeping silence as to material fact, as the contract becomes invalid.

11. Failure of **consideration**: The surety will be discharged on a substantial failure of consideration.

12. Lack of any essential element of contract: A contract of guarantee like any other contract must have all the essential elements of a valid contract. If any of the elements is not present, the contract is void and the surety is discharged.

CONTRACT OF BAILMENT AND PLEDGE:

The word 'bailment' is derived from a French word 'Bailer' which means 'to deliver'. In legal sense, it has been defined as voluntary change of possession of goods from one person to another for some purpose. According to sec. 148 of Contract Act defines a bailment," A bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the person delivering them." The person who delivered the good is called bailer and the person to whom they are delivered is called the bailee. The transaction is called bailment

Essentials of Bailment:

1. **There must be a delivery of goods:** - Delivery of goods from one person to another for some specific purpose is very essential for bailment. Mere custody without possession does not create bailment. Possession should be distinguished from mere custody. A person under whose custody the goods are without its possession is not a bailee. Delivery may be actual or constructive. In actual delivery, the delivery may be made by physical handing over the goods to the bailee. In some cases it may not always be possible to give physical possession due to difficulty or inconvenience. In such cases delivery may be constructive or symbolic.

2. Specific purpose: - Delivery of goods should be made for some specific purpose. If the goods are delivered to a particular person by mistake, there is no bailment at all.

3. Return of goods: - When the purpose is accomplished the same goods are to be returned. But the condition is that the specific goods should be returned either in their original form or in altered form.

4. Ownership: In the bailment, ownership is not transferred from the bailer to the bailee. Possession alone is transferred.

5. Movable goods: Bailment is concerned with only movable goods. It is important to notethat money is not included in the category of movable goods.

Duties of a Bailer:

1. Duty to disclose known defects:-It is the duty of the bailor to disclose all the known defects in the goods bailed to the bailee. If he fails to do so, he is responsible for any damage caused to the bailee directly from such defects.

2. Duty to bear Extraordinary Expenses: - Where the bailment is gratuitous and the bailee is to receive no remuneration the bailor shall pay the bailee all the necessary expenses incurred for the purpose of bailment.

3. Duty to indemnify bailee: - Sec. 164 of the act says that the bailor should indemnify the bailee for any cost or costs incurred because of the defective title of the bailor to the goods bailed.

4. Duty to receive back the goods bailed: When the bailee returns the goods after the purpose is fulfilled or the time is expired, it is the duty of the bailor to receive back the goods.

Rights of Bailor:

1. Entitled to get back the goods:-He is entitled to get back the goods bailed as soon as the time for which they were bailed has expired or the purpose for which they were bailed has been accomplished.

2. Right to terminate the contract: The bailor can terminate the contract if the bailee does, with regard to the goods bailed, any act which is inconsistent with the terms of the bailment. 3. Right to claim damages: The bailor has an inherent right to claim for damages for any loss that might have been caused to the goods bailed, due to the negligence of the bailee.

4. Right to recall goods at any time in a gratuitous bailment: When goods are lent gratuitously, the bailor can demand the return whenever he pleases, even though he had lent them for a specified period.

5. Right to file a suit against third person: If a third party does some wrongful act and deprives the bailee from the use of goods bailed or does some injury to the goods bailed, the bailor has a right to file a suit against that third party.

6. Enforcement of right: - The bailor has a right ro enforce by suit all the liabilities or duties of the bailee.

Duties of a Bailee:

1. To take reasonable care of the goods bailed: - The most important duty of the bailee is to take care of the goods entrusted to him. The degree of care required from the bailee is the same whether the bailment is for reward or is gratuitous.

2. Not to mix the goods bailed and his own goods: - The bailee must keep his own goods separately from the goods of bailor.

3. Not make an unauthorized use of goods: - He is under a duty not to use the goods in any unauthorized way. If the bailee makes unauthorized use of goods, he is responsible for all damages to the goods and must pay compensation to the bailor. This liability arises even if the bailee is not guilty of any negligence, and even if the damage is the result of accident.

4. Not to set up an adverse title: - It is the duty of the bailee to return the goods only to the bailor even though any third person is claiming the title over them.

5. Return the goods: - According to sec. 160, it is the duty of the bailee to return or deliver according to 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.

6. Return the additions or profit: - According to sec 163, in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase of profit which may have acquired from the goods bailed.

Rights of a Bailee:-

1. Right to enforce the duties of the bailor: - The bailee, by suit enforce the duties of the bailor.

2. Right to deliver goods to one of the joint owners: - In the absence of an agreement to contrary, when several joint owners of goods bail them to a bailee, the bailee has a right to deliver back the goods to anyone of the joint bailers without the consent of all.

3. Right to claim damages: - According to sec 150, if the bailee has suffered any loss due to the non-disclosing of facts by the bailor, he has a right to claim damages to that

4. Right to Indemnify: - If any loss is caused to the bailee due to the demand made by the bailor for return of goods before the specified time, the bailee has a right to be indemnified by the bailor.

5. Right to Sue: - Bailee can file a suit against a person who has wrongfully deprived him of the use or possession of the goods bailed or has done them an injury.

