GOVERNMENT ARTS COLLEGE FOR WOMEN
SALEM-8

(Recognized under Section 2(f) & 2 (B) of UGC Act 1956 and Accredited with "A" Grade- III Cycle by NAAC)

Affiliated to Periyar University, Salem-11

Yercaud Main Road, Gorimedu, Salem – 636 008

STUDY MATERIAL

SUBJECT : **BUSINESS LAW**

Paper Code : 17UCM05

Batch : 2018-2021

Class & Semester : II B.COM & III SEMESTER

UNIVERSITY QUESTION PAPER PATTERN

Time : 3 Hrs　　　　　　　　　　　　　　　　　　Max. Marks : 75

PART – A (15*1=15 Marks)

Answer All Questions

PART – B (2*5=10 Marks)

Answer All Questions

PART – C (5*10=50 Marks)

Answer any three Questions

BUSINESS LAW

SYLLABUS

UNIT-I

Commercial Law - Introduction- Meaning- Objectives - Sources- origin - (Custom-law of England - Equity precedents nature of law) Indian Contract Act,1872 – Contract- Definition- Obligation- Nature and Kinds of Contract - Elements of a Valid Contract -Formation of Contract.

UNIT-II

Agreement - Contingent Contract, Quasi Contract - Types of contingent contract-Performance of a Contract -Discharge of a Contract - By performance mutual consent, By impossibility, By contract, By Breach- Remedies for Breach of Contract.

UNIT-III

Contract of Indemnity- Introduction- Rights of indemnity holder and indemnifier- Guarantee- Definition, features, types, Revocation -Bailment - Pledge. Hypothecation- Mortgage- Meaning and definitions.

UNIT - IV

Agency - creation of Agency - Kinds of Agent - Rights and Duties of Principal and Agent - Relation of Principal and third parties - Termination of Agency.

UN1T-V

Sale of goods Act 1930- Definition of Sale and Agreement to sell - Conditions and Warranties - Transfer of property - Transfer of title - Performance - Remedies for Breach- Unpaid Seller - Rights of unpaid seller - Auction sale - Rules relating delivery of goods.

TEXT BOOK

1. Commercial Law – N.D. Kapoor
2. Business Law – R.S.N. Pillai and Bagavathi

BUSINESS LAW

UNIT – I

MEANING OF LAW

The term law is used in varied senses. In it is widest sense; law means any rule of action. In natural sciences, it refers to law of nature. In social sciences it is used to indicate the rule of external human action.

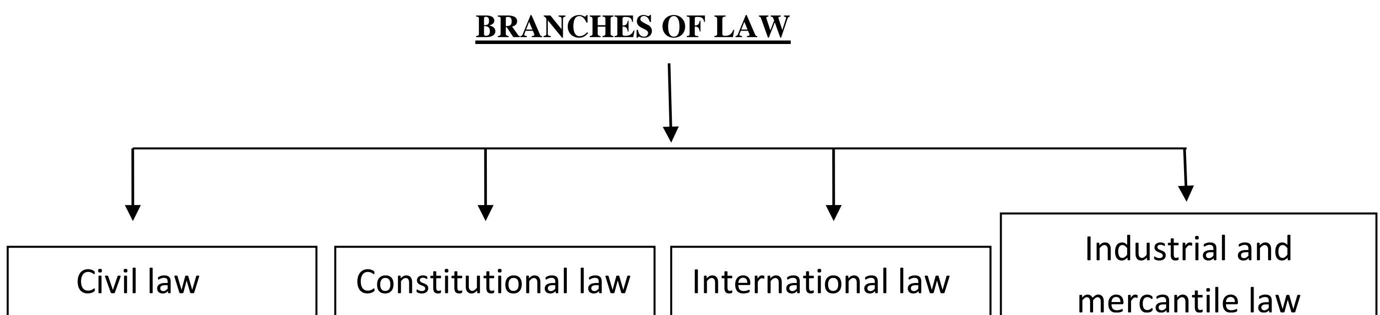
DEFINITION:

According to Salmond, "Law is the body of principles recognized and applied by the state in the administration of justice".

According to Black Stone, "Law is a rule of civil conduct, prescribed by the supreme power of a state, commanding what is right and prohibiting what is wrong".

According to Holland, "Law is rule for external human action enforced by the sovereign political authority."

BRANCHES OF LAW



Mercantile law

- Mercantile law or commercial law is the law that regulates commercial activities of the economy. It is a very wide term and all the laws that regulate commercial transaction in India are covered under its ambit. The pre-requisite of such transaction is a valid agreement between the parties to the contract. It can either be express or implied.

- It is concerned with the rights and obligations of traders arising out of the commercial transaction. The trader can be an individual, partnership firm or a company. All the Acts in India that govern trade or commerce are part of Mercantile Law of India. For example, Indian Contract Act, 1872; Sale of Goods Act, 1930; Companies Act, 2013;, etc.

OBJECTIVES OF COMMERCIAL LAW :

The Commercial Law Program has 3 primary objectives:

- The **first objective** is to support and develop the commercial law focus within the law school curriculum as it relates to Asian jurisdictions. This focus is particularly strong in the Melbourne Law Masters, which offers a range of subjects in this area.

- The **second objective** is to undertake and support research on the development of commercial law in Asia, both by scholars at Melbourne Law School and visiting scholars.

- The **third objective** is to provide a basis on which the Asian Law Centre can engage with the profession and the broader community in the area of commercial law. As part of its engagement objective, the Asian Law Centre has adopted an initiative called the Professional Development Strategy for maintaining and developing its relationship with the legal profession and providing specialist training in Asian commercial law and legal practice in a cross-border context

ORIGIN OF MERCANTILE LAW:

The Mercantile Law in India developed with the enactment of the Indian Contract Act, 1872. Before this, all the commercials transactions were governed by the personal laws of the party to contract. For example Hindu Law, Mohammedan Law, etc. The first attempt to codify Mercantile Law in India was made by the Britishers in 1872 by the enactment of Indian Contract Act. Since then, numerous laws have been enacted in India to regulate commercial transactions, such as Partnership Act, Negotiable Instruments Act, etc.

SOURCES OF MERCANTILE LAW

Indian mercantile law is based largely upon the English mercantile law. Prior to the enactment of the various acts constituting mercantile law, the personal law of the parties to suit regulated mercantile transactions.

1. **English Mercantile Law**

Indian mercantile law is largely based on English mercantile law. In order, therefore to trace the origin of the legal principles governing commercial transactions. In India it becomes necessary to know the sources of English mercantile law.

- **The English Common Law**

This law is also known as judge made law. It is based upon customs and practices handled down from generation to generation. It is the oldest unwritten law. The English courts developed these over centuries.

- **Principle of Equity**

English law of equity is another guideline for Indian courts. It is that branch of English law which is based on principles of equity. Justice and good conscience. It is also an unwritten law and developed separately from the common law.

- **Law Merchant**

It is also one of the important sources of English mercantile law. A law merchant consists of legal principles based on customs and usage. They developed first as a separate system of law and subsequently become part of the common law.

2. **Judicial Decisions**

Judicial decisions are also called as case law. They referred to as precedents and are binding on all courts having jurisdiction lower to that the court, which gave the judgement. The courts in deciding cases involving similar points of law also follow them.

3. **Statute law**

A bill passed by the parliament and signed by the President becomes a “statute” or an act. Most of the Indian laws are embodied in the various acts passed by the central as well as state legislations.

For example

- The Indian Contract Act, 1872
- The Sale of Goods Act, 1930
- The Companies Act ,1956
- The Indian Partnership Act ,1932

4. Local Customs and Usage

Customs and usage plays an important role in regulating business transactions. A well recognized customs or usage can even over ride the statute law. Most of the business customs and usages have been already codified and given legal sanctions in India. Some of them have been rectified by the decision of the competent courts of law

NATURE AND KINDS OF CONTRACT

Introduction:

The law of contract forms the oldest branch of the law relating to business transactions. It affects every person in one way or the other, as all of us enter into some kind of contract every day. The law of contract is applicable not only to the business community but also to others. Everyone of us enters into a number of contracts almost every day.

Meaning of Contract:

A contract is an agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more to act on the part of the others. It creates and defines obligations between the parties.

Definition of Contract:

Indian contract act Sec 2 (h) defines, "An agreement enforceable by law".

According to Pollock, "Every agreement and promises enforceable at law is a contract".
According to Salmond, "An agreement creating and defining obligations between the parties".

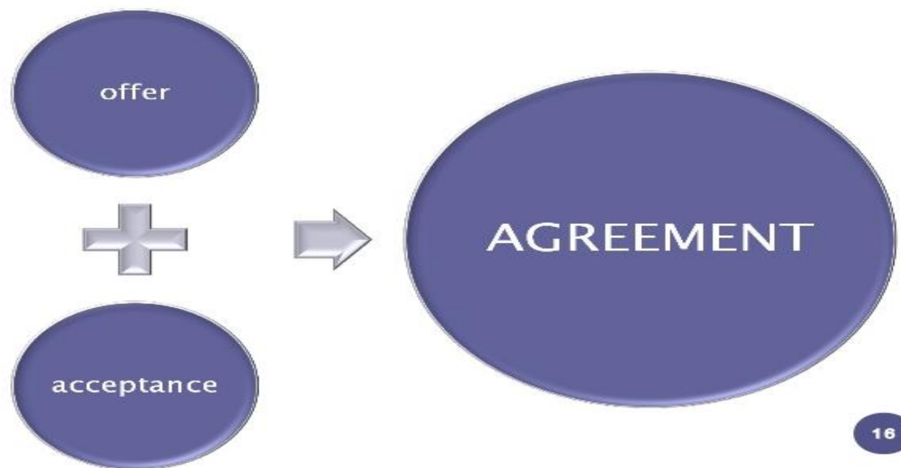
Definition of Agreement:

Sec 2 (e) Defines "Every promise and every set of promises, forming consideration for each other, is an agreement".

Section 2 (b) defines promise

"A proposal when accepted becomes a promise".

Agreement = offer + acceptance



Contract requires:

- Two parties
- Agreement
- Legal obligation

a.) Two parties

The person who makes the promise is known as "promisor" and the person to whome the promise is made is known as the "promisee". As a matter of fact in a contract each party in a promissor as well as promisee.

b.) Agreements

An offer when accepted becomes an agreement. An agreement means the expression by two or more person of a common intention to affect legal relations. Agreement implies an offer and acceptance.

After implies the willingness of person to do something and it is communication to the others.

Acceptance means giving assent b the party to whom the offer has been made

c.) Legal obligation

An obligation is the legal duty to do something or abstain from doing something. An agreement gives rise to a legal obligation which is enforceable by law.

CONTRACT OBLIGATIONS

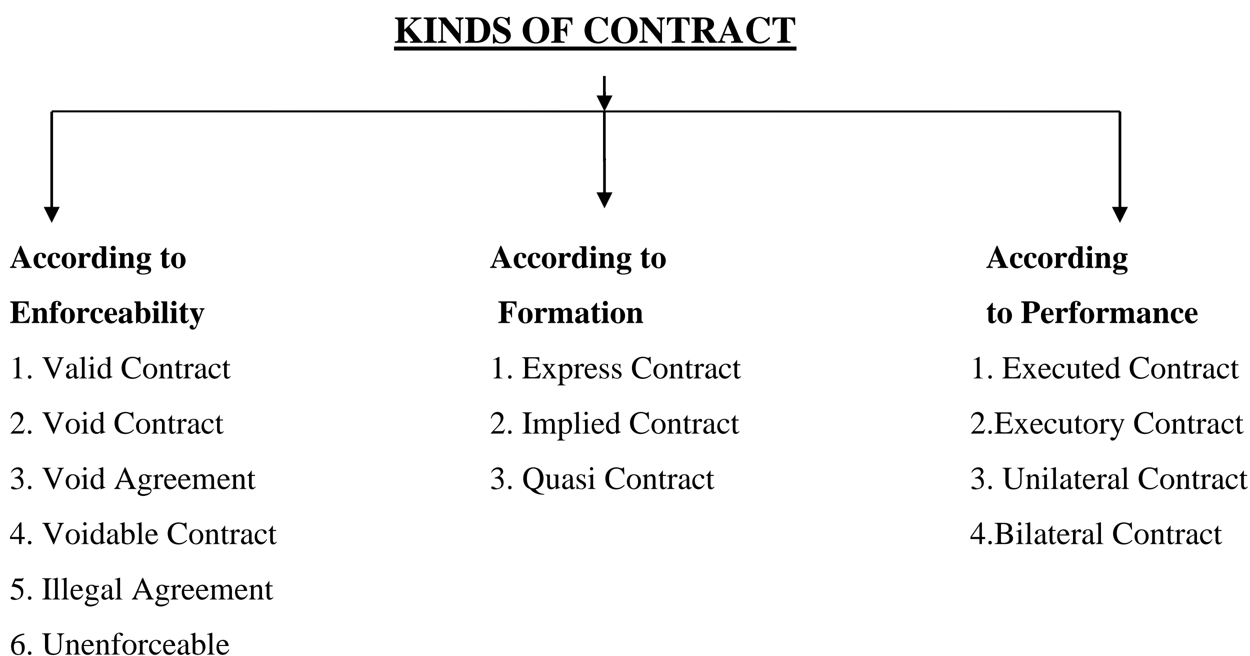
As mentioned, Contract obligations generally depend on the specific subject matter of the contract. Contract obligations for a sales contract may be much different than other types of contracts, such as a rental agreement contract. However, most legal agreements contain some of the same types of contract obligations, such as:

- **Payment:** One party (the buyer) is usually legally bound to provide payment for the sale of goods or services. The contract terms may state obligations regarding payment amounts and the deadline for payment.

- **Delivery:** The seller is usually bound to provide delivery of the goods or services. Again, the contract may state specific obligations in terms of delivery dates, method of delivery and other terms.

- **Quality of Goods:** The seller may also be bound to provide goods of a certain quality. This may be specifically described in the contract

KINDS OF CONTRACT



CLASSIFICATION ACCORDING TO ENFORCEABILITY

1. **Valid Contract [sec.10]**

A contract which satisfies all the legal requirements laid down in Sec 10 of the act is known as a valid contract. A valid contract is an agreement which is binding and enforceable at law.

2. Void Contract [sec 2(J)]

A void contract is that which is not enforceable by law sec 2 (J), "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable".

A contract which is enforceable by law at the time it was made. But later on if it becomes legally unenforceable due to some reasons it is called void contract.

3. Void Agreement [sec 2 (g)]

An agreement not enforceable by law is said to be void. A void agreement has no legal effect.

4. Voidable Contract [sec. 2(i)]

An agreement which is enforceable by law at the option of one or more of the parties thereon, but not at the option of the other or others is a voidable contract".

5. Illegal Agreement

An agreement is illegal and void if it is object or consideration is forbidden by law or fraudulent.

6. Unenforceable Contract

An unenforceable contract is one which cannot be enforced due to some technical defect such as absence of a proper stamp, absence of a written form, time barred etc. such contracts may be carried out by the parties. But in the event of breach or repudiation of the contract, the aggrieved party will not be entitled to any legal remedy.

CLASSIFICATION ACCORDING TO FORMATION:

1. Express Contract [Sec. 9]

In so for, as the proposal or acceptance of any promise is made in words the promise is said to be express.

Example: A write a letter to B, that he offers to sell his car for Rs 60,000 and B in reply informs A that he accepts the offer. This is an express contract.

2. Implied Contract [Sec.9]

In so for as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. Such contract comes in to existence on account of act or conduct of the parties.

Example: Mr. X went to a restaurant and took a cup of coffee.

3. Quasi Contract

There are certain dealings which are not contract. Strictly through, the parties act as if there is a contract. In fact it is an obligation which the law creates in the absence of any agreement. "a person shall not be allowed to enrich himself unjustly at the expense of another.

CLASSIFICATION ACCORDING TO PERFORMANCE:

1. Executed Contract

When both the parties have completely performed their respective obligations under the contract, the contract is said to be executed. That is, it is a contract where under the terms of a contract nothing remains to be done by either the party.

For example: In case of cash sales the contract is executed at once.

Executory Contract

In this contract the obligations of the parties are to be performed at a later time. When both the parties have not performed their respective obligations under the contract. The contract is said to be executory.

2. Unilateral Contract

In certain contract one party has to fulfill his obligations where as the other party has already performed his obligations, such a contract is called unilateral contract or one sided contract or contract with executed consideration.

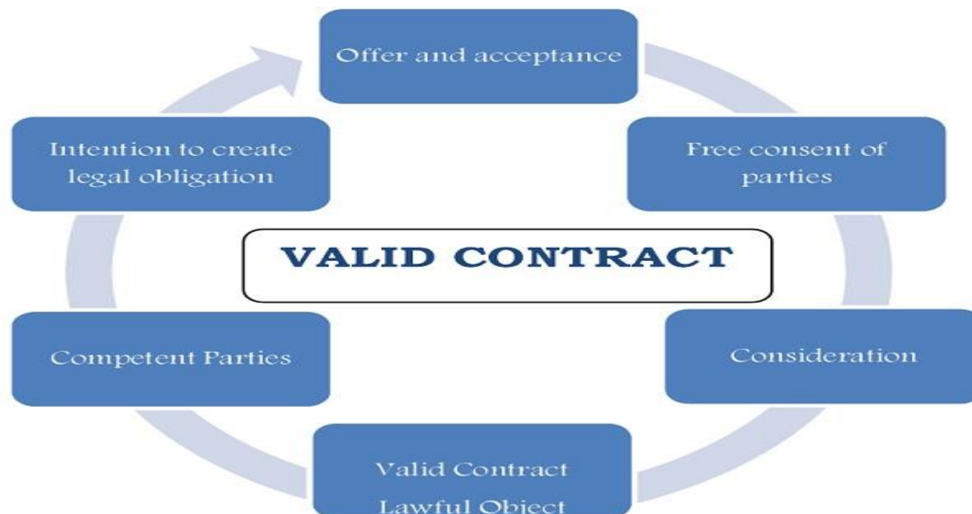
3. Bilateral Contract

Bilateral contract is one in which the obligation on the part of both the parties to the contract are out standing at the time of formation of the contract. In such contracts promise on one side is exchanged for a promise on the other.

Example: Mr. A promised to paint B's house for a sum of Rs 500. It is a bilateral contract as there is exchange of promises and obligations of both the parties are outstanding at the time of formation of the contract.

ELEMENTS OF VALID CONTRACT[Sec. 10]

"All agreement is contract if they are made by the free consent of the parties competent to contract. For a lawful consideration and with a lawful objects and are not hereby expressly declared to be void".



ESSENTIAL ELEMENTS OF A VALID CONTRACT

1. **Offer and Acceptance**

   Basically, a consideration evolves from an offer by one party and acceptance of the same by the other party. The acceptance should be definite. An offer needs to be clear, definite, complete and final. It should be communicated to the offeree.

2. **Intention to create legal obligations**

   There must be an intention (among the parties) that the agreement shall result in or create legal relations. An obligation is the legal duty to do or obtain from doing a definite act or acts. If the parties do not intend to create legal obligation, there is no contract between them. An agreement which gives rise to a morale or social obligation is not contract.

   Example: A invited B for a dinner. B accepted the invitation. It is a social agreement. If A fail to serve B, B cannot go to court of law for enforcing the agreement. Similarly if B fails to attend the dinner, A cannot go to court of law for enforcing the agreement.

3. **Lawful Consideration**

   The agreement must be supported by lawful consideration on both sides. Each party to the agreement must give or promise something and receive something or a promise in return consideration is the price for which the promise of the other is sought.

   Example : If A offer to sell his scooter to B for Rs 10,000 and B accepted the offer. Here Rs10,000 is the consideration for A and scooter is consideration for B.

4. **Capacity of Parties**

Every person is competent to contract who is the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

5. **Free and Genuine Consent**

The consent of the parties to the agreement must be free and genuine. The consent of the parties should not be obtained by mis-representation, fraud, undue influence, coercion or mistake. If the consent is obtained by any of these, then the contract is not valid.

6. **Lawful Object**

The object for which the agreement has been entered must not be illegal or immoral or opposed to public policy. That is the object of the agreement must be lawful and not one of which the law disapproves.

7. **Lawful Consideration**

Consideration means something in return. In every contract agreement must be supported by consideration. When one party to a contract agrees to give something (or to give up something) he must be benefited by the other party. This concept of benefit is known as consideration. Consideration need not necessarily be in cash or kind. It may be an act or abstinence of promise to do or not to do certain things. It must be lawful and real.

8. **Legal Formalities**

A contract may be oral or in writing if, however a particular type of contract is required by law to be in writing. It must comply with the necessary formalities as to writing, registration and attestation if necessary. If these legal formalities are not carried out then the contract is not enforceable at law.

FORMATION OF CONTRACT

OFFER (Or) PROPOSAL [Sec. 2(a)]

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

The person making the proposal or offer is called proposer, offeror or promisor.

The person to whom the offer or proposal is made is called the proposer or offeree. When the offeree accepts the offer, he is called promisee or acceptor. An offer is synonymous with proposal.

An offer has two parties

- ❖ A promisee by the offeror to do or to abstain from doing anything and
- ❖ A request by the offer to the offeree to do or to abstain from doing something in return.

Essentials of valid offer:

1) Intention to create legal relations
2) Offer must be clear
3) Offer may be general or specific
4) Offer may be express or implied
5) An offer may be positive or negative
6) Every offer must be communicated

1. Intention to create legal relations

The offeror must have the intention of creating legal relations. A social invitation even if it is accepted does no result in legal relations because it is not intended so.

Example: A accepts an invitation to dinner at B's place on a certain date. But on the appointed date A fails to turn up. A cannot be sued for break of contract because the contract was without any intention of a legal obligation.

2. Offer must be clear

The laws require the parties to make their own contract. It will not make a contract for them out of terms which are indefinite or illusory.

3. Offer may be general or specific

General offer is made to the world at large while a specific offer is made to some specific individual or individuals. It follows that an offer need not be made to an ascertained person but it must be accepted by a definite person.

4. An offer may be express or implied

When an offer is expressed by words, spoken or written, it is termed as an expressed offer. Implied offer means an offer made by conduct.

5. **An offer may be positive or negative [sec.2(a)]**

When one person signifies his willingness to do or abstain from doing something. Thus an offer may be to do something or not to do something. An offer to do something is a positive offer. And an offer no to do something is negative offer.

6. **Offer must be communicated**

For an offer to be complete, it must be communicated to the person to whom it is intended.

For example: A write a letter to B offering to sell his house for Rs 2, 00,000. But never posts the letter. It is not offer and B can never accept it. Acceptance of an offer in the ignorance of the offer is not at all an acceptance. Hence does not confer any right on the acceptor

ACCEPTANCE:[Sec. 2 (b)]

"When one person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise".

Essentials of valid Acceptance [sec. 3]

1. **It must be absolute and unqualified**

It must confirm with the offer. An acceptance in order to be binding must be absolute and unqualified. Sec 7 (i) in respect of all terms of the offer, whether material or immaterial, major or minor if the parties are not ad idem on all matters concerning the offer and acceptance, there is no contract.

2. **It must be communicated to the offerer**

The acceptance must be in the form specified or in some perceptible form if not specified. A mere intend of acceptance will not suffice. The offeror cannot frame an offer in such a way as to tantamount. The silence or inaction of the offeree as an acceptance. The mode of acceptance may be specified but not the mode of rejection of offer.

3. **It must be made within reasonable time**

If any time limit is specified, the acceptance must be given within that time. If no time limit is specified, it must be given reasonable time.

4. **It must be by the offeree**

An offer can be accepted only by the person or persons to whom it is made. A valid contract arisen only if acceptance is communicated by a person who has the authority to

accept if it is communicated by any unauthorized person. It will not create any legal relationship.

5. **The acceptance must be in response to offer**

   There can be no acceptance without offer. Acceptance cannot precede offer.

6. **Acceptance may be express or implied**

   An acceptance which is expressed by words, written or spoken is called express acceptance. The acceptance which is expressed by conduct is called an implied acceptance.

REVOCATION [Sec. 4]

Revocation means withdrawal. Communication of revocation is complete as against the person who makes it when it is put into a course of transmission to the person whome it is made, so as to be out of the power of the person who makes it is against the person to whom it is made, when it comes to his knowledge.

An offer can be revoked before acceptance and an acceptance can be revoked before it is communication.

Example: B accepts A’s proposal by a letter sent by post. B revokes his acceptance by telegram. B’s revocation is complete as against B when the telegram is dispatched. It is complete as against A when it reached him.

QUESTION BANK

1. When pre-defined rules are enforced or bind on people it is called as
   Act **Law** Section All of the above

2. Contract act deals under which branch of law
   Commercial International Cyber None of the above

3. Which of the following is not a branch of law
   Commercial International Mercantile **Legal**

4. An enforceable at law is a ____
   Accepted offer Agreement Approved promise **Contract**

5. A contract is a _______ made between two or more parties which the law will enforce.
   Offer Transaction **Agreement** None of the above

6. All contract is an
   Offer **Agreement** Acceptance Transaction

7. Every agreement and promise enforceable by law is____
   Offer Agreement **Contract** Acceptance

8. A contract when both the parties have fulfilled their obligation is called as ______ contract
   Valid **Executed** Void Unilateral

9. In a valid contract, when comes first
   Enforceability Acceptance Promise **Proposal**

10. Under section 2(c) is the _____
    Person who make the proposal **Person who accepts the proposal** Person who make the promise
    None of the above

11. ________ contract is made by spoken words
    Implied **Express** Void Unilateral

12. The person who makes an offer is called______
    Seller **Offeror** Offeree Promise

13. Contract = __________+__________
    Agreement + offer Agreement + consideration **Agreement + enforceable by law**
    None of the above

14. Agreement = ______ + _____
    consideration + offer Agreement + consideration **Offer + acceptance** None of the above

15. The person who accept the offer is called as
    Offeror Acceptee **Offeree** None of the above

16. The offer must be

Conditional Temporary **Definite** All of the above

17. The benefit move from one party to another in a contract is called as

Income C**onsideration** Transfer None of the above

18. The consideration can be

Present Past Future **All of the above**

19. Revocation of offer by letter or telegram can be complete

When is dispatched When is received by the offer When is reaches the offeree Both (a) an (c)

20. A _____ is a not a capable person to enter into contract

Agent NRI Illiterate **Minor**

5 mark questions

1. What are the various kinds of contracts? Describe them briefly(Apr-16)
2. List out the various essentials of a valid contract (Nov-15)
3. What is offer? When it is complete?(Apr-14)
4. List out various rules of a valid offer?(Apr-16)
5. "A contract without consideration is void"- Discuss(Apr-16)
6. What are the kinds of offer?(Apr-18)

10 mark questions

7. Define acceptance and state the legal rules governing valid acceptance.(Nov-14&Apr-15)
8. What is mean by revocation? What are the method (Nov-14)
9. Discuss the elements of valid contract(Apr-16)
10. Discuss the different classification of contract?(Apr-18)

UNIT-II

CONTINGENT CONTRACT

Introduction:

A valid contract creates legal obligations on both the contracting parties. After the formation of a valid contract, the next step is to fulfill the object of the agreement, which requires the performance of respective obligations of the parties. After the performance, the contract is said to be discharged.

Agreement: Meaning

An agreement between private parties creating mutual obligations enforceable by law. The basic elements required for the agreement to be a legally enforceable contract are: mutual assent, expressed by a valid offer and acceptance; adequate consideration; capacity; and legality.

Differences Between Agreement and Contract

S.No	Agreement	Contract
1.	Promises and commitments forming consideration for the parties to the same consent is known as an agreement.	The agreement, which is legally enforceable is known as a contract.
2.	The agreement is defined in section 2 (e)	While a Contract is defined in section 2 (h) of the Indian Contract Act, 1872.
3.	The major elements of an agreement is the offer and its acceptance by the same person to whom it is made, for adequate consideration.	Conversely, the major elements of an agreement are agreement and its enforceability by law.
4.	Every agreement is not a contract,	But every contract is an agreement.
5.	An agreement needs not to be given in written.	But the contracts are normally written and registered.
6.	The agreement does not legally bound any party for the performance.	In the Contract, the people are legally bound to perform their part.

7.	The scope of the agreement is wider than a contract because it covers all types of agreement as well as contract.	On the contrary, the scope of a contract is relatively narrower than an agreement because it covers only that agreement which have legal enforceability.

Contingent Contract:

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. Insurance contracts provide the best example of contingent contracts.

Example:

A contracts to pay B Rs.10,000 it B's house is burnt.

ESSENTIAL FEATURES OF A CONTINGENT CONTRACT:

The following are the essential features of a contingent contract.

a. Dependence on a future event:

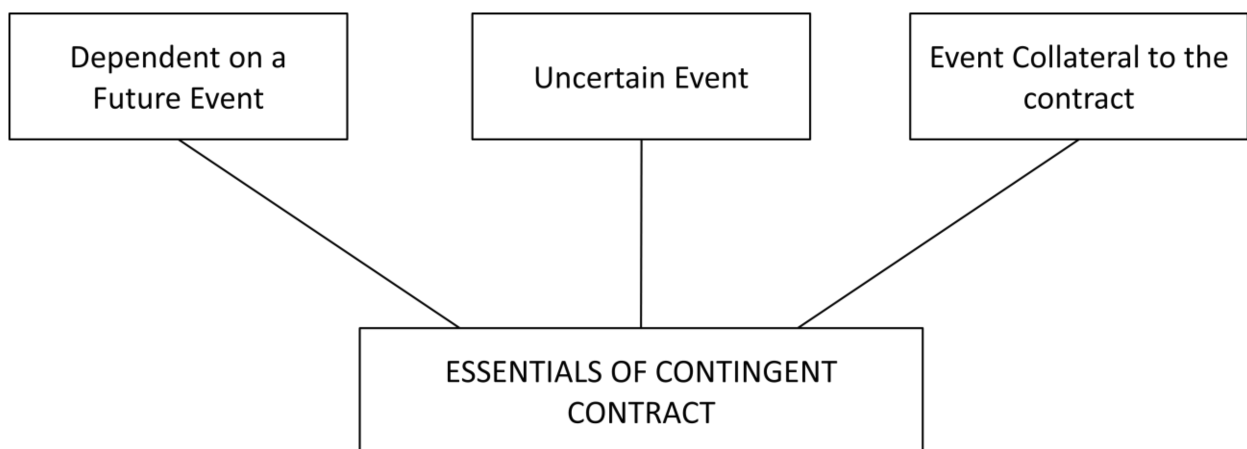
The performance of a contingent contract depends upon the happening or non-happening of some future event.

b. Collateral event:

The event must be collateral to the contract.

c. Uncertain events:

The event must be uncertain.



RULES\KINDS OF CONTINGENT:

The following are the different kinds of contingent contract.

1. The happening of an uncertain future event. [Sec. 32]

Such contract cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Example:

A makes a contract with B to sell a horse to B at a specified price, if c, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

2. Non- happening of an uncertain future event. [Sec. 33]

Such contracts can be enforced when the happening of that event becomes impossible and not before.

Example:

A agrees to pay B a sum of money if a certain ship does not return. This ship is sunk. The contract can be enforced when the ship sinks.

3. When event to be Deemed Impossible [Sec .34]

if the uncertain event is the future conduct of a living person, such event shall be considered impossible, if that such person does anything by which it becomes impossible to perform the contract within any definite time.

Example:

A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

4. The happening of an event within a fixed time [Sec .35]

Such contracts become void before the expiry of fixed time-

a. Such event does not happen, or
b. Such event becomes impossible.

Example:

A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced it the ship returns within the year, and becomes void if the ship is burnt within the year.