6. Right of lien: - Where the bailee has rendered any service in accordance with the purpose of the bailment involving the exercise of labour or skill, he has a right to retain such goods until he receives the due remuneration for the services he has rendered in respect of them, if there is no contract to the contrary.

LIEN

Lien is a right by which one person is entitled to retain the possession of some goods belonging to another, until the demands of the person in possession are satisfied. This right is sometimes called 'possessory Lien'. For example, X gives his Radio to Y, a Radio mechanic, for repairing. X fails to pay the repairing charges to Y. Hence Y is entitled to retain the Radio until X pays the repairing charges. This right of retaining Radio by Y is called lien.

Lien may be of two types, Particular lien and General lien.

1. **Particular or special lien:-**According to sec 170,"where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives the remuneration for the services he has rendered in respect of them."

   In case of particular lien, the following conditions must be satisfied. a. He should have rendered some service involving the exercise of labour or skill. b. Labour should have been performed in accordance with the purpose of bailment. c. He can retain only such goods on which he has expended labour or skill. d. There should not be any contract to the contrary.
2. **General Lien:** - A general lien is a right to retain any goods belonging to the other as security for a general balance of accounts. The right of a general lien is given only to

particular person. The persons entitled to general lien are bankers, factors, Wharfingers, Attorneys of a High court and policy brokers.

Termination of Bailment: A contract of bailment will be terminated in the following circumstances:

1. On the expiry of time: - If the contract of bailment is for a stipulated time period, on the expiry of the time, it will be terminated automatically.

2**. Accomplishing the objectives**: - If the bailment is for a specific purpose, it terminate as soon as the purpose is fulfilled.

3. Destruction of subject matter: - When the subject matter of the bailment is destroyed, a bailment is terminated.

4. Death of bailor or bailee: - A gratuitous bailment is terminated by the death of either the bailor or the bailee.

5. Misuse of the goods: If the bailee does any act in respect of goods bailed against the terms of bailemet, the contract of bailment becomes voidable at the option of the bailor.

FINDER OF LOST GOODS

A finder of goods is a person who finds goods belonging to anther and takes them into custody. Generally there is no obligation on the part of a person who finds goods, but if he picks them up or to take charge of the goods, he becomes the bailee of those goods.

Rights of the Finder of Lost Goods:

1. He has a right of lien over the goods for his expenses

2. If the real owner of the goods has offered a reward, for the return of lost goods, the finder may sue for such reward, and may retain the goods unless he receives it.

3. He has the right to sell the goods found by him in the following cases:

a. If he could not find out the owner of the goods with reasonable diligence, or b. When the owner of the goods refuses to pay the lawful charges to the finder, or c. If the things are in danger

of perishing, or d. When the lawful charges of the finder, in respect of the thing found amount to two third of its value.

Obligation of Finder of lost Goods:-

1. He must take reasonable care of the goods.
2. He should not use the goods for his own use.
3. He must try to find out the true owner of the goods

PLEDGE or PAWN

According to sec. 172, "The bailment of goods as security for payment of debt or performance of promise is called pledge or pawn" The bailor here is the pawner and the bailee is the pawnee. For example, 'X' borrows Rs. 10,000 from 'Y' and he delivers his Bike to 'Y' as security for repayment of the debt. This kind of bailment is known as pledge. Here X is the pawner and Y is the pawnee.

Rights of a Pawnee/Pledgee:

1. Rights of retainer: The pawnee has a right to retain the goods pledged not only for for the payment of debt, but also for its interest.

2. Retainer of subsequent advances: When the pawnee lends money to the same pawner after the date of the pledge, it is presumed that the right of retainer over the pledged goods extends to subsequent advances also.

3. Right to Extra Ordinary Expenses: - The pawnee has a right to receive from the pawner, extra ordinary expenses incurred by him for the preservation of the goods pledged.

4. Right against true owner, when the pawner's title is defective: - When the pawner has obtained possession of the goods pledged by him under voidable contract, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided has acted in good faith and without notice of the pawner's defect to the title.

Rights of pawner or pledger:

1. Right to get back goods: - The pawner in entitled to get back the goods pledged.

2. Right to redeem debt: - The pawner should repay the loan and take back the delivery of the goods from the pawnee within the stipulated time.

3. Rights of an Ordinary Debtor: - The pawner as a debtor has various rigts given to him by statute for the protection of debtors.

Pledge by Non Owners: -

In the following cases, one who is not an owner can make a valid pledge

1. A mercantile agent, who is with the consent of the owner in possession of the goods or of the documents of title to goods, can make a valid pledge of the goods while acting in the ordinary course of business of a mercantile agent.

2. A person having a possession of goods under a voidable contract can make a valid pledge of the goods so long as the contract is not rescinded.

3. Where the person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

4. If one of several co-owners is in sole possession of the goods with the consent of the owners, he can make a valid pledge of the goods.

UNIT --IV

CONTRACT OF AGENCY

It is a contract which creates the relationship of agent with principal is known as agency. According to sec.182 of the Contract Act, "an agent is a person employed to do or to represent another in dealings with third person. The person for whom such act is done or who so represented, is called the principal. Thus, an agency is the relation between an agent and his principal created by an express or implied agreement whereby an agent is authorized by his Principal to act or represent him in dealing with third parties and to establish principal's contractual relations with them.