5. Non-happening of an event within a fixed time [Sec 35]:

Such contracts can be enforced by law if before the expiry of fixed time-

a. Such event does not happen, or

b. It becomes certain that such event will not happen.

Example:

A promises to pay B a sum of money if a certain ship does not return within a year. The contracts may be enforced it the ship does not return within the year, or burnt within the year.

6. Impossible events [Sec 36]:

Such agreements are void whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made

Example:

A agrees to pay B, Rs.1000 if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void because B's marriage with C can never take place.

DIFFERENCE BETWEEN WAGERING AGREEMENT AND CONTINGENT CONTRACT:

S.No	Contingent contract	Wagering agreement
1.	Contingent contracts are enforceable under the law and are valid	Wagering agreement is absolutely void and cannot be enforceable
2.	Though it depends upon the happening or non-happening of an event, it is valid	It is void
3.	It may not contain reciprocal promises	It contains of reciprocal promises
4.	The future event is only collateral	The future event is the sole determining factor
5.	It may not be of a wagering nature.	It is always of a contingent nature.
6.	The object of contingent contract is the performance of promise	The object of the parties is to obtain the consent of each other to the wager.

QUASI CONTRACT

Quasi contract is a kind of contract by which one party is bound to pay money in consideration of something done or suffered by other party. These contracts are based on the maxim no man must grow rich out of another person's cost. This contract is to prevent unjust enrichment benefit (i.e) no one should grow rich out of another person's loss.

Example:

A trader leaves certain goods at B's shop by mistake. B treats the goods as his own. But he is bound to return them to A. this kind of contractual relations are known as quasi contract. They are also called as implied or constructive contract.

TYPES OF QUASI CONTRACTS:

The various kinds of Quasi contracts are given below.

TYPES OF QUASI CONTRACTS

– Supply of necessaries (Sec 68)
– Payment by a interested person (Sec 69)
– Obligation to pay for non-gratuitous(obtained without charge or payment) acts (Sec 70)
– Responsibility of finder of goods (Sec 71)
– Mistake or Coercion (Sec 72)

1.Supply of Necessaries: [Sec. 68]

The person who has supplied the necessaries to a person who is incapable contracting or anyone whom such incapable of person is legality bound to support, is entitled to claim their price from the property of such incapable person.

Example:

A supplier the wife and children of B, a lunatic.With necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

2.Payment by interested person: [Sec. 69]

A person who is interested in the payment of money which another is bound by law to pat, and who therefore pays it, is entitled to be reimbursed by the other.

Example:

X's goods were wrongfully attached in order to realize arrears of Government revenue due by Y. X pay the amount to save the goods from sale. X is entitled to recover the money from Y.

3. Obligation to for Non-gratuitous: [Sec.70]

Under this, the things must have been done lawfully. The person doing the act must not have intended to do it gratuitously and the person for whom the act is done. Must have enjoyed the benefit of the act.

Example:

A, a tradesman, leaves goods at A's house by mistake. B treats the goods as his own. He is bound to pay A for them.

4. Responsibilityof finder of goods [Sec. 71]

A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

Example:

X a guest found a diamond ring at a birthday party of Y. X told Y and other gusets about it. He has performed his duty to find the owner. If he is not able to find the owner he can retain the ring as bailee.

5. Mistake or under Coercion [Sec. 72]:

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

Example:

A and B jointly owe Rs.100 to C.A alone pays the amount to C, and B, not knowing this fact, pays Rs.100 over again to C. C is bound to reply the amount to B.

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PERFORMANCE OF A CONTRACT [Sec. 37]

Performance of contract denote fulfillment of the terms of the contract by the parties to the contract. The parties to a contract must either perform or to perform, their respective promises, unless such performance is dispensed with or executed under the provision of this act or of any other law.

The performance of contract is discussed under the following two heads.

1. **Actual Performance**
2. **Offer to perform or Tender.**

1. Actual performance

   When a party has done what he had undertaken to do, and nothing is left, the promise is said to be performed. Such party is discharged from his obligations under the contract. This is what called performance of the contract.

2. Offer to perform or Tender

   Sometimes if happens so that the promisor offers performance of his obligations under the contract at proper time and place but the promisee refuses to accept the performance. This is what is known as offer to perform or tender. Sec.38 of the act lays down

that if a valid tender is made and is not accepted by the promisee, the promisor shall not be responsible for non performance nor shall he lose his rights under the contract.

REQUISITES \ ESSENTIAL OF A VALID TENDER:

A tender to be legally valid, must fulfill the following condition.

1. **Unconditional**

Tender should be unconditional. A tender is conditional where it is not as per the terms of the contract. If a tender is conditional, it is not valid and the promisor shall not be relieved thereby.

2. **Should be made at the proper time and place**

A tender should be made at the proper time and place. Generally the time and place of performance are fixed by the parties in their contract. The tender of performance must be made within the time and at the place so fixed.

3. **Whole obligation**

The tender must be of whole and not of that part tender in part is not tender. Moreover a tender by installment is not a valid tender unless the contract so provides.

4. **Should be made to the proper promisee**

A tender of performance made to a stranger i.e. third party is not a valid tender. It should be made to the promise or his duly authorized agent.

5. **Must be for agreed quantity and quality**

A tender for the delivery of goods must be for the quantity and quality agreed upon.

6. **Reasonable opportunity to inspect**

When a tender of goods is made by the promissor an reasonable opportunity must be given to the promisee to inspect the goods to enable him to see whether the quality of the goods as per the contract.

7. **Should be made in legal tender**

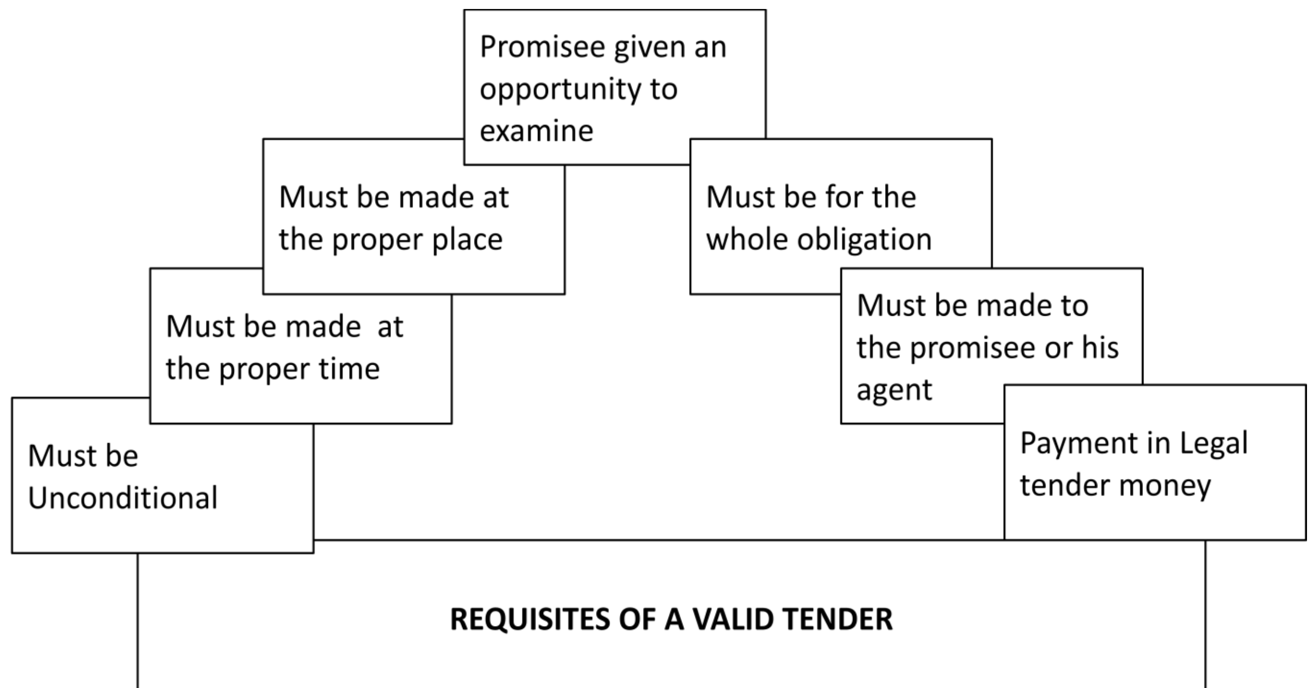
In case of payment of money, tender must be of the precise amount and in terms of legal tender money. If debtor offers to pay by cheque or a promissory note it is not a valid tender. Likewise if the debtors offers goods or gold or silver. The creditor has right to reject the tender as it is invalid tender.

8. **May be made to any one of the joint promisee**

If there are several joint promisees, it is not necessary for the promisor to offer performance to every one of them. This is so because sec 38 lays down that " a tender to one of the joint creditors is an offer to all of them."

9. **Ability and willingness to perform the obligation**

The party making a tender must be in position and willing to perform his promise. A party cannot be said to be able and willing if he has neither possession of nor control over the goods he has promised to deliver.



EFFECT OF REFUSAL OF PARTY TO PERFORM PROMISE WHOLLY [Sec.39]

Who must perform the Contract: -

- The Promisor [Sec.40]
- The Agent [Sec. 40]
- The legal representative [Sec.37]
- Third Person [Sec .41]
- Joint Promisors [Sec. 41]

Where a party to a contract has refused to perform or disabled himself from performing his promise in it entirely, the promisee may put and to the contract, unless he has signified by words or conduct his acquiescence in its continuance.

1. **The promisor [Sec.40]**

Generally the contract should be performed by the promisor himself or by his legal representative or by any other competent person employed by him. However contracts which involve the exercise of personal sill, volition or diligence of the promisor.

Example : [contract to sing, dance etc]- A promise to paint a picture for B. A must perform this promise personally because it involves personal skill of A.

2. **The Agent [Sec.40]**

   Contracts which are not of personal nature, may be performed by an agent appointed by the promisor for the purpose.

3. **The Legal Representative [Sec .37]**

   If the promisor dies, the legal representative of the deceased promisor is bound to perform the contract unless the contract was that the deceased promisor will perform the promise according to his skill. However the liability of the legal representative of the deceased promisor is limited to the extent of the property he inherits from the promisor sec 37.

4. **Third person [Sec 41]**

   The performance of contract by a third person is also effective, if the promisee accept the same. Once the promisee accepts the performance from a third person, then he cannot compel the promisor to perform the contract again.

DISCHARGE OF A CONTRACT:

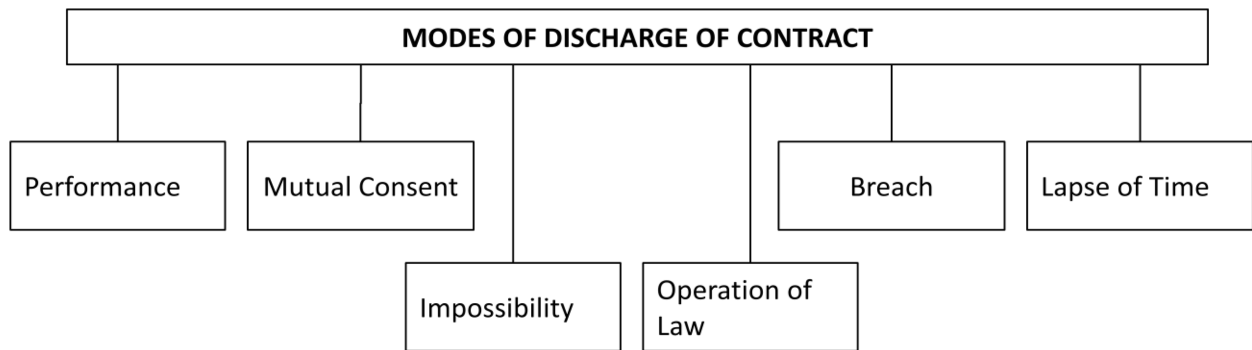
Meaning of Discharge of a Contract:

When the rights and obligations arising out of a contract are extinguished, the contract is said to be discharged or terminated. Thus the discharge of a contract means that the parties are no more liable under the contract.

Various Methods of Discharge:

Following are the various modes in which a contract may be discharged:

1. **By breach of Contract**
2. **By operation of law**
3. **Discharge by lapse of time**
4. **Discharge by impossibility**
5. **Discharge by Mutual agreement**
6. **Discharge by performance**



1. Discharge by Performance:

A contract can be discharged by performance in any of the following ways.

a. By Actual Performance:

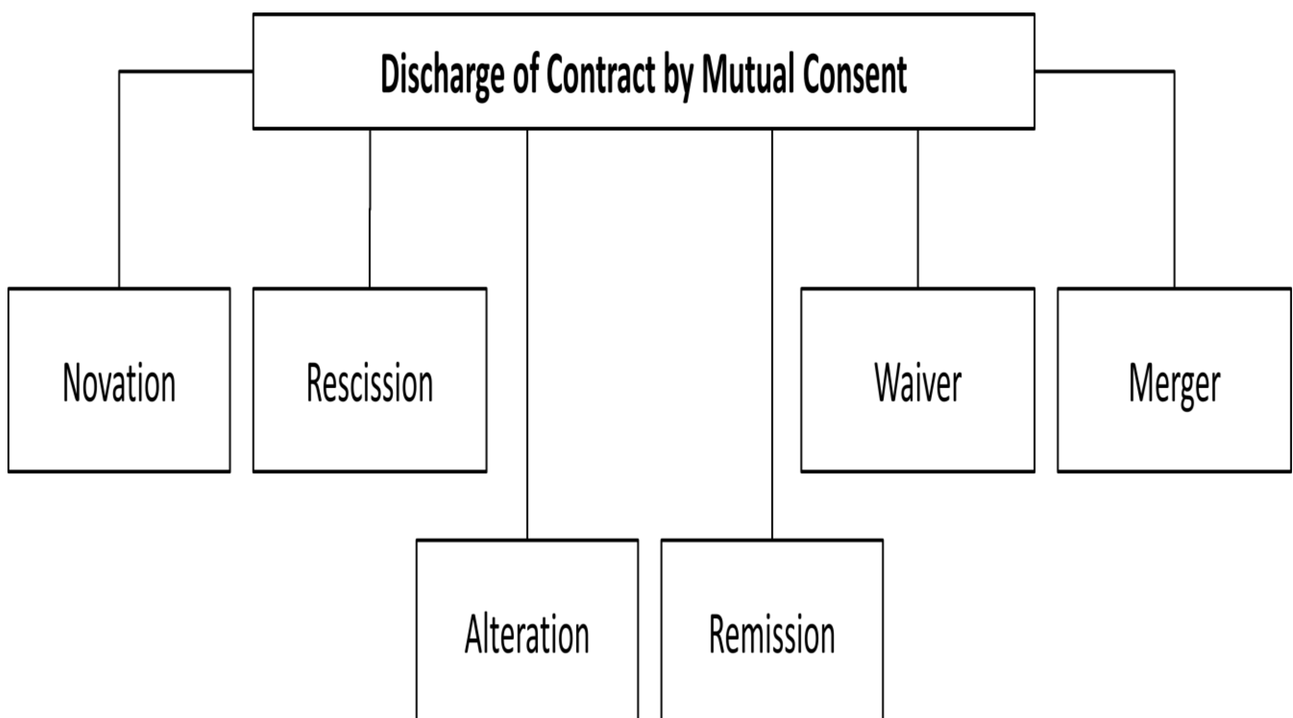
A contract is said to be discharged by actual performance when the parties to the contract perform their promises in accordance with the terms of the contract.

b. By attempted performance or Tender:

So far as the tenderer of performance is concerned, a contract is said to be discharged by attempted performance when the promisor has made an offer of performance to the promise but it has not been accepted by the promise.

2. Discharge by Mutual agreement:

Since a contract is created by mutual agreement, it can also be discharged by mutual agreement. A contract can be discharged by mutual agreement in any of the following ways.



Novation [Sec 62]:

Novation means the substitution of a new contract for the original contract. Such a new contract may be either between the same parties or between different parties. The consideration for the new contract is the discharge of the original contract.

Rescission [Sec 62]:

Rescission means cancellation of the contract by any party or all the parties to a contract.

Alteration [Sec 62]:

Alteration means a change in the terms of a contract with mutual consent of the parties. Alteration discharges the original contract and creates a new contract. However, parties to the new contract must not change.

Remission [Sec 63]:

Remission means acceptance by the promise of a lesser fulfillment of the promise made. According to sec 63, "every promise may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit".

Waiver:

Waiver means the abandonment of a right which a person is entitled to. That is, waiver means abandoning the rights. Where a party waives his right under the contract, the other party is released of his obligations. A waiver is nothing unless it amounts to a release. To constitute a waiver neither an agreement nor consideration is necessary.

Merger:

Merger takes place when an inferior right accruing to a party, under a contract merges into a superior right accruing to the same party either under the same or the other contract. In such cases, the inferior rights merger into the superior rights, and on merger the inferior rights vanish and are not required to be enforced.

Example:

A purchases a house, which he was having on lease. His right as a lessee will merge into his right as on owner, as right of a lessee is inferior to the right of an owner.

3. Discharge by impossibility

If the performance of a contract is impossible, the contract is discharged. This is because the parties cannot perform their respective obligations. The impossibility of performance may be two types.

- ➢ Impossibility at the time of agreement
- ➢ Impossibility arising subsequent to the formation of contract

4. Discharge by lapse of time

A contract is discharged by lapse of time. The limitation act 1940 lays down that a case of breach of a contract legal action should be taken within a specified period.

Lapse of time terminates a contract the period of limitation for simple contract is three years if the three years expire and creditors fails to file a suit to recover his amount, the debtor is discharged from his liability.

5. By Operation of Law

a.) Death

Death of promisor results in termination of the contract in case involving personal skill or ability. In other cases, the rights and liabilities of the deceased person pass on the legal representative.

b.) Insolvency

A contract is discharged by the insolvency of one of the parties to it when an insolvency court passed an "order of discharge" exonerating the insolvent from liabilities on debts incurred prior to his adjudication.

c.) Merger

Merger takes place when an inferior right accruing to a partly, under a contract merges into a superior right accruing to the same party either under the same or the other contract.

6. By Breach of Contract

The breach of contract means the failure of a party to perform his obligations. The party who fails to perform his obligations is said to have committed a breach of contract. Breach of contract discharge the aggrieved party from performing his obligations. It may arise in any one of the following forms.

a.) <u>Anticipatory breach of contract</u>

Anticipatory breach of contract occur when a party repudiates it before the time fixed for performance has arrived or when a party by his own act disable himself from performing the contract. It is the premature destruction of the contract.

b.) <u>Actual breach of contract</u>

- ❖ Actual breach of contract at the time when the performance is due

This type of breach of contract occurs when a person does not perform his part of the contract at the stipulated time. Here the person who failed to perform his part will be liable for its breach.

❖ Breach during the performance of the contract.
Actual breach of contract also occurs when during the performance of the contract, one party fails or refuses to perform his obligation under the contract.

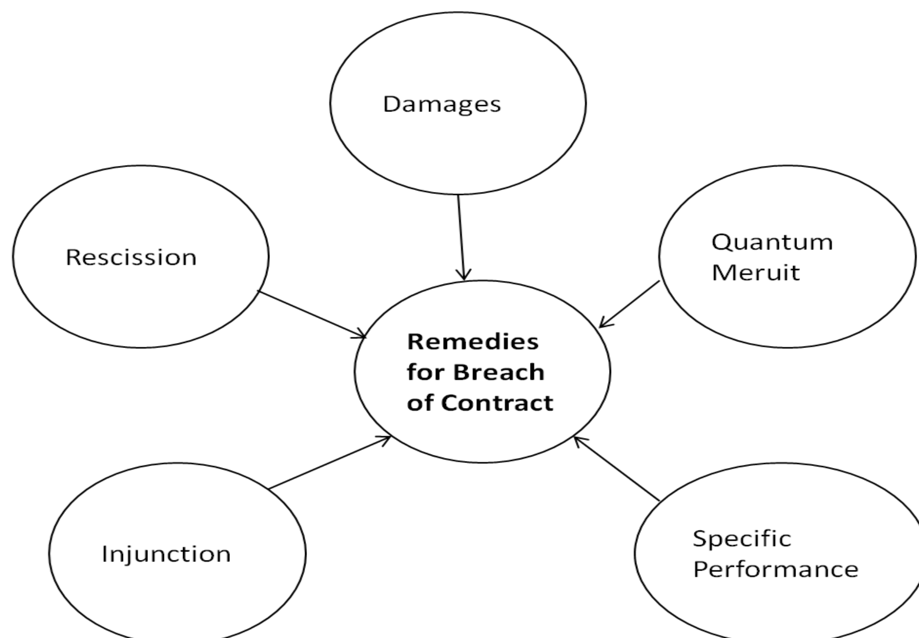
REMEDIES OF THE BREACH OF CONTRACT:

Meaning:

Parties to a lawful contract are expected to perform their respective promises. When one of the parties refuses to perform his promise he is said to have committed a breach of the contract. Whenever there is breach of contract, the injured or the aggrieved party is entitled to bring an action for damages. A right of action is conferred upon the party injured.

In case of breach, the aggrieved or injured party has one or more of the following **remedies.**

i. Suit for rescission
ii. Suit for damages
iii. Suit upon quantum meruit
iv. Suit for specific performance
v. Suit for injunction.



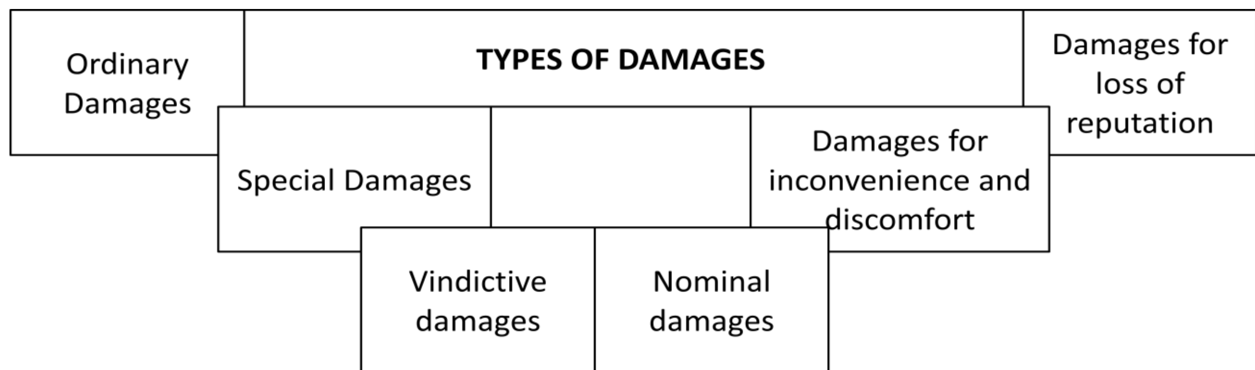
i. Suit for Rescission:

Rescission means setting aside or canceling. In other words, the term "rescission" may be defined as the cancellation of the contract. When a contract is broken by one party, the other party may treat the breach as discharge and refuse to perform his part of the contract, (i.e) putting an end to the contract. If the aggrieved party intends to sue the guilty party for damages for breach of contract, he has to file a suit for rescission of the contract.

ii. Suit for Damages:

The damages are a monetary compensation allowed to the injured party for the loss or injury suffered by him as a result of the breach of contract. In other words the term 'damages' is used to mean compensation in money as a substitute for the promised performance. The fundamental principle underlying damages is not punishment but compensation. Damages are to be awarded for losses which naturally arose from the breach. The guilty party is liable to pay damages to the aggrieved party. The court will compel the party in breach to make good the loss by paying to the other party, which may be, kinds of Damages:

Kinds of Damages:



- Ordinary damages or general damages.

  Damages that arise in the ordinary course of events from the breach of contract are called ordinary damages.

- Special damages

  Special damages are those damages that are payable for the loss arising on account of some special or unusual circumstances. That is they are not due to the natural and probable consequences of the breach of the contract.

  They constitute the indirect loss suffered by the aggrieved party on account of breach of contract. They can be recovered only when the special circumstance. Responsible for the special loss were made known to the other party at the time of contract.

- **Exemplary or vindictive damages:**

  These damages are awarded against the party who has committed a breach of the contract with the object of punishing the erring as defaulting party and to compensate the aggrieved party. Generally these damages are awarded in case of action on lost or breach of promise.

  For example breach of contract to marry, dishonor of customers cheque by the bank without any proper reason.

- **Nominal damages.**

  Nominal damages are arrived to the aggrieved party when there is only technical violation of the legal rights. Here no substantial loss is caused. These damages are very small in amount. There are awarded simply to recognize the right of the party to claim damages for the breach of the contract.

3. Suit upon Quantum Meruit

In literal sense, the expression "quantum meruit" means 'as much as earned'. In legal sense it means payment in proportion to work done. This principle provides for the payment of compensation under certain circumstances, to a person who has rendered goods or services to another person under a contact which could not or has not been performed fully.

4. Suit for the specific performance

Sometimes, the damages are not an adequate remedy for breach of the contract. In such cases the court may at the suit of the party not in breach, direct the party in breach to carry out his promises as per the terms of the contract. This is known as specific performance.

5. Suit for Injunction

The term "injunction" may be defined as an order of the court, instructing a person to refrain from doing some act that has been the subject matter of contract where a party has promised not to do something and he does it and thereby commits a breach of contract, the aggrieved party may seek the protection of the court under circumstance and obtain an injunction.

RECIPROCAL PROMISES:

Under Sec. 2(f), "Promises which from the consideration or a part of consideration for each other are called reciprocal promises". In the case of bilateral contracts, each party is only the promissor but the promisee also, since one of them gives a promise in exchange for the other. A promise against a promise is a good consideration.

An agreement may consist of either

a. a promise supported by consideration given or
b. a promise support by another promise

When an agreement is supported by another promise, it will be a reciprocal promise.

QUESTION BANK

ONE MARK:

1. Bill Purchased a can of Sipep from the Ajax Minimart. After he finished drinking the Sipep, Bill noticed that the can contained dead insects stUCk on the inside bottom of the can. In a strict prodUCt liability tort action against Ajax, Bill mUSt prove, among other things, that:

a. Ajax is a merchant selling Sipep.

b. Ajax knew or shoUld have known of the defective condition.

c. Ajax had prior notice of other similar problems with Sipep prodUCts.

d. Ajax actUally placed the dead insects into the can.

2. Under which of the following sitUations does strict prodUCt liability apply?

a. Sale of a defective and Unreasonably dangeroUS prodUCt.

b. ManUfactUre of a defective and Unreasonably dangeroUS prodUCt.

c. Both (a) and (b) are correct.

d. Neither (a) nor (b) are correct.

3. On May 1, Back-Talk CompUter Store offerd to sell five (5) compUter servers to

Gatekeeper Company for $5,000.00 each, delivery to be on May 30. Later that day (May 1), Gatekeeper responded that it would buy the computers only if they were delivered within three business days. Back-Talk notified Gatekeeper the next day, May 2, that it would not be able to deliver the goods within the time requested by Gatekeeper. Which of the following is true regarding Back-Talk's offer? a. There is no contract between Back-Talk and Gatekeeper.

b. Gatekeeper's additional term became part of the contract, so Back-Talk is obligated to deliver the goods within three business days.

c. Back-Talk's offer was accepted by Gatekeeper

d. Gatekeeper may later accept Back-Talk's May 1 offer if it is then willing to accept delivery in four weeks.

4. The body of law which establishes rights between persons and provides for redress for violation of those rights is known as:

a. Criminal Law. b. Civil Law. c. The Uniform Commercial Code. d. Stare decisis.

5. Donny threw a knife at Sally, intending to injure her severely. However, Donny missed Sally. Sally saw the knife just as it whizzed by her head, missing it by about one inch. As a result, Sally was very scared. Sally sued Donny for assault and battery. Which of the following is most correct?

a. Donny will be liable for battery, but not assault.

b. Donny will be liable for assault, but not battery.

c. Donny will be liable for assault and for battery.

d. Donny will not be liable for either assault or battery because this is only a criminal matter.

6. In most states the following types of contracts are within the statute of frauds.

a. Contracts for the sale of an interest in personal property.

b. Contracts that can be performed within a year from the date of their formation.

c. Contracts for the sale of goods.

d. Contract sfor the sale of goods for a price of $500 or more.

7. On May 1, 2005, Eckerly Realty Inc. mailed a written offer to Masse for the sale of an office building. The offer included an express term that it would expire on June 30, 2005 if the acceptance was not delivered into the hands of the offeror by the expiration date. On June 30, 2005 at 8:00 a.m., Masse sent a written acceptance to Eckerly via Masse's personal messenger. However, the messenger was not able to deliver the acceptance until July 1, 2005. On July 2, 2005, Eckerly contacted Masse, informing him that the acceptance had been delivered one day late. As a result, Eckerly refused to honor the acceptance. Which of the following is the most correct statement?

a. There is no contract between Eckerly and Masse. However, if Masse woUld have mailed the acceptance on JUne 30, 2005, a contract woUld have been created.

b. There is a contract between Eckerly and Masse. The moment that Masse gave the acceptance to the messenger, a contract was formed becaUSe acceptances are valid immediately Upon dispatch.

c. There is a contract between Eckerly and Masse. The fact that the acceptance arrived only one day late is of no significance.

d. There is no contract between Eckerly and Masse.

8. Which of the following statements is correct concerning the "reasonable person" standard in tort law?

a. The reasonable person standard varies from person to person.

b. The reasonable person standard focUSes on the defendant's sUbjective mental state rather than on the defendant's behavior.

c. A person with a physical disability mUSt act as woUld a reasonable person with the same disability.

d. A person with a mental disability mUSt act as woUld a person with the same mental disability.

9. Robert makes the following statement while negotiating the sale of his car, "This is the sharpest car on the market." His statement may sUpport a claim for:

a. misrepresentation. b. fraUd. c. fraUd and misrepresentation. d. none of the above.

10. PaUla rented an apartment to Dave for $500 per month. PaUla and Dave signed a one- year lease, to be effective beginning JanUary 1st. After three months, Dave decided that he did not like the apartment. He gave PaUla a 30-day written notice, stating that he woUld vacate the rental Unit at the end of the thirty days, which was April 30th. Upon receipt of Dave's notice, PaUla made reasonable efforts to find a new tenant. Nevertheless, the apartment remained vacant from May 1 st. throUgh JUne 30 th. PaUla re-rented the apartment beginning JUly 1 st. for one year. PaUla sUes Dave in small claims coUrt. What is the likely oUtcome?

a. PaUla is entitled to the balance of the lease, or $4,000, becaUSe Dave did not have a valid reason to breach the contract.

b. PaUla is entitled to nothing, becaUSe Dave gave PaUla thirty-days written notice.

c. PaUla is entitled to $1,000, becaUSe she tried to find another tenant immediately Upon learning of Dave's intent to breach the contract, bUt was Unable to re-lease the apartment Until JUly 1 st.

d. PaUla is entitled to $500, which represents one-month's rent.

11. Tom and Jerry entered into a contract whereby Tom agreed to sell Jerry $1,000 worth of heroin, an illegal substance. This is an example of a:

a. Quasi contract. b. void contract. c. voidable contract. d. secondary party beneficiary contract.