Rules relating to the contract of Agency:

1. Whatever a person can do personally, he can do through an agent. This rule has some exceptions like marriage, singing, painting etc

2. He who does an act through another does it by himself.

Essential Features of Agency:

1. The principal should be competent to contract: Any person who is major and of sound mind can employ an agent. A lunatic or a drunken person cannot employ an agent.

2. An agreement: Agency should be created by an agreement between the principal and the agent. Such agreement may be either express or implied.

3**. Intention of the agent:** Intention of the agent to act on behalf of the Principal is also an essential feature of the contract of agency.

4. No consideration is necessary:-According sec.185, No consideration is necessary to create an agency. Generally an agent is remunerated by way of commission for service rendered, but no consideration is immediately necessary at the time of creating an agency.

5. Free consent: An agreement of agency depends up on free consent of the principal and agent.

Creation of an Agency: An agency may be created in any of the following ways:-

1**. Agency by Express Agreement:** - When an agent is appointed by words, spoken or written is called agency by express agreement.

2. Agency by Implied Agreement:-It includes

a) Agency by estoppels: Estoppels means preventing a person from denying a fact. According to sec. 237 of the contract act lays down that, when an agent has, without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

b). Agency by holding out:-It is a branch of the agency by estoppels. In this case some affirmative conduct by the principal is necessary. Where a person permits another by a long course of conduct to pledge his credit for certain purposes, he is bound by the act of such person in pledging his credit for similar purposes, though in some cases without the previous permission of his master.

c. Agency by necessity: In some extra ordinary circumstances, a person who is not really an agent should act as an agent of another. Such an agency is called agency by necessity.

3. Agency by ratification (Ex-post facto agency): Ratification means subsequent acceptance by the principal in all respect of an act done by the agent without authority. Sometimes the agent may act without the authority of the principal. If the principal accepts or ratify subsequently the act of the agent, he is said to have ratified the act. For example, 'X' without 'Y's authority, lends Y's money to Z. Afterwards Y accepts interest from Z. Y's conduct implies a ratification of the loan.

Essentials of Ratification:

Ratification is an approval of a previous act done without authority. In the agency contract, sometimes ratification becomes necessary.It includes

1. The act to be ratified must be a lawful one.

2. The principal must be in existence at the time of the act that is to be ratified.

3. The principal must have contractual capacity both at the time of entering into contract and at the time of ratification.

4. Ratification may be implied or expressed and must be made within a reasonable time.

5. Ratification must be with full knowledge of facts.

6. The agent must purport to act as agent for a principal.

7. The whole transaction must be ratified

8. Ratification relates back to the date of the act of the agent

9. Ratification must be communicated to all the related parties

Duties and Rights of an Agent:

Duties of an Agent to Principal:

1. Duty to follow directions given: An agent must conduct the business of the principal according to the directions given by the principal. In the absence of any direction, should conduct according to the custom.

2. Duty to act with skill and diligence: - An agent is bound to conduct business of the agency with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of his want of skill.

3. Duty to render accounts: It is the duty of an agent to keep the money and property of the Principal separate and to keep true and correct accounts of all his transactions on behalf of the principal and to produce the sake to his principal whenever he demands.

4. Duty to communicate in case of difficulty: In cases of difficulty it is the duty of the agent to communicate with his principal and get his instruction. Otherwise any act of loss will not bind the principal.

5. Duty to pay the amounts received for the Principal: It is the duty of the agent to pay overall money received on behalf of the principal subject to any lawful deductions for remunerations or expenses properly incurred.

6. Duty not to Delegate his Authority: An agent cannot delegate his authority to another person unless authorized or warranted by the usage of trade or nature of the agency.

7. Duty on Termination of Agency by Principal's Death or Insanity:- When an agency is terminated by the principal's death or becoming of unsound mind, the agent is bound to take on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interest entrusted to him.

8. Duty not to Disclose Confidential Information: It is very important not to disclose the confidential information relating to the business of agency.

9. Duty not to Deal on his Own Account: An agent should not deal on his own account in the business of agency. If an agent, without the knowledge of his principal, deals in the business of

the agency on his own account, the principal may either repudiate the transaction or claim from the agent any benefit which may have resulted to him from the transactions.

Rights of an Agent:

1. Rights to Remuneration: Where services rendered by agent are gratuitous, he is entitled to receive the agreed remuneration or if nothing has been agreed, a reasonable remuneration.

2. Right of Retainer: The agent has a right to retain his principal's money until his claim in respect of his remuneration or advances made or expenses properly incurred in conducting the business of agency are paid.

3. Right of lien: An agent has a right to retain goods, papers and other movable or immovable property of the principal received by him until the amount due to him had been paid or accounted for.

4. Right of Indemnification: An agent had a right to be indemnified by the principal against the consequences of lawful acts done in exercise of his authority.

5. Rights of Compensation:- An agent is entitled to claim compensation from the principal in respect of any injury caused to the agent by the negligence of the principal or want of skill.