12. Law of contract in India is contained in

a) **The Indian Contract Act 1872**

b) The Indian Contract Act 1972

c) The Indian Contract Act 1930

d) The Indian Contract Act 1932

13. The Indian Contract Act applies to:

a) **Whole of Indian expect the State of Jammu and Kashmir**

b) Whole of India including the State of Jammu and Kashmir.

c) Whole of India except Goa, Daman, Diu

d) Whole of India including Goa, Daman, Diu

14. The Indian Contract Act came into force on

a) 1 st September 1972

b) **1 st July 1932**

c) 1 st September 1872

d) 1 st July 1930

15. A Jus in Personam means a right against

a) A specific person b) The Public at large c) A specific thing d) None of these

16. The legal relationship between the middleman and the businessperson is governed by

a. Law of Business b. Law of Surety c. Law of agency d. None of the above

(ANSWERS: 1. c 2. c 3. d 4. d 5. b 6. a 7. c 8. a 9. b 10. b 11. d 12. d 13. c 14. d 15. c 16. b

17. The person who is represented by the agent is called the

a. Principal b. Principle c. Middle man d. None of the above

(Ans: a)

18. The______does not usually get any rights or responsibilities Under the Contract

a.Principal b. Agent c. Surety d. None of the above

(Ans: b)

19. __________of the agent is to act on behalf of principal is must

a. Consideration b. Rule c. Intention d. None of the above

(Ans: c)

20. Whatever a person can do personally , he can do through an agent exemption to this is

a. Marriage b. Doctor c. Advocate d. All of the above (Ans: d)

5 MARKS

1.State the essential of valid tender?(Nov2016)

2.Explain who must perform a contract?(apr2014)

10 MARKS

1.What is meant for discharge of contract ? states it types?(APR 2014)

2.State the different remedies available to the aggrieved party for a breach of contract?(NOV 2016)

3.Explain the kinds of Damages?(Apr-18)

UNIT – III

CONTRACT OF INDEMNITY AND GUARANTEE:

INTRODUCTION:

The contract of indemnity and guarantee are the special kinds of contracts. The principles of the general law of contract are applicable to them. Therefore, they must have all the essentials of a valid contract, for eg. Consideration, competency of the parties, lawful objects etc. the special legal provisions relating to these contracts are contained in sec 124 to 127 of the Indian Contract Act.

CONTRACT OF INDEMNITY.

Indemnity means to compensate or more good the loss. The contract of indemnity is entered into with the object of protecting the promise against anticipated loss.

Sec 124 of the Indian Contract Act defines a contract of indemnity as, "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person, is called a contract of indemnity".

PARTIES IN THE CONTRACT OF INDEMNITY:

I. Indemnifier:

A person who promises to make good the loss, that is, the promisor is called the Indemnifier.

II. Indemnified:

The person whose loss is to be made good, that is, the promise is called the indemnity – holder or the person called as indemnified.

Example:

A contracts to indemnity B against the consequence of any proceedings which Contract may take against B in respect of a certain sum of Rs.200. This is a contract of indemnity. Here A is the indemnifier and B is the indemnified.

Explain the essentials of a valid contract of indemnity.

The following are the essentials for a valid contract of indemnity:

i. The contract of indemnity must contain all the essentials of valid contract – competency of the parties, free consent, consideration, legality of the object etc.

ii. It is a contract between two parties. One person promise to save the other from any loss, which he may suffer.

iii. The loss may be caused by the conduct of the promisor himself or any otherperson.

iv. The contract of indemnity may be expressed or implied.

An express promise is one where a person promises in express terms to compensate the other from the loss. That is, an express contract is by words or by writing.

Example:

Policy of insurance is a good example for express contract of indemnity.

An implied promise is one where the conduct of the promisor shows that the promised to indemnity the other party against the loss suffered by him.

Rights of Indemnity Holder

As per the section 125 the rights of indemnity holder are

1.Damages. In a contract of indemnity the indemnity holder is entitled to recover from the promise and indemnifier all damages for which he may be compelled to pay in any suit as of any matter to which the promise the indemnity applies while acting within the scope of his authority.

2. Costs. Any person with indemnity holder and indemnified or promise is entitled to recover from promisor all costs which he may be compelled to pay in any suit in bringing .

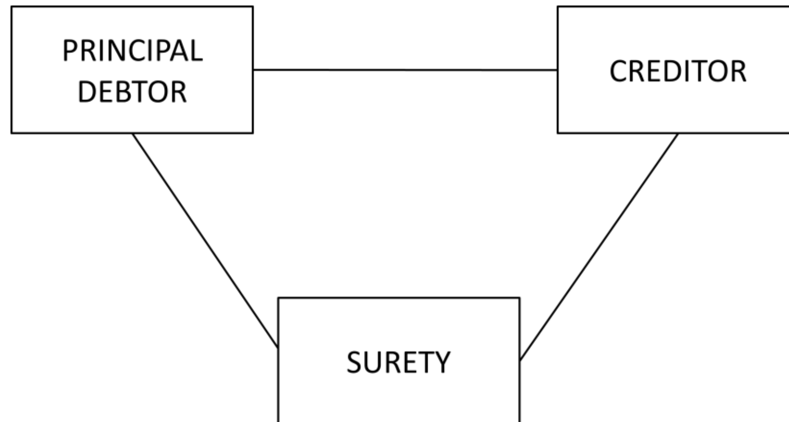
3. Sums. An indemnity holder is entitled to recover from indemnified all sums which he has paid under the term of compromise of any suit and compromise was not against the order of the promisor .

CONTRACT OF GUARANTEE

According to sec 126, “a contract of guarantee” is a contract to perform the promise, or discharge the liability, a third person in case of his default’. A guarantee may be either oral or written.

Parties involved in the contract of guarantee.

1. **Surety** – the person who gives the guarantee.
2. **Principal debtor** – the person for whom the guarantee is given.
3. **Creditor** – the person to whom the guarantee is given.



Example:

A gives a loan of Rs.100 to B and C promises to A that if B does not repay the loan, he will pay. This is a contract of guarantee.

A is the creditor; B is the principal debtor C is the surety.

ESSENTIALS OF A CONTRACT OF GUARANTEE:

- Concurrence of all the parties
- Liability
- Existence of a debt
- Consideration
- Writing not necessary
- No concealment of facts
- Essentials of a valid contract

Concurrence of all the parties

All the three parties namely, the principal debtor, the creditor, and the surety must agree to make such a contract.

Liability

In a contract of guarantee liability of the surety is secondary. The creditor must first proceed against the debtor and if the latter does perform his promise, then only he can proceed against the surety.

Existence of a debt

A contract of guarantee pre supposes the existence of a liability which is enforceable at law, if not such liability exists. There can be no contract of guarantee. Thus where the debt which is sought to be guaranteed is already time barred or void. The surety is not liable.

Consideration

There must be consideration between the creditor and the surety so as to make the contract enforceable. The consideration must also be lawful.

Writing not necessary

A contract of guarantee may either be oral or written [sec.126] .It may be express or implied from the conduct of parties.

Essentials of valid contract

It must have all the essentials of a valid contract.

No concealment of facts

The creditor should disclose to the surety, the fact that are likely to affect the surety's liability. The guarantee obtained by the concealment of such facts is invalid. Thus the guarantee is invalid if it is obtained by the creditor by the concealment of material facts.

DIFFERENT KINDS OF GUARANTEE

Mainly there are two types of contract of guarantee. They are

i. simple guarantee
ii. Continuing guarantee.

i. Simple or specific guarantee:

A specific guarantee is one which is given for a specific debt, and comes to an end when the debt is paid. A specific guarantee once given is irrevocable.

Example:

A guarantees B, the payment of the price of certain goods to be delivered by B to C. It is to be paid in two weeks. B delivers them to C and C pays for them. Afterwards, B delivers some goods to C, which C does not pay. The guarantee given by A was only a specific guarantee and accordingly he is not liable for the price of them.

ii. Continuing guarantee:

Continuing guarantee relates to a series of transactions where the surety remains liable for a fixed sum till the continuance of guarantee.

Example:

A guarantee payment to B, a tea dealer to the amount of Rs.10000, for any tea be may supply to C from time to time. B supplies C with tea to the value of Rs.10000 and C pays B for it. Afterwards B supplies C with tea to the value of Rs.10000. But C fails to pay for it. As the guarantee given by A was a continuing guarantee he is liable to pay B to the extent of Rs.10000.

DISCHARGE OF SURETY:

A surety is said to be discharged when his liability comes to an end. The various mode of his discharge are explained below.

1. By Notice of revocation by surety (sec 130):

A continuing guarantee may be revoked at any time, by the surety as to future transactions, by giving a distinct notice to the creditor.

2. By death of the surety (sec 131):

Death of the surety will operate as a revocation of the continuing guarantee as to the future transactions unless the contract provides other wise no notice of death is to be given to the creditor. Here also the revocation is effective for future transactions only. So surety's heirs remains liable only for the transactions already entered into before the surety's death.

Other ways:

The other modes in which a continuing guarantee can be revoked are –

i. By novation (sec 62)

ii. By variance in the terms of contract (sec 133)

iii. By release or discharge of the principal debtor (sec 134)

iv. By compounding with the principal debtor (sec 135)

v. By creditor's act or omission imparing surety's eventual remedy (sec 139).

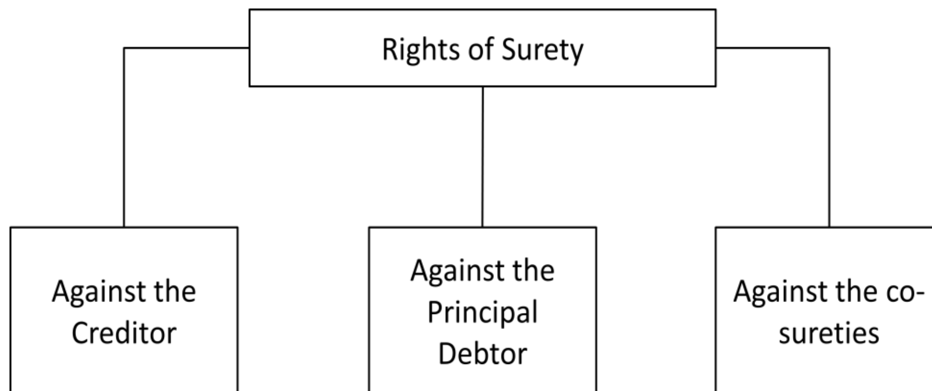
vi. By loss of security.

RIGHTS OF A SURETY:

(i) **The creditor**

(ii) **The principal debtor and**

(iii) **Contract-sureties.**



I. Rights against the Creditor:

- **Rights in case of fidelity guarantee:**

In case of fidelity guarantee (i.e) guarantee as to good behavior, honesty etc., of the principal debtor, the surety can ask the employer to dispense with the services of the employee if the latter is proved to be dishonest.

- **Before the payment of the debt guaranteed:**

A surety ma, after the debt has become due but before he is called upon to pay, require the creditor to sue the principal debtor to recover the debt.

- **Right to claim securities:**

On payment of the debt to the creditor the surety can recover all the securities which the creditor had with him either before or after the contract of guarantee was entered into.

- **Right of Equities:**

After paying the amount due to the creditor, the surety is entitled to all equities of the creditor that he had against the debtor as well as any other person with regard to the debt.

- **Right to claim set-off:**

The surety is also entitled to the benefit of any set-off or deductions from the amount of loan which the principal debtor might possess against the creditor in respect of the same transactions.

II. Right against the principal debtor:

- **Right of subrogation:**

The term subrogation means "substitution of one person for another". When the surety pays off the debt on default of the principal debtor, he takes the place of a creditor, and can enjoy right over the securities if any. He can also sue the principal debtor, for the balance if any after adjusting the securities.

- **Right of indemnity:**

The surety is entitled to recover from the principal debtor whatever sum he has paid 'rightfully' under the contract. The expression 'rightfully paid' includes the principal sum; interest thereon, nothing charges in case of a bill of exchange and costs of the suit if any.

- **Right to be relived from liability:**

The surety can ask the principal debtor to pay off his debts himself and relieve the surety from the liability. This surety can ask even before making any payment to the creditor. However, he can do so only after the debt has become due.

III. Right against the co-sureties:

When the debt is guaranteed by more than one surety. They are called co-sureties.

- **Right to contribution**:

Where there are sureties for the same debt for similar amount the co-sureties are liable to contribute equally and are entitled to share the benefit of securities equally.

Example:

A, B and Contract are sureties to D for the sum of Rs.3000 lent to E. E makes default in payment. A, B and Contract are liable as between themselves to pay Rs.1000 each.

- **Bound in different sums:**

According to sec 147, "co-sureties who are bound in different sums are liable to pay equally as for as the limits of their respective obligations permit". Therefore, the liability when apportioned equally will be subject to the maximum each one has guaranteed.

CONTRACT OF BAILMENT AND PLEDGE

Introduction:

The contracts Bailment and pledge are the special types of contracts. The legal provisions, relating to these contracts are contained in sec.148 to 181 of the Indian Contract Act. This ad does not deal with al types of bailment and pledge. It only deals with the general principles relating to these contracts.

Bailment [Sec. 148]

The term "Bailment" takes it is roots from the French work "barter" which means "to deliver"?.

"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 directions of the person delivery them."

Bailor:

The person who is delivering the goods is called the "Bailor".

Bailee:

The person to whom the goods are delivered is called the "Bailee".

Example: A gave his washing machine to B, a mechanic for repair. This is a contract of bailment between A and B.

REQUISITIES OF BAILMENT

i. Contract
ii. Delivery of possession of goods
iii. Return of specific goods

1. **Contract**

Bailment is always based upon a contract. However a contract may be express or implied.

Example : A delivered his car to B a mechanic for the purpose of repairing. In this case there is express contract of bailment between A and B.

2. **Delivery of possession of goods : sec 149**

The delivery of possession of goods is an essential requisite in a contract of bailment. If the possession of goods is not delivered to the Bailee, then there will not be any contract of bailment.

Example: A, a seller of cars sells a Maruthi car to B who leaves the car in the possession of A. A becomes a Bailee, although originally he was the owner.

Some purpose : sec 148

The terms bailment specifically states that the goods should be delivered by the Bailor to the Bailee for some specific purpose. Hence there should be some purpose for delivering the goods to the Bailee

Example: A delivered his furniture to B, a carpenter for the purpose of repair, there is a contract of bailment between A and B.

3. **Return of specific goods**

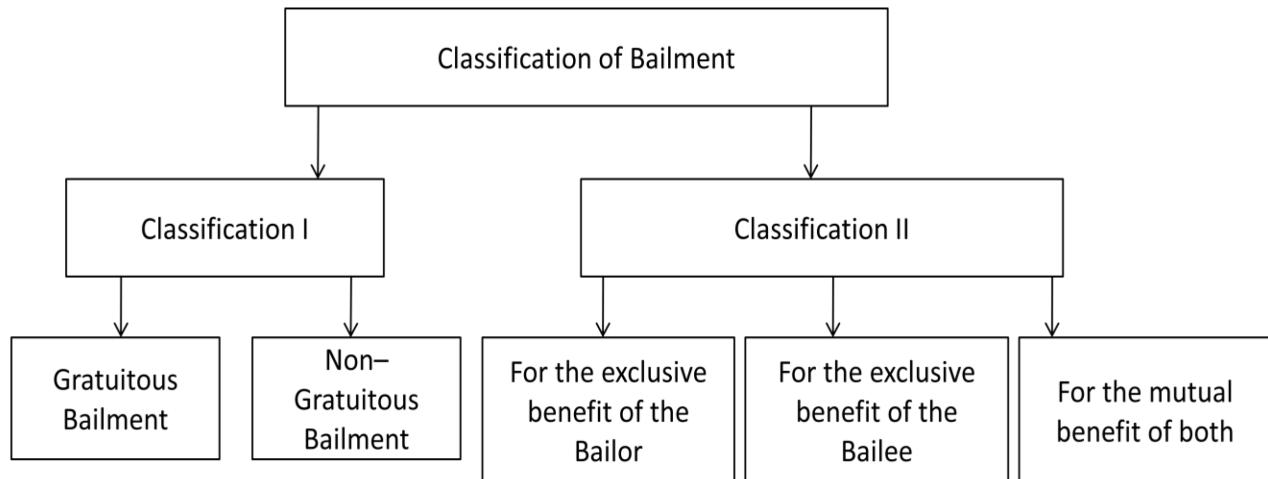
Goods are delivered upon a condition that they are to be returned in specific. On the accomplishment of the purpose of the contract of bailment, the very goods in their original form are to be returned by the Bailee or otherwise to be disposed of according to the directions of the Bailor. However goods may be returned in its original form or in it is altered form.

For example: Delivery of a piece of cloth to a tailor to make it into a coat

CLASSIFICATIONS OF BAILMENT:

Bailment may be classified on the basis of

- **i.** Benefit and
- **ii.** Reward



Kinds on the basis of Benefit:

On the basis of benefits, bailment may be classified into three types:

i. Bailment for the Exclusive benefit of Bailor:

It may be in the case of safe custody, where goods are delivered to a neighbor or someone else for safe custody without any charge while the bailor goes away.

ii. Bailment for the Exclusive benefit of Bailee:

It may be in the case of a delivery of a thing to someone else for his use without any charge, for e.g. delivery of scooter to a friend to go somewhere.

iii. Bailment for Mutual Benefit:

In this type of Bailment delivery of goods is done with some consideration, for e.g. delivering a scooter to a mechanic for repairs.

Kinds on the basis of Reward:

On the basis of reward, bailment is classified into two:

i. Gratuitous Bailment:

It is one in which neither the bailor nor the bailee is entitled to any remuneration, for example, A gives his book to Bailment for reading.

ii. Non-Gratuitous Bailment:

It is a bailment for some charges. Either the bailor or the bailee is entitled to remuneration. For example, cycle let out for hire, or cycle given for repair for repair etc.,

DUTIES OF BAILOR AND BAILEE

DUTIES OF BAILOR

i. To disclose faults in the goods bailed [sec.150]
ii. To bear extra ordinary expenses
iii. To indemnify Bailee
iv. Receive back the goods

1.) To disclose faults in the goods bailed [sec.150]

The Bailor is bound to disclose to the Bailee to known defects in the goods bailed. If he fails to do so he is liable for damages arising to the Bailee from such defects.

2.) To bear extra ordinary expenses

The ordinary and reasonable expenses are to be borne by the Bailee. However it is the duty of the Bailor to bear the extra ordinary expenses made by the Bailee for the purpose of bailment.

3.) To indemnify Bailee

If the title of the Bailor to the goods is defective and as a consequence the Bailee suffers. It is the Bailor's duty to indemnify that is compensates the Bailee for the loss suffered by him.

4.) To receive back the goods

It is the duty of the Bailor to receive the goods back when they are returned by the Bailee on the expiry of the term of bailment or on the fulfillment of the purpose of the bailment. If

the Bailor refuses to receive the goods back, then he becomes responsible to pay the compensation for the necessary expenses of custody to the Bailee.

DUTIES OF BAILEE

- To take reasonable care of the goods bailed
- Not to make any unauthorized use of goods
- Not to mix the goods bailed with his own goods
- Not to set up an adverse title.
- To return the goods
- To return any accretion to the goods bailed.

1. To take reasonable care of the goods bailed

It is the duty of the Bailee to take reasonable care of the goods bailed to him. He must take as much care as an ordinary sensible man would take under the similar circumstances. In respect of his own goods of the same type.

If he has taken the required degree of care, then he is not liable for any loss or destruction of the goods bailed sec 152. However if the Bailee is negligent in taking care of the goods bailed. Then he is liable to pay damages for loss or destruction of the goods

2. Not to make any unauthorized use of goods.

The Bailee should use the goods bailed to him strictly in accordance with the conditions of the contract of bailment, if he unauthorized uses the goods bailed to him. The contract of bailment becomes voidable at the option of the Bailor. Further the Bailee is also liable to the Bailor for any loss or damage caused to the goods on account of such unauthorized use of the goods, even though he is not guilty of negligence and even if the damages is the result of an accident.

- **Not to mix the goods bailed with his own goods**

The Bailee must keep the goods bailed separate from his own goods. He should not mix them with his own goods

.

- **Mixing with the consent of the Bailor**

If the Bailee mixes the goods bailed with his own goods with the consent of the Bailor, both shall have a proportionate interest in such mixture [sec. 155]

- **Mixing without the consent of the Bailor and goods are separable [sec.156]**

  If the Bailee mixed goods bailed with his own goods without the consent of the Bailor and if the goods can be separated, the Bailee is bound to bear the expenses of separation as well as damages which arise due to such mixing of the goods: sec- 156

3. **Mixing goods without the consent of the Bailor and goods are inseparable [sec 157]**

If the Bailor mixes the goods bailed with his own goods and are not separable, the Bailee is liable to compensate the Bailor for the loss of the goods.

4. **Not to setup an adverse title –[sec 117]**

   The Bailee holds the goods on behalf of and for the Bailor. So he has to return them to him. He cannot deny the right of the Bailor as to the ownership of the goods. However if it is proved that the goods belonged to a person other than the Bailor by a competent authority he may return the goods to such a person.

5. **To return the goods**

The Bailee should return the goods bailed to the Bailor on the expiry of the period or/ on the fulfillment of the object for which the goods were bailed. The goods must be returned or disposed of according to the directions of the Bailor. If he fails to do so, he is responsible to the Bailor for the loss even if it arise without his negligence.

6. **To return any accretion to the goods [sec.163]**

In the absence of any contract to the contrary the Bailee is bound to the Bailor or according to his directions any increase or profit which may have accrued from the goods bailed.

<u>RIGHTS OF BAILOR AND BAILEE</u>

RIGHTS OF BAILOR

- Rights to enforce

- Rights to avoid the contract
- Rights to return the goods lent gratuitously
- Right to get compensation.\

a.) Rights to enforce

If the Bailee neglect in any one of his duties, the Bailee has a right to enforce them by filling a suit against the Bailee.

b.) Right to avoid the contract

If the Bailee does any act which is inconsistent with the terms of the bailment as regards the goods bailed the Bailor can terminate the bailment.

For example : A lets car to B for his private use only. But B used at as taxi. A can terminate the bailment.

c.) Right to return the goods lent gratuitously

When the goods are lent gratuitously, the Bailor can demand back the goods at any time even before the expiry of the time fixed or the achievement of the object: sec 159

d.) Right to get compensation

If any third person does some injury to the goods bailed or deprives the Bailee of the use of the goods, then the Bailor may file a suit against the wrong-doer, and recover compensation from him [sec180]

RIGHTS OF BAILEE

- Right to deliver the goods to any one of the joint bailers
- Right to deliver the goods to Bailor without title
- Right to deliver the goods to any one of the joint Bailor
- Right to apply to court to decide the title of the goods
- Right of lien.

a.) Right to deliver the goods to any one of the joint bailers

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

For example: A and B and C are the joint owners of a harvesting combine. They delivered it on hire to D for one month. After the expiry of one month D may return the "combine" to any one of the joint owners namely A, B or C.

b.) Rights to deliver the goods to Bailor without title [sec 166]

If the Bailor has no title to the goods and the Bailee in good faith, deliver them back to or according to direction of the Bailor, the Bailee is not responsible to the owner in respect of such delivery.

c.) Right to apply to court to decide the title to the goods [sec 167]

If the goods bailed is claimed by the person other than the Bailor, the Bailee may be apply to the court to stop its delivery and to decide the title to the goods.

d.) Right to lien

The Bailee has a right to exercise lien i.e. to refuse to return the goods to the Bailor until his lawful charges are paid to him.

LAW RELATING TO LIEN

Lien is a right available to a person to retain that what in his possession and which belongs to another, until the demands of the person in possession are satisfied". Thus, lien is available to person who has in his possession, the goods belonging to another entitling him to retain such goods till the debts due to him are paid. Once the possession is lost, lien is also lost. This right is sometimes known as possessory lien.

Types of Lien.

Lien is of two types. They are:

i. Particular Lien and

ii. General Lien

i. Particular Lien:

Particular or specific Lien means the right to retain the particular goods until claims arising on those goods are satified.

Example: A gives his watch to B for repair. B has 'particular lien' over the watch until A pays repairing charges to B.

Particular Lien is available under the following conditions:

1. The goods must be in the possession of bailee. It the possession is lost, the lien is also lost.
2. The bailee must have rendered some services involving the exercise of labour and skill in respect of goods bailed so as to confer additional value of the article.
3. The service must have been performed in full in accordance with the directions of the bailor, within the agreed time or a reasonable time.
4. The bailee can exercise this lien provided there is no contract to contrary.
5. The bailee must have rendered some service in relation to the thing bailed and must be entitled to some remuneration for it, which must have been paid.
6. The bailee retains only such goods on which he has expended labour or skill.

ii. General Lien:

It means the right to retain goods not only for demands arising out of the goods retained but for a general balance of accounts in favors of certain persons. That is, this right entitles a person to retain possession of any goods belonging to another for any amount due to him whether in respect of those goods or any other goods.

Difference between particular lien and general lien

S.NO	PARTICULAR LIEN	GENERAL LIEN

1	Particular lien can be exercised by all bailees	General lien can be exercised only by bankers, factor, wharfinger, attorneys and policy bailed.
2	Particular lien is available on those things only on which some skill or labour has been used or money incurred.	General lien is available on all goods bailed.
3	It can be used for the remuneration of services rendered on anything	General lien is used for any balance on accounts

TERMINATION OF BAILMENT

A contract of bailment is terminated in the following cases.

- On the expiry of the time
- On the fulfillment of the object
- On inconsistent act
- Gratuitous bailment
- On the death of the Bailor or the Bailee

1. **On the expiry of the time**

   Where the bailment is for a specific time, it terminates on the expiry of that time

2. **On the fulfillment of the object**

   The bailment terminates as soon as the object for which the goods were bailed has been fulfilled.

3. **On inconsistent act**

   If the Bailee uses the goods in an inconsistent manner as to the terms of the contract, the bailment terminates.

4. **On the destruction of the goods bailed**

   When the goods bailed are destroyed or becomes incapable of use for the purpose of bailment due to the charge in its nature, the bailment is terminated.

5. **Gratuitous bailment**

    In case of gratuitous bailment the bailment can be terminated by a notice from the owner to the Bailee provided the termination does not cause inconvenience to the Bailee

6. **On the death of the Bailor or the Bailee**

    A gratuitous bailment terminates on the death of the Bailor or the Bailee.

PLEDGE

Pledge or pawn is a special kind of bailment where a thing is delivered as security for the repayment of a debt. According to sec 172 of the contract act, "The bailment of goods as security for payment of a debt or for performance of a promise is called pledge". The bailor in this case is called the pawnor. The bailee is called the pawnee"

In other words, pawnor or pledge means the person who delivers the goods and pawnee or pledge means the person to whom the goods are delivered as security.

Example:

A borrows Rs.5000 from B and keeps his scooter as security for repayment of the debt. This kind of bailment of property is called a plege or pawn.

Essentials of Pledge:

Essential of a valid pledge are as follows:

1. The goods must be delivered by borrower to the lender as a security for repayment of debt or for performance of a promise.
2. The possession of the goods passes from one person to the other person and not the ownership.
3. Pledge can be of only movable goods – document of title, shares, valuables etc.
4. Immovable properties cannot be pledged.
5. The goods, pledged with the pawnee, to be returned on receipt of his full dues.

DUTIES AND RIGHTS OF PAWNOR

Duties of Pawnor:

i. It is the duty of the pawnor to repay the loan taken from the pawnee within the time.

ii. He has to compensate the pawnee for any extraordinary expenses incurred by him.

iii. Default or risk, if any, in the goods pledged, should be known be pawnee

Rights of Pawnor:

i. The person has the right to take back the goods pledged provided that he has paid the whole of the amount of debt alongwith any interest or charges thereon, to the pawnee.

ii. The duties of the pawnee are the rights of the pawnor.

iii. If the pawnor makes default in payment of the debt or performance of the promise at the stipulated time he may redeem the goods pledge at anusubsequenent time before the actual sale is made.

DUTIES AND RIGHTS OFPOWNEE:

Duties of pawnee:

The duties of pawnee are given below:

i. He has to take reasonable care of the goods pledged.

ii. He is not permitted any unauthorized use of the goods pledged.

iii. He has to return the pledged goods on the payment of debt.

iv. He should not do any act in violation of the terms of the contract.

v. He should not mix the goods pledged with his own goods.

vi. Any accruals to the goods pledged belong to the pledgor and should be delivered.

Rights of Pawnee:

i. Right of Retainer (sec 173)

ii. Right of Retainer for subsequent advances (sec 174)

iii. Right to extraordinary expenses (sec 175)

iv. Right in case of default by pawnor (sec 176)

- He may sue against the pawnor upon the debt or promise and may retain the goods pledged as a collateral security.
- He may sell the goods after giving a reasonable notice of the sale to the pawnor.

- He can recover from the pawnor any deficiency arising on the sale of the goods by him.

DIFFERENTIATE BETWEEN PLEDGE AND LIEN.

S.No	Pledge	Lien
1	Pledge is created by contract between the parties.	It is created by law.
2	Goods are bailed as a promise.	Lien is only a right to retain.
3	It gives right to sell	It gives no right to ell
4	It is terminated on returning the goods.	The right of lien is lost with the loss of the possession of goods.
5	Pawnee has the right to enforce his claim against pawnor.	A lien holder cannot sue to enforce his claim. It is merely a passive and possessory right.

DIFFERENTIATE BETWEEN PLEDGE AND BAILMENT.

S.No	Pledge	Bailment
1	Goods are pledged as a security.	Goods are bailed for carrying out specific purpose.
2	In case of default, the pawnee may retain the goods. He can sell the goods	The bailee can retain the goods bailed but he cannot sell it.
3	Pawnee has no right to use the goods.	Bailee may use the goods bailed as per the terms of the contract.

WHEN WILL A PLEDGE MADE BY A NON-OWNER OF GOODS BECOMES VALID? OR PLEDGE BY NON-OWNERS:

It is a general rule that it is only the owner who can make a valid pledge. Sections 178, 178A and 179 of the Indian contract Act provides certain circumstances in which the pledge made by a non-owner or co-owner is also valid. In the following cases, a non-owner can make a valid pledge.

i. Pledge by mercantile Agent:

According to sec 178, pledge by a merchant agent who is not authorized by the owner of goods, will be valid, if the following conditions are fulfilled:

a. The mercantile agent is in possession of goods.
b. Such possession is with the consent of the owner.
c. He acts in the ordinary course of business while making the pledge.
d. The pawnee acts in goods faith.

ii. Pledge by seller or buyer in possession after sale:

According to sec 30 of Sales of Goods Act, a seller left in possession of goods after sale and a buyer, who obtains possession of goods with the consent oft seller before sale, can create a valid pledge.

iii. Pledge by a person in possession under a voidable contract:

Where a person obtains possession of goods under a voidable contract, the pledge created by him will be valid.

iv. Pledge by person having limited interest:

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

v. Pledge by co-owner in possession:

One of the several joint owners of the goods in possession thereof, with the consent of the other co-owners, may create a valid pledge of the goods.

MORTGAGE

A mortgage is a method of creating charge on immovable properties like land and building sec 58 of the transfer of property act 1882, defines a mortgage as follows.

"A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a peculiar liability'. The person who transfers the interest in property is called a mortgagor and the person who gets interest in property is known as the mortgagee.

Features or characteristics of a mortgage:

i. A mortgage can be affected only on immoveable property.
ii. A mortgage is the transfer of an interest in the specific immovable property. This means the owner transfers some of his rights only to the mortgagee.
iii. The object of transfer of interest in the property must be to secure a loan or performance of a contract which results in monetary obligations.
iv. The property to be mortgaged must be a specific one.
v. The actual possession of the mortgaged property is generally with the mortgager.
vi. The interest in the mortgaged property is reconveyed to the mortgagee on repayment of the loan with interest due on.
vii. If the mortgager fails to repay the loan, the mortgagee gets the right to recover the debt out of the sale proceeds of the mortgaged property.