Rights and Duties of a Principal

Rights of a Principal:

1. The principal is entitled to compensation for any breach of duty by the agent.

2. The principal has a right to give proper directions to the agent for the conduct of the business.

3. The principal is entitled to receive proper accounts from his agent

4. He is entitled to get profit, the agent makes by dealing with the principal's goods on the agent's own account.

5. He has the right to receive any secret profit made by the agent out of the agency.

6. He can revoke the authority of the agent under certain circumstances.

7. The principal has a right to receive all sums received on his account by the agent, after deducting the lawful remuneration and expenses incurred thereon**.**

Duties of the Principal:

1.To pay remuneration

2. To indemnify the agent against the consequences of all lawful acts done in his duty.

3. Duty to give compensation to the agent in respect of any injury caused to such agent by the principal's neglect.

Liabilities of Principal to Third parties:-

1. All acts of agent done within his authority:-The principal is liable for the acts of the agent if they are done within the scope of his authority and in the course of his employment as an agent.

2. Misrepresentation or fraud of the agent: - The principal is responsible for and is bound by misrepresentation or frauds committed by the agent in respect of matters falling within his authority.

3. Information obtained by the agent: - Where an agent receives any information the presumption is that the agent communicates the same to his principal and it is construed that the principal has taken notice of it even though the agent did not in fact, communicate the information. It is called doctrine of 'constructive notice'.

4. Where the agent acts for an unnamed or undisclosed principal:-Undisclosed principal means principal whose existence and name both have not been disclosed by the agent. In this case, third parties have a right to discover the principal and to proceed against him and hold him responsible for the contract entered into by the agent.

5. Where the agent is personally liable:- In cases where the agent has rendered himself personally liable in respect of the transactions, a third person dealing with him may hold either him or his principal, or both of them, liable.

Liability of agent to third parties:- According to sec. 230 of the Act, the agent, in the absence of any contract to that effect, is not personally bound by the contracts entered into by him on behalf of his principal. But in certain cases an agent will be personally liable.

1. **Where the agent acts for foreign principal: -** Where an agent enter into a contract for the sale or purchase of goods that the agent should be personally liable, in such cases the agent would be personally liable
2. **Where the agent acts for an undisclosed principal:** - Where the agent acts for an undisclosed principal, he is personally liable. But it is open to the third party on discovering the name of the principal to see him if he so chooses.
3. **When acting for a principal who cannot be sued:** Where the principal, though disclosed, cannot be sued, the agent is personally liable.
4. **Where money is paid by mistake or fraud**: - Where third party pays money to the agent by mistake or fraud, they can sue the agent personally. In the same way, if the agent pays money to a third party by mistake or fraud, he can recover it from him.
5. **Where the agent exceeds his authority:** When the agent acts without or beyond his authority and in this way commits a breach of warranty of authority, he can be held personally liable.
6. **Where the agents' authority is coupled with interest**: - Where the agent has himself interest in the subject matter of agency, he shall be personally liable to that extend. He is a principal to the extent of such interest and is entitled to enforce it.
7. **Where the usage or custom of trade makes the agent liable:** - Where according to usage or custom of a trade provides for agent's personal liability, the agents can be held personally liable, provided there is no contract to the contrary
8. **When the agent signs the negotiable instrument in his own name:** - When an agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent, he is personally liable for the instrument.

9. **When the contract expressly provides:** Where the contract with the parties specially stipulates that the agent should be personally liable, in such cases the agent would be personally liable.

Kinds of Agent:

1. **On the basis of extend of their authority**

   a. General agent b. Special agent c. Universal agent

2. On the basis of nature of work performed:-

a. Commercial agent/mercantile agent

(i)Auctioneers (ii)Broker (iii)Commission agent (iv) Delcredere agent (v)Factor

b. Non mercantile agent Sub Agent: A sub agent is a person employed by, and acting under the control of the original agent in the business of the agency. The agent is responsible to the principal for the acts of the sub agent. The legal relation between the principal and the subagent depends upon the important factor namely whether the sub agent is properly appointed or not.

Substituted Agent (Co-agent)

According to section 194 of the Contract Act, "When an agent has an express or implied authority of his principal to name another person to act for the principal and the agent names another person accordingly, such person is known as substituted agent. Such a person is an agent of the Principal and is responsible to him. Sec.195 states that in selecting such agent for for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this, he is not responsible for the principal for the acts or negligence of the agent so selected.

Termination of Agency:-

Termination of agency means cancellation of authority of the agent. A contract of agency may be terminated either by the act of parties or by the operation of law.

1. Termination by the act of parties: - An agency may be terminated either by the principal or by the agent or both in the following ways.

a. By Agreement: - An agency contract can be terminated at any time and at any stage by the mutual agreement between the principal and the agent.

b. Revocation by the principal: - Principal may either expressly or impliedly after giving reasonable notice; revokes the authority of the agent before it has been exercised by the latter so as to bind the former.

c. By renunciation of agency: - The agent himself may renounce the agency after giving a reasonable notice to the principal. If the contract of agency is for a fixed period, the agent cannot renounce it before that period without any sufficient cause for the same.

2. Termination by operation of law:-An agency may terminated by operation of law in any of the following ways.

a. By expiry of time: - Where the agent is appointed for a fixed period, it terminates on the expiry of that time. For example If an agent is appointed for a sale of plot within a period of six months, the agency come to an end at the end of six months even though the sale is not effected.

b. By destruction of the Subject Matter: - If the subject matter of the agency is destroyed, the agency comes to an end. For example, if the agency is for the sale of a house, the same is terminated if the house is destroyed.

c. Insolvency of the principal: - If the principal is adjudicated as insolvent, the agency terminates, but insolvency of the agent does not terminate the agency.

d. Principal becoming an alien enemy:-The principal and the agent belong to different countries and war breaks out between those two countries, contract of agency is terminated.

e. Death or insanity of the Principal or agent: - According to sec. 201, death or insanity of principal or agent automatically terminate the agency.

f. Dissolution of the company: - When a company is dissolved, the contract of agency automatically comes to an end.

Revocation of Agency:

What is Revocation?

The principal may revoke his agent's authority and that puts an end to the agency. Revocation of agency takes effect not from the moment of revocation, but when it becomes known to the agent and with regard to third persons when it becomes known to him.

Irrevocable Agency:

Agency cannot be revoked in the following cases:-

1. When the agency is coupled with interest: - When the agent is personally interested in the subject matter of agency, it is said to be agency coupled with interest. Agency is irrevocable during the existence of such interest.

2. When the agent has incurred liability: - Where the agent has incurred a personal liability in the contract of agency, the agency becomes irrevocable and the principal will not be permitted to revoke the agency leaving the agent exposed to risk.

3. When the Agent has partly exercised his Authority: - The principal cannot revoke the authority given to his agent after the authority has been partly exercised by the agent.

UNIT--V

SALE OF GOODS ACT 1930

Itroduction

The Sale of goods Act contains certain law relating to sale of movable properties. The Act covers topics such as the concept of sale of goods, warranties and conditions arising out of sale, delivery of goods and passing of property and other obligations of the buyer and the seller, the documents to title to goods and the transfer of ownership on the basis of such documents. A contract of sale has some special features which are not common to all contracts. Goods: The goods include every kind of movable property other than actionable claim or money.

Contract of Sale: According to section 4 of the sale of Goods Act, "A contract of sale of goods is a contract whereby the seller's transfers or agrees to transfer the property in goods to the buyer for a price." A Contract of sale may be absolute of conditional. In absolute sale the property in the goods passes from the seller to the buyer immediately and nothing remains to be done by the seller. In conditional contract of sale, the property in the goods does not pass to the buyer absolutely until a certain condition fulfilled.

Essential features of a Contract of Sale:

1. Contract: - A contract of sale is a contract and must fulfill all the requirements of a valid contract.

2. Two parties: - The sale requires existence of two parties, the seller and the buyer. The seller is a person who sells or agrees to sell goods. The buyer is a person who buys or agrees to buy goods. It is necessary that the same person cannot be both a seller and a purchaser.

3. Movable goods: - The subject matter of the contract of sale must be in the form of movable goods. Sale and purchase of immovable property are covered under the Transfer of Property Act 1882.

4. Transfer of ownership: It is the element which distinguishes a sale from several other classes of contract like bailment, lease etc. Hence, in a sale, ownership must be transferred from the seller to the buyer.

5. Price: - Price means money consideration for sale of goods. In a contract of sale money must be paid or promised. If there is no money consideration, the transaction is not a contract of sale. Sale and Agreement to Sale: - Where the ownership of goods is transferred just at the time of

making a contract it is known as 'sale'. If the seller promises to transfer it at some future date, it is known as 'agreement to sell'. conditions of bailment

Formation of a contract of sale Sec. 4 of the Act defines a contract of sale and sec. 5 deals with the formalities required for making a contract of sale. It provides that a contract of sale is made by a buyer offering to buy or a seller offering to sell goods for a price and the other party accepting such offer. A contract of sale may be in writing or by word of mouth. It may be made partly in writing and partly by word of mouth. It may also be implied from the conduct of the parties. Persons enter restaurants, order dinner and eat them, but obviously there is a sale. A written offer to sell goods may be orally accepted or vice versa. Subject matter of contract of sale: According to sec.6 'Goods' form the subject matter of a contract of sale.

Goods may be divided into three types,

1. **Existing goods**: - Goods owned and possessed by the seller at the time of making of the contract of sale are called existing goods. Existing goods may be either specific, ascertained or unascertained:
    a. **Specific goods:** - 'Specific goods' means goods identified and agreed upon at the time a contract of sale is made.
    b. **Ascertained goods: -** It means goods identified in accordance with

the agreement after the contract of sale is made. Ascertained goods are sometimes used as specific goods, but ascertained goods are not always the same as specific goods

c. Unascertained goods: - It means 'generic goods' ie, goods goods defined by description or even by samples. Unascertained goods are not definite and specific.

2. Future goods: - Sec. 2(6) of sale of goods act defines future goods as," Future goods means goods to be manufactured or produced or acquired by the seller after making of the contract of sale." Future goods are not in existence at the time of contract of sale.

3. Contingent goods: - It is a type of future goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

CONDITIONS AND WARRANTIES

Condition:

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. If a condition is broken, the buyer has the right to terminate the contract to refuse the goods, and if he has already paid for them, then to recover the goods.