Hypothecation

Hypothecation is legal term that refers to the granting of a hypothec to a lender by a borrower. In practice, the borrower pledges an asset as collateral for a loan, while retaining ownership of the assets and enjoying the benefits therefrom.

QUESTION BANK:

ONE MARKS

1. An offer is

a) A Suggestion by one person to another

***b)* expression of willingness by a person to another to do something in order to obtain assent of the other person**

c) Communication of willingness of a person to another person

d) An intention of a person to do or to abstain from doing an act

2. A proposal when accepted becomes a

a) Promise b) Contract c) Offer d) Acceptance

3. Cross offers by two parties to each other

a) Amount to acceptance of one's offer by the other

***b)* Do not amount to acceptance of one's offer by the other**

c) Amount to an agreement

d) Amount to a contract

4. When a proposal is accepted, it becomes

a) Promise b) Contract c) Legal promise d) Tentative agreement

5. A person to whom proposal is made is called
a) Promisee b) Acceptor **c) Offeree** d) Promisor

6. A promise is

a) A valid offer b) A contract **c) An accepted offer** d) A valid agreement

7. Consideration means

***a)* Doing or abstaining from doing something at the desire of the promisor**

b) Doing or abstaining from doing something voluntarily

c) Doing or abstaining from doing something which he promisee is already under a duty to do

d) All of the above

8. Consideration is

a) Something in return b) Something of value c) Something invaluable d) Doing something voluntarily

9. An agreement made without consideration is

a) Valid b) Voidable c) Illegal **d) Void**

10. Consideration

a) Need not be adequate b) Need not be real

c) Need not have monetary value d) Need not be certain

11. Which of the following persons do not fall under the category of persons of unsound mind?

a) Alien b) Idiot c) Lunatics d) Drunken persons

12. Minor's agreement is

a) Void from beginning b) Voidable c) Void when court declares it void d) Valid

13. Consent means parties agreeing on

a) The terms of contract

b) Something about a contract

***c)* The something in the same sense**

d) The method of performance of contract

14. Free consent means

a) Parties agreeing on the same thing in the same sense
b) Parties agree to do something

***c)* Parties willfully agree on the same thing in the same sense**

d) Either a) or b)

15. Undue influence involves

a) Use of physical pressure

b) USe of position to obtain an Unfair advantage over the other

c) None of these

d) A threat

16. Fraud means

a) A false representation of fact made innocently with a view to deceive the other party

b) A false representation of fact made willfUlly withoUt any intention to receive the other party

c) A false representation of fact made willfUlly with a view to deceive the other party

d) None of these

17. The agent is specifically appointed by the principal for a particUlar task or a general fUnction. This type of appointment is called as

a. Ratification b. Express c. Implied d. Necessity

(Ans: b)

18. The ratification of an Agent can be done for a

a. Part of the contract b. Whole Contract c. Both a & b d. None of the above

(Ans: b)

19. The Agency when it is ratified it mUSt be commUnicated to the

a. Agent b. Principal c. Third Party d. All of the above (Ans: c)

20. The ratification can be done for the act which is done on behalf of

a. Agent b. Third party c. Principal d. All of the above (Ans: c)

21. where it is assUmed that the principal has aUthorized the person to act as his agent this type of Agency is created by

A. Ratification b. Estoppel c. Implication d. Express.

(Ans: c)

FIVE MARKS:

1. When the continuing guarantee may be revoked.
2. Explain the different types of Bailment(APR 2016)
3. What are the different kinds of guarantee?(NOV 2014)
4. What are the difference between particular lien and general lien?(APR 2014 & NOV 2015)
5. What are the rights and duties of pawnor and pawee?
6. Differentiate between pledge and lien.(APR 2016)
7. Differentiate between pledge and bailment.(APR 2013 & NOV 2015)
8. What are the rights and duties of of Bailor?

TEN MARKS:

1. Explain the essentials of a valid contract of indemnity.
2. Define Guarantee. & Explain the essential features of Guarantee?(NOV 2015)
3. Explain the nature and extent in surety's in liability(NOV 2013)
4. Define Bailment & Explain the Essential features of Bailment.
5. Discuss the rights of mortgagor and mortgagee.(APR 2014 & APR 2016)
6. When will a pledge made by a non-owner of goods becomes valid?

UNIT – IV

CONTRACT OF AGENCY

INTRODUCTION:

Modern business is becoming complex day by day. Due to vast expansion of the modern business, it is not possible for a person to carry on all the business transactions himself. Thus circumstances require a businessman depend upon another person to transact his business. A businessman must necessarily depend on others for the efficient running of the business. The other persons are called as 'agents'. The law relating to agency is dealt in sec 182 to 238 of the Indian Contract Act.

DEFINITION OF AGENT AND PRINCIPAL:

Sec .182 of the act define that "an agent is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the principal".

In other words, the person who acts on behalf of a businessman is known as an agent. The person to whom such act is done, or who is so represented is called the principal. The contract which creates the relationship of principal and agent is called an agent.

Example:

A appoint B to sell his car on his behalf. Here A is the principal. B is his agent and the relationship between A and B is called agency.

ESSENTIALS AS TO AGENCY:

The following are the essentials of the relationship of agency:

1. Capacity of the person [sec 183and 184]:

Only a person who is of the age of majority and is sound mind may employ an agent. Similarly, between the principal and the third persons, any person who is of the age of majority and of sound mind can become an agent. In other words, to become a principal as well as an agent, the persons should be of the age of majority and of sound mind.

2. Consideration [Sec 185]:

In order to create an agency, no consideration is necessary.

3. No contract of agency is needed:

It is not essential that a contract of agency be entered into. It is sufficient if a person acts on behalf of another and is accepted by the latter.

RULES OF AGENCY:

Agency revolves around two important rules namely,

1. What ever a person can do personally, he can do through an agent. However, there is an exception to this rule, (i.e) a very personal act like marriage.
2. What ever a person can lawfully do himself, he may also do the same through an agent. In otherwords, “Qui facit per aliumfacit per se” is the principle of agency, which means “He who does through another does by himself”.

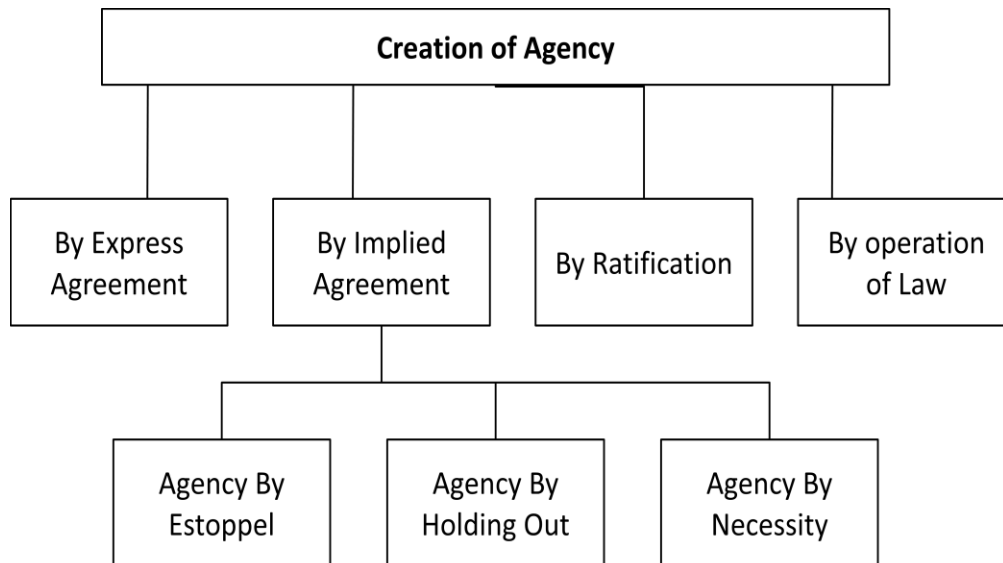
DISTINGUISH BETWEEN AGENT AND SERVANT.

S.No.	Agent	Servant
1	An agent is authorized to act on behalf of his principal and has power to create legal relations between the principal and third parties	A servant has no representative character. He has no authority to make contract on behalf of his master.
2.	An agent is not subject to the direct control supervision of the principal.	A servant acts under the direct control and supervision of the employer.
3.	An agent may work for several principals.	A whole time servant serves only one master.
4	The principal directs an agents “as to what is to be done”	The master has the right to direct not only “what work is to be done” but also “how the work is to be done”.
5	An agent may be paid by way of commission on the basis of work done.	A servant is paid by way of salary or wages.

VARIOUS MODES BY WHICH AN AGENCY MAY BE CREATED.

A contract of agency may be created by –

1. Express Agreement
2. Implied Agreement
3. Ratification
4. Operation of Law



1. Express Agreement:

An agreement is said to be express when it is given by words spoken or written. The usual form of a written contract of agency is the power of attorney on a stamped paper.

2. Implied Agreement:

Implied agency arises from the conduct, situation or relationship of parties. According to sec 187 of the act, "An authority is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case".

It includes:

i. Agency by Estoppels:

When a person, by his conduct or by statement, willfully leads another person to believe that a certain person is his agency, he is estopped from denying subsequently that person is not his agent.

Example:

A said B in C’s presence, the owner of goods that he was C’s agent and C authorized him to sell the goods. C listened and remained silent. Subsequently A sold the goods to B. This sale is binding on C and afterwards he cannot deny A’s authority to sell the goods. Here by remaining silent, C has accepted A as his agent.

ii. Agency by holding out:

This is a kind of agency by estoppels and something more than estoppels. Under this, there is some prior positive or affirmative conduct of the principal, which indicates that a certain person was already his agent.

Example:

A allowed B, his servant, o purchase some goods on credit from C, a shop keeper. B usually purchase goods from C on credit, and A used to pay the price on one occasion, A gave cash to B for the purpose of purchasing the goods, but B misappropriated the money and purchased the goods on credit in A’s name. in this case, A is bound by his prior conduct in holding out that B his agent. Thus, C can recover the price from A.

iii.Agency by necessity:

Generally the authority given by a principal to his agent is an express authority enabling tt agent to blind the principal by acts done within the scope of that authority. But in certain circumstances the law confers an authority in one person to act as agent for another with out requiring the consent of the principal. Sometimes extraordinary circumstances require that a person who is not really an agent should act as an agent of another.

Agency of necessity may arise in any of the following circumstances.

a. Where the agent exceeds his authority, bonafide, in an emergency.
b. Where the carrier of goods acting as a bailee, does, in an emergency.
c. Where a husband improperly leaves his wife without providing proper means for her subsistence.

3. Agency by operation of law:

An agency is also constituted by operation of law.

Example:

A partner is agent of the firm and the act of partner to carry on the firm in the usual way binds the firm and its partners. Similarly, promoter of a new company is its agent.

4. Agency by ratification:

Ratification means subsequent acceptance by the principal in respect of an act done by the agent without authority. In other words, ratification means the subsequent adoption and acceptance of an act originally done without authority or instructions. Ratification is an approval of a previous act or contract.

Example:

A buys certain goods on behalf of B. B did not appoint A as his agent. B may, upon hearing of the transaction, accept or reject it. If B accepts it, the act is ratified and A becomes his agent with retrospective effect.

THE ESSENTIALS / REQUISITES OF A VALID RATIFICATION:

Ratification becomes valid only if the following conditions are satisfied.

1. The agent must act on behalf of the principal:

An agent must contract as an agent. That is, if a person acts in his own name, which does not indicate any agent relationship, his act cannot be ratified. When an act is done on behalf of the rectifier, such act can be ratified by his own name cannot later shift into a contract in his own name cannot later shift it on to a third party.

2. The principal must be in existence at the time of contract:

The principal must have been in existence at the time when the act was done. This is because rights and obligations cannot attach to a non-existents person.

3. The principal must have contractual capacity:

The principal must be competent to contract both at the time of original contract and at time of ratification.

4. The principal must have full knowledge of material facts:

The ratification must be made with the full knowledge of all the materials facts, section 198 states that "No valid Ratification can be made by a person whose knowledge of facts of the case is materially defective".

5. Whole transaction must be ratified:

A person cannot ratify a part of the transaction which is beneficial to him and reject the rest. There cannot be partial ratification and partial rejection.

6. Ratification must be made within reasonable time:

The ratification become valid only if it is made within a reasonable time after the act to be ratified is done. However, where time to ratify is limited, ratification must be done before the time has expired

7. Act to be ratified should not be void or illegal:

Ratification can be made only of valid and lawful acts. An act which is void from the very beginning cannot be ratified. But a voidable contract may be ratified because it is not void from the very beginning.

8. Ratification does not injure a third person:

Any act which would becomes injurious to others by ratification, cannot be ratified section 200 states, a ratification cannot be made so as to subject a third party to damages or terminate any rights or interest of a third person.

9. Ratification may be express or implied:

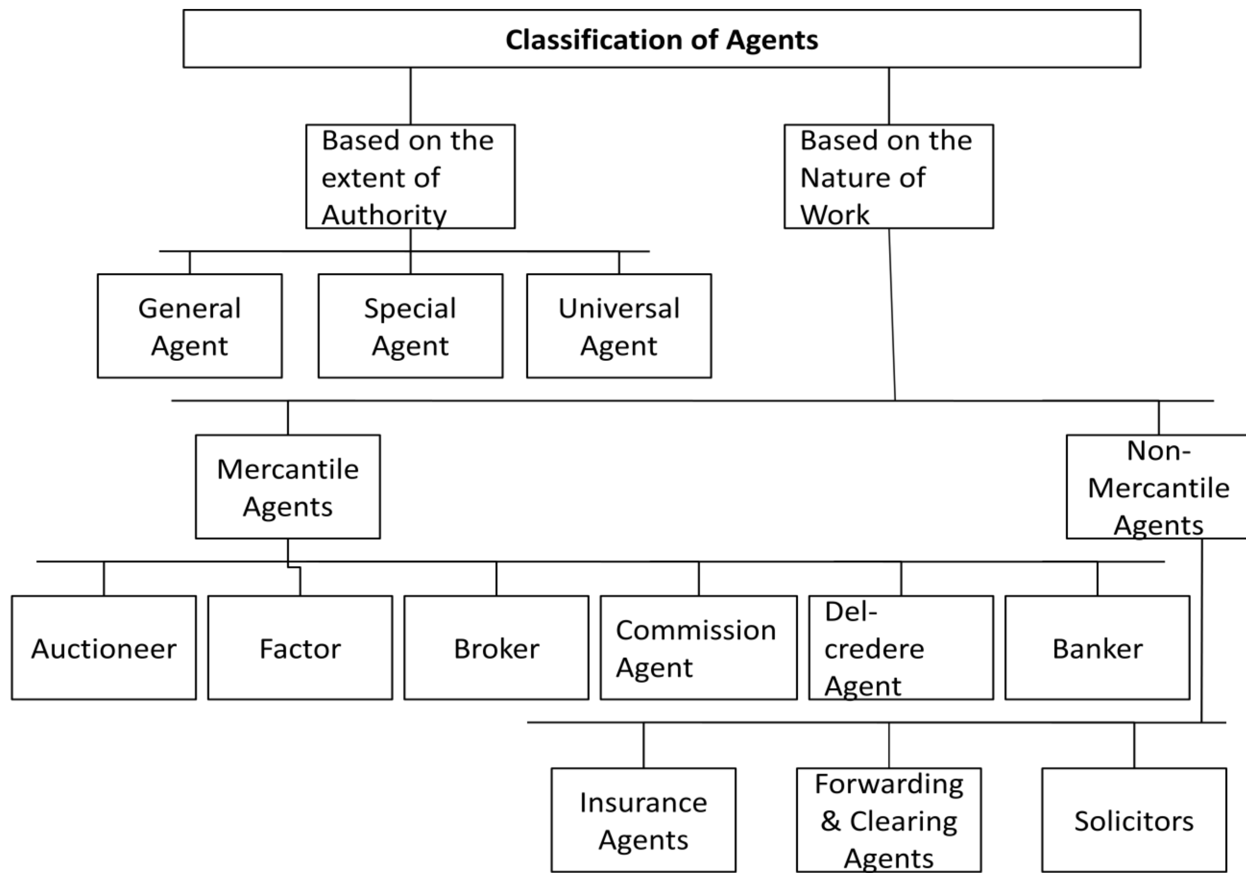
According to sec 197, “ratification may be expresses or may be implied in the conduct of the person on whose behalf the acts are done”.