Essential features

1. It is essential to the main purpose of the contract

2. The non –fulfillment of condition causes irreparable damage to the aggrieved party

3. The breach of condition gives a right to terminate the contract to the aggrieved party.

Warranty:

A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract repudiated. In short, breach of warranty will only give rights to claim for damages, while a breach of condition would entitle the other party to avoid the contract altogether.

Express and Implied Conditions and Warranty:

In a contract of sale of goods, conditions and warranties may be express or implied.

Express conditions and warranties are those which have been expressly agreed upon by the parties at the time of contract of sale. They are stated in definite words as the basis of the contract.

When the conditions and warranties are not written in the contract, but applied to the contract either by operation of law or by trade or custom, they are called **implied conditions and warranties.**

Important implied conditions:-

1. Conditions as to title of goods sold: - The first implied condition in the part of the seller is that, in the case of a sale, he has a right to sell the goods and that in the case of an agreement to

sell, he will have a right to sell the goods at the time when the property is to pass. If the title of the seller turns out to be defective, the buyer is entitled to reject the goods and can recover the whole amount.

2. Goods sold should Correspond to Description: - Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. The expression sale by description includes the following things:

a. Buyer has not seen the goods but buys them on the basis of description given by the seller b. Buyer has seen the goods, but he relies not on what he has seen but what was stated to him by the seller. c. Packing of goods may sometimes be a part of the description d. The arrival of goods at a particular time and place may form part of the description.

3. **Sale by sample**:-If the goods are supplied in a contract of sale, according to sample agreed upon, the implied conditions are:

a. The bulk shall correspond with the sample .b. the buyer shall have a reasonable opportunity of comparing the bulk with the sample, andc. the goods supplied shall be free from any defect.

4. Conditions as to quality or fitness: - Normally in a contract of sale there is no implied condition as to quality or fitness of the gods for a particular purpose. But there is an implied condition that the goods sold are reasonably fit for the purpose for which they are purchased for.

a. The goods are needed for a particular purpose which the buyer brings to the knowledge of the seller, either expressly or impliedly. b. The buyer relies on seller's skill and judgment and c. It is sellers duty to supply by description, then there is an implied condition that the goods should be reasonably fit for that purposes.

5. Condition as to merchantability: Where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be mercantile quality.

6. Conditions as to wholesomeness: In a contract of sale of eatables and provisions, there is an implied condition on the part of the seller that the goods shall be wholesome. It means,

the goods supplied by the seller must not be dangerously adulterer and must be fit for human consumption.

Important Implied Warranties:

1. Warranty for quiet possession: - Where the buyer has obtained possession of the goods and if the buyer is in any way disturbed in the enjoyment of goods, the buyer has a right to sue the seller for damages caused.

2. Implied warranty against encumbrance: - There is also an implied warranty in all cases of sale that the goods are not subject to any charge in favour of third parties which is not disclosed or known to the buyer before or at any time when the contract is made. 3. Implied warranty as to usage of trade: - An implied warranty as to quality or fitness for a particular purpose may be fixed by the usage of trade.

Doctrine of Caveat Emptor:

It is an important doctrine in connection with sale of goods. The term 'Caveat emptor' means 'let the buyer beware'. This principle states that, at the time of buying goods, the buyer must make reasonable examination of the goods as to satisfy himself regarding suitability of goods for the purpose , he buys for and as to discover the defects. If the goods turn out to be defective or do not suit his purpose, the buyer cannot hold the seller liable for the same. It is the duty of the buyer to ensure that the goods are in good condition and suitable for his purposes.

Exceptions:

The following are the exceptions to the rule of caveat emptor:

1. Fitness for buyers purpose:- When the buyer, expressly or impliedly, make known to the seller the particular purpose for which he requires the goods and relies on the sellers skill or judgment the goods must be suitable for buyers purpose. In such cases the the doctrine of caveat emptor does not apply.

2. Sale under a patent or trade name:- In the case of a contract for the sale by a specified article under its patent or other trade name, there is an implied condition that the goods shall be reasonably fit for any particular purpose.

3. Merchantable quality: Where the goods are purchased by description from a seller who deals in gods of such description there is an implied consideration is that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed.

4. Usage of trade: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.(Sec 16(3))

5. Consent by fraud: Where the consent of the buyer is obtained by the seller or where the seller conceals a defect, the doctrine of caveat emptor does not apply. 6. Sale by Sample: Where the goods are bought by sample the doctrine does not apply, if the bulk does not correspond with the sample.

TRANSFER OF OWNERSHIP IN GOODS:

The transfer of ownership in goods, delivery and passing of the risk are the three important stages in the performance of a contract of sale. Among these, the most important feature of a contract of sale is transfer of property. It may be noted that there is a difference between property in goods and possession of goods. Property in goods means the ownership of goods whereas possession of goods refers to custody or control of goods.

Rights and Obligations of Parties in Passing of Ownership:

1. Risk of loss: - In the case of loss or destruction of goods it is the owner who suffers. If the goods are still in the possession of the seller and the ownership is transferred to the buyer, the loss of goods shall fall on the buyer.

2. Only owner Can Sue: Where the goods are destroyed or damaged by the action of a third party, it is he who possesses the ownership in goods can sue or take legal action against third party

. 3. Suit for price: The seller can sue for the price, unless otherwise agreed, only if the goods have become the property of the buyer.

Rules regarding the transfer of ownership:

1. In the case of ascertained or specific goods: - Specific goods are existing goods at the time of contract of sale and the it is identified and agreed upon at the time of sale. In this type of goods, the property in them is transferred to the buyer at which time as the parties to the contract intend it to be transferred. Therefore once the goods are ascertained, it is purely a question of the intention of parties, as to be gathered in respect of the time of transfer, from the terms of the contract, the conduct of the parties and surrounding circumstances.

a. When goods are in deliverable state: In this case, the ownership passes to the buyer as soon as the the contract is made and the sale is affected. The following conditions are to be satisfied for applying this rule

(a)contract sale should be unconditional (b) It must relate to specific goods (c) the goods must be in a deliverable state.

b. When goods are not in a deliverable state: According to section 21, where contract is for specific goods which are not in a deliverable state and the seller has to do something to put the goods in a deliverable state, in such cases the ownership will not pass to to the buyer until that particular thing is done and the goods are put in a deliverable state and the buyer has notice thereof.

c. When goods are to be measured and weighted:- According to sec.22, in a sale of specific goods which are in a deliverable state, if the seller has to do something in order to ascertain the price, like weighing and measuring, the ownership in the goods will pass only after such things are done and the buyer has notice thereof.

d. When goods are delivered "on sale or return" or "on approval basis":- According to section 24, in case where goods are delivered to the buyer 'on approval' or 'on sale or return basis' the ownership passes to the buyer only.

2. In the case of unascertained goods: - The goods which are not identified and ascertained at the time of sale are unascertained goods. In case of sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. A contract to sell unascertained goods is not a complete sale but a promise to sell.

Transfer of ownership in case of sale on approval: Sec.24 of the Act lays down, "when, goods are delivered to the buyer on approval or 'on sale or return' or other similar terms, the property there is passes to the buyer. 1. When he signifies his approval or acceptance to the seller 2. When he does any other act adopting the transaction; and 3. Failure to return the goods.

SALE BY NON OWNERS

The general rule is that if a person, who has no right or title to the goods, sold the same, the buyer cannot obtain any right or title to the goods which he purchased even though he may have acted honestly and paid the value for the goods. In other words, no one can transfer a better title than what he himself has. This is expressed in the Latin maxim " Nemodatquod not habet". This means that one cannot give that which he has not. The buyer cannot acquire a better title than what the seller had, and the maxim protects the true owner. According to sec. 27 of the sale of goods act, a buyer cannot get a good title to the goods unless he has purchased the same from the owner. For example if goods are purchased form a thief, the buyer gets no title because the thief is not the owner

Exceptions to the General Rule: Under the following circumstances, the buyer gets a valid title even if the seller is not the absolute or full owner.

1. Title by estoppels: - When the owner by his conduct, or by an act, leads the buyer to believe that the seller has the authority to well, then subsequently he may be stopped from denying the seller's authority to sell.

2. Sale by a mercantile agent: - The mercantile agent is a person who has authority, in the customary course of business, either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods. A mercantile agent get better title of the good if he fulfills the following conditions

a. The agent is in possession of the goods or documents of title to gods with the consent of the owner

b. The agent sell the goods in the ordinary course of business of a mercantile agent

c. The purchaser acts in good faith and has no notice that the agent has no authority to sell.

3. Sale by one of the joint owners: - If one of the several joint owners of goods has the sole possession of the goods by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner provided the buyers acts in good faith and without notice that the seller had no authority to sell.

4. Sale of goods obtained under a voidable agreement: - When the seller of goods has obtained possession of gods has obtained possession thereof under a voidable agreement but the agreement has not been rescinded at the time of sale, the buyer obtains a good title to the goods provided he buys them in good faith and without notice of the seller's defect of title.

5. Sale by the seller in possession of goods after sale: - Where a seller, having sold goods, continuous to be in possession of the goods or of documents of title to the goods an re sells them either himself or through a mercantile agent in the same good faith and value without notice of previous sale, the new buyer gets good title.

6. Re sale by an unpaid seller: - An unpaid seller of goods who has exercised his right of lien or stoppage in transit resells the goods; the buyer acquires a good title to the goods as against the original buyer.

7. Sale under provisions of other acts:- a. Sale by a finder of lost goods under certain circumstances b. Sale b y a pawnee or pledge under certain circumstances c. Sale by an official assignee or liquidator of companies.

Performance of Contract of Sale: According to sec.31 of the Sale of Goods Act, performance of contract of sale means as regards seller delivery of goods to the buyer, and as regards the buyer acceptance of the delivery of the goods and payment for them, in accordance with the terms of the contract of sale.

Delivery of the Goods: Sec. 2(2) of the Sale of Goods Act defines delivery as a voluntary transfer of possession from one person to another. The delivery of goods may be actual, symbolic or constructive.

1. Actual delivery: - When the goods are handed over by the seller to the buyer or his duly authorized agent, the delivery is said to be actual.

2. Symbolic delivery: Where the goods are bulky and heavy, it is not possible to give actual delivery of the goods. In such a case, the control over the goods is transferred by delivery of a symbol.

3. Constructive delivery or delivery by atonement: When a person who is in a possession of goods accepts or acknowledges holding them on behalf of the buyer, it is called constructive delivery.

Rules regarding delivery: - Following are the provision relating to the delivery of goods by the seller to the buyer:

1. Possession of goods: Delivery should have the effect of putting the buyer in possession of the goods. So a delivery to anyone other than the buyer or his agent is insufficient.

2. Delivery and payment are concurrent conditions:-The seller should be ready to hand over the possession of goods and the buyer should be ready to pay the price.

3. Part delivery: A delivery of part of the goods has the effect of delivery provided such part delivery is made in progress of the delivery of the whole(Sec. 34)

4. Buyer to apply for delivery: Unless expressly agreed to the contrary, the seller is not bound to deliver them until the buyer applies for delivery.

5. Time of delivery: -In a contract of sale, the delivery of goods should be made within a reasonable time unless a time is fixed in the contract.

6. Place of delivery: - Where the place of delivery is stated in the contract, the goods must be delivered at the specified place during working hours on a working day.

7. Goods in possession of Third Person: - When the goods at the time of sale are in possession of a third person, delivery takes place if such third person acknowledges to the buyer that he holds the goods on his behalf.

8. Expenses of delivery: - The seller should bear the expenses of putting the goods into a deliverable state and also the incidental expenses unless otherwise agreed.

9. Installment delivery: - Unless both the parties agree, the buyer of goods is not bound to accept delivery thereof by installments.

10. Delivery to a carrier by wharfinger: Delivery of goods to a carrier for the purpose of transmission to the buyer or the delivery of the goods to a wharfinger for safe custody is prima facie deemed to be delivery of the goods to the buyer.

11. Buyer right of Examining the Goods: - Where the goods are delivered to the buyer which he has not previously examined, he is entitles to examine them for his satisfaction.

12. Return of rejected goods: - A mere fact that goods have been received does not lead to acceptance. In certain cases, buyer has a right to reject the goods after having received them.

13. Examination of goods by the buyer: - Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he is given a reasonable opportunity of examining the goods.

14. When wrong quantity is delivered: - Where the quantity delivered is different from the quantity contracted then, the buyer accepts the goods which are in accordance with the contract and reject the rest.

15. Liability of buyer for neglecting or refusing delivery of goods: - When a seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer fails to take delivery within a reasonable time of that request, the buyer is liable to compensate the seller for any loss arising due to his neglect or refusal to take delivery plus a reasonable charge for the care and custody of the goods.

UNPAID SELLER:

An unpaid seller is a seller who has not been paid the whole of the price or any other negotiable instrument which is subsequently dishonored. According to sec.45 (1) of the Sale of Goods Act, the unpaid seller means, a seller

a. Who has not been paid or tendered the whole of the price of goods sold and

b. Who has received a Bill of Exchange or any other negotiable instrument like cheques as conditional payment the condition being that the instrument shall be duly honoured.

1. Right s of an Unpaid Seller against the Goods:-

a. Right of lien (sec.47 to 49):- A lien is a right to retain possession of goods until payment of the price. In the case of unpaid vendor's lien, the seller is entitled to retain the goods of the buyer until the whole price is paid even though the ownership is passed from the seller to the buyer. A lien may be of two kinds. General lien and particular lien..

b. Right of stoppage of goods in transit (sec.50 to 52): It is only an extension of the unpaid seller's right of lien. This right can be exercised only when the following conditions are satisfied

i. The seller must be an unpaid seller ii. Goods must be in transit iii. The buyer must have become insolvent The moment when the buyer takes delivery of the goods the seller loses his right of stoppage.

c. Right of resale(sec. 54): An unpaid seller can re sell the goods: i) If the goods are of a perishable nature ii) When the unpaid seller notice of his intention to sell iii. Where the seller expressly reserves a right of re sale in case the buyer makes default.

2. Rights of an unpaid seller against the buyer personally:- The unpaid seller can exercise the following rights against the buyer personally

a. Suit for price: - When the property has passed to the buyer, and the buyer wrongly neglects or refuses to pay, the seller can sue him for the price.

b. Suit for damages: - When the buyer wrongfully refuses to accept the goods, the seller may sue him for damages for non acceptance.

c. Suit for repudiation: - If buyer repudiates the contract before the date of delivery the seller may treat the contract as subsisting and wait till the date of delivery, or may treat the contract as rescinded and sue for damages for breach.

d. Suit for interest: - The seller has a right to get interest from the buyer on the price of goods.

Auction Sale:

An Auction sale is a public sale, where the goods are offered to be taken by the highest bidder from among the public.The person who sells goods through auction is known as auctioneer. The relationship between the owner of the goods and the auctioneer is that of the principal and agent.

Rules of Auction Sale

1. Where an auction sale is made in lots, each lot is prima facie deemed to be the subject of separate contract of sale. 2. A sale by auction is complete when the auctioneer announces its completion and consequently property in the goods passes to the buyer 3. If the sale is notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the auctioneer to take the bid. 4. A right to bid may be reserved by the seller 5. Any sale contravening the above rule may be treated as fraudulent by the buyer.

..********** **ALL THE BEST**********