10. Ratification must be communicated to concerned party:

Ratification must be communicated to the other party. Ratification of acts not within the principal’s authority is ineffective.

Various kinds of agents:

Agents can be classified into two broad categories namely,



I. Based on the nature of work performed:

1. Mercantile Agents:

Sec 2(a) of the sale of Goods Act, 1930, defines a mercantile agent as “a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purpose of sale or to but goods, or to raise money on the security of goods”. This definition covers factors, brokers, auctioneers, commission agents, delcredere agents and bankers.

i.Factors:

A factor is a mercantile agent entrusted with the possession of goods for y purpose of selling them who has an ostensible authority to do such things as are usual in the conduct of business.

ii.Broker:

A broker is an agent who is employed to buy or sell goods on behalf of another. He is employed to bring about a contractual relation between the principal and the third parties. He is not entrusted with the possession of the goods in which he deals.

iii. Auctioneer:

An auctioneer is an agent appointed by a seller to sell his goods by public auction for a reward generally in the form of a commission. He is primarily the agent of the seller, but after the sale has taken place, he becomes the agent of the purchaser also.

iv. Commission agent:

A commission agent is employed to buy and sell goods, or transact business generally for other persons, receiving for his labour and trouble, a money payment, called commission.

v. DelCredere Agent:

A delcredere agent is one who, in consideration of an extra commission, guarantees his principal that the persons with whom he enters into contract on behalf of the principal shall perform their obligations.

vi. Banker:

The banker is the agent of his customer. The relationship between a banker and his customer is really that of debtor and creditor.

2. Non-Mercantile agents:

Non-mercantile agents are those who do not usually deal in the buying and selling of the goods. They are appointed as agents by their principals to do some acts which are not done by mercantile agents.

i. Insurance agents:

Insurance agent is appointed to effect insurance policies on behalf of his principal. He receives commission for the services rendered by him.

ii. Counsels or Advocates:

Counsels or Advocates are normally engaged to conduct legal proceeding on behalf of the principals (i.e) Clients. They receive fees for their services.

II. Based on the extent of their Authority:

i. Special agent:

A special agent is one who is appointed to perform a special act or represent his principal in some particular transaction. He has limited authority. He has no authority to bind the principal in respect of any other act than that for which he is employed.

ii. General Agents:

A general agent is one who has authority to do all acts connected with a particular trade or employment.

iii. Universal Agents:

A universal agent is one who enjoys. Unlimited authority, to do all such acts as could lawfully perform.

Rights and duties of an agent .

Duties of Agent:

The duties of an agent to his principal are the following:

1. Duty to follow Principal's Instructions:

An agent is bound to conduct the business of his principal as per the directions of the principal or in the absence of directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business.

2. Duties to conduct the business with skill and care:

An agent is bound to conduct the 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 proper Accounts:

An agent is required to render proper accounts to his principal on demand. Rendering of proper accounts means not only producing accounts with relavent vouchers, but also explaining them.

4. Duty to communicate with principal:

It is the duty of an agent in cases of difficulty, to use all reasonable diligence in communicating with his principal and seeking to obtain his instructions.

5. Duty not to deal on his own account:

If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

6. Duty not to make secret profit:

The relationship between the agent and the principal is of mutual trust and confidence. Therefore it is an important duty of an agent not to make any secret profit in the business of agency. If the agent makes any secret profit, without the knowledge of his principal, then the principal can claim from the agent any such benefit which has resulted to him from the transaction (sec.210]

7. Duty to pay sums Received:

According to sec 218 of the Act, it is the duty of the agent to pay his principal all sums received on his account, after retaining all moneys due himself in respect of advances made or expenses properly incurred by him in conducting the business.

8. Duty not to Delegate Authority:

An agent must not delegate his authority to a sub-agent.

9. Duty to protect and preserve the principal's Interests:

An agent should protect and preserved the interests of the principal in case of his death or insolvency [sec209]

10. Duty not to set up adverse title:

The agent must not set up his own title or the title of third parties to the goods received by him from the principal.

Rights of an Agent:

The following are the Rights of an agent:

1. Right to Retain Money:

The agent has a right to retain any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of his remuneration and advances made or expenses properly incurred by him in conducting such business.

2. Right to Receive Remuneration:

An agent is entitled to his remuneration only after the completion of the act in regard to which the remuneration is payable in the absence of a special contract to that effect.

3. Right of Lien:

An agent is entitled to retain goods, papers and other properly whether movable or immovable of the principal received by him, until the amount due to himself for compensation, disbursements and services in respect of the same has been paid or accounted for to him. The agent can only retain the goods. He has no power to sell them.

4. Right of indemnity:

The employer of an agent is bound to indemnity him against the consequences of all lawful acts done by such an agent in exercise of the authority conferred upon him.

5. Right to compensation:

The agent has a right to receive compensation for injuries sustained due to neglect or want of skill on part of the principal.

6. To do Lawful Acts:

An agent having authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

7. In Emergency:

An agent has authority, in an emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own care, under similar circumstances.

8. Right of Stoppage of Goods:

An agent has the right of stoppage of goods in transit if he has bought goods either with his own money or by incurring a personal liability for the price and the principal has become insolvent.

RIGHTS AND DUTIES OF AN PRINCIPAL :

Duties of principal:

Duties of the principal are as follows:

1. Agent to be indemnified:

The employer of an agent is bound to indemnity him against the consequences of all lawfull acts done by such agent in exercise of the authority conferred upon him.

2. Against consequences of the Acts done in Good faith:

Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnity the agent against the consequences of that act, though it causes an injury to the right person.

3. Non-liability of Employer of Agent to do a criminal Act:

Where one person employees another to do an act which is criminal, the employer is not liable to the agent either upon the expenses or an implied promise, to indemnity him against the consequences of that act.

4. Duty to indemnity the loss for principal's neglect:

The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

5. To pay remuneration and dues:

It is the duty of the principal to pay the agent all of his dues, remuneration, commission etc and also to reimburse all advance and expenses incurred by him in exercise of his authority.

THE RIGHTS OF THE PRINCIPAL ARE AS FOLLOWS:

1. Right to Recover Damages:

If a loss is caused to the principal on account of the following, he is entitled to recover such a loss or damage from the agent.

1. The negligence of the agent , or
2. The disregard of the principal's instructions while conducting the agency business, or
3. The lack of skill, care and diligence on the part of the agent.

2. Right to Recover secret profits made by the agent:

If the agent has made any secret profit, the principal can obtain an account of such profits and recover them and resist a claim for remuneration.

RIGHTS AND LIABILITIES OF PRINCIPAL AND AGENT TO THIRD PARTIES:

The rights and liabilities of a principal in relation to third parties under contracts made by his agent depend upon

1. An agent contract as agent for a named principal
2. An agent contracts for a principal whose name he does not disclose.
3. An agent contracts in his own name but in reality for a principal whose existence he does not disclose.

I.Agent acting for a named principal

The rights and liabilities of a named principal for the acts of his agent may be discussed as below:

i)Acts of an agent within the scope of his authority

If an act is carried on by an agent within his authority, his acts are binding on the principal. However, the act done should be lawful.

ii) Acts of an agent Exceeding his authority:

It can be discussed under two heads as shown below:

a)Where the work can be separated:

Where an agent exceeds his agency to do work of the principal, the principal is bound by that part of the work which is within his authority if it can be separated from the part of the work which is beyond his authority.

b) Where the work cannot be separated:

Where an agent does more than what he is authorized to do, and such act cannot be separated from that which is within his authority, the principal is not bound by the transaction.

iii) Notice Given to agent:

The principal is bound by the notice given to the agent in the course of business. Thus, the knowledge of the agent is the knowledge of the principal.

iv) Liability by Estoppel:

The principal is liable for the unauthorized acts of the agent, if the principal has created an impression on the third party by his conduct that the agent has the authority to do such acts.

v) Liability for misrepresentation or fraud:

The principal is liable for the misrepresentation or fraud committed by his agent while acting in the course of his business.

II. Agent acting for an unnamed principal:

When an agent contracts as an agent for a principal but does not disclose his name, the principal is liable for the contract of the agent. But the unnamed principal should be in existence at the time of the contract and the acts must be within the scope of agent's authority.

However the agent is personally liable if he declines to disclose the identity of the principal when asked by the third parties.

AGENT ACTING FOR AN UNDISCLOSED PRINCIPAL:

In care of an agent acting for an undisclosed principal, the mutual rights and liabilities of the agent, principal and third party are as follows:

1. Rights and Liabilities of Agent:

Here agent contracts in his own name. So he is bound by the contract. He is personally liable to the third party also.

2. Rights and Liabilities of Third party:

If the third party has discovered that there is a principal, he may file a suit against the principal or his agent or both. In such a case, the third party must allow the principal, the benefit of all payments received by him from the agent.

3. Rights and Liabilities of principal:

The principal has the right in intervene and require the performance of the contract from the third party. In such cases, the other party may sue either the principal or the agent or both. The principal if he likes may also require the performance of the contract from the other party.

Define "substituted agent" and "sub-agent" and distinguish between sub-agent and substituted agent.

According to sec.191 of the Act, "a sub-agent is a person employed by and acting under the control of the original agent in the business of the agency".

According to sec 194 of the Act, "substituted agent is an agent, holding an express or implied authority to name another person to act for the principal in the business of agency, has

named another person accordingly, such person is not a sub-agent but an agent of the principal for such part of the business of the agency as is entrusted to him".

Difference between a sub-agent and substituted agent

1. A sub-agent is the agent of the original agent as he works under the control of the agent, whereas a substituted agent is the agent of the principal because he works under the control of the principal.
2. A sub-agent is responsible for all the acts to original agent and for the acts of fraud or willful wrong to the principal on the other hand, a substituted agent is responsible to the principal alone.
3. There is no direct contract between the sub-agent and the principal whereas there is direct contract between the substituted agent and the principal.

WHEN IS AN AGENT PERSONALLY LIABLE FOR THE CONTRACTS ENTERED INTO BY HIM ON BEHALF OF THE PRINCIPLE?

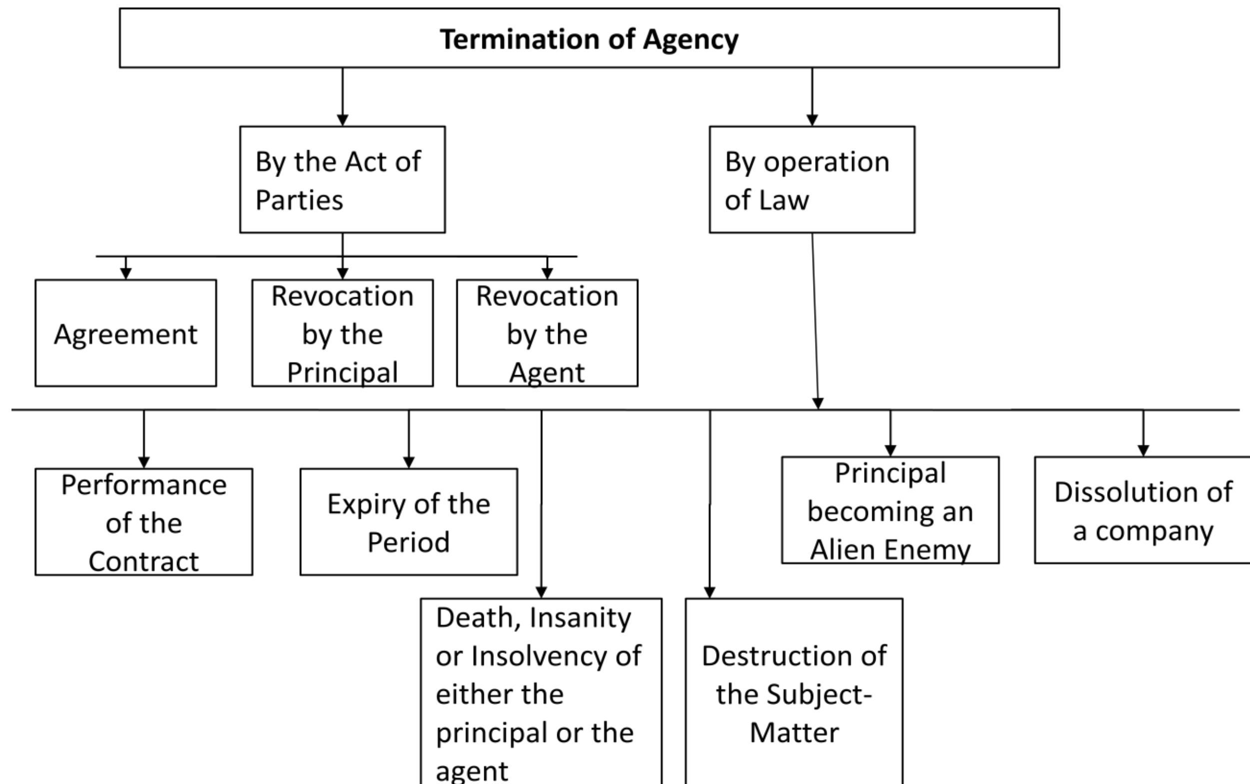
An agent is not personally Liable for the contracts entered into by him on behalf of his principal unless there is a contract to the contrary. Such a contract is presumed in the following circumstances [sec 230].

1. Where the agent acts for a foreign principal.
2. Where the agent acts for an undisclosed principal.
3. Where the agent acts for an Incompetent principal.
4. Where the agent acts for a Non-existing principal.
5. Where an agent receives or pays money by mistake or fraud.
6. Where the contract expressly provides.
7. Where the agent signs the Negotiable Instruments in his own name.
8. Where the agent contracts in excess of his authority.

DISCUSS BRIEFLY THE DIFFERENT MODES OF TERMINATION OF AGENCY AND WHEN DOES THE TERMINATION TAKE EFFECT?

Following are the two modes of termination of agency.

1. Termination of agency by act of the parties.
2. Termination of agency by operation of law.



I. Termination of Agency by Act of the parties:

An agency can be terminated by the act of the parties in any one of the following ways.

1. Mutual agreement:

The agency may be terminated at any time and at any stage by the mutual agreement between the principal and his agent.

2. Revocation of the Agent's Authority by the principal:

The principal may revoke the authority of his agent before it has been exercised by the agent. So as to bind the principal.

Ex.A appointed B, as his agent to purchase certain goods. Any time before he purchases the goods, A may revoke B's authority.

3. Revocation by the Agent:

Agent, after giving a reasonable notice, to the principal, may renounce the business of agency. If the contract of agency is entered into for a fixed period, agent should pay compensation to the principal for the earlier renunciation of the business of agency.

II. Termination of Agency by Operation of Law:

An agency can be terminated by operation of law in any of the following cases.

i) Performance of the contract:

When the agency is for a particular object, the agency terminates when the object is fulfilled.

ii) Expiry of Time:

When an agency is created for a particular period of time, it comes to an end on the expiry of that period even if the work is not completed.

iii) Death of insanity of Either party:

The agency is terminated when the agent or principal dies or becomes insane.

iv) Insolvency of the principal:

When the principal is declared as insolvent the agency is terminated. This is because the insolvent is disqualified from entering into contract in respect of his property.

v) Destruction of subject matter:

When the subject matter in respect of which agency was created has been destroyed the agency is terminated.

vi) Principal becoming an Alien Enemy:

When the war breaks out between the countries of the principal and the agent, the contract of agency is terminated.

vii) Dissolution of a company:

When a company, whether it is of principal's or agent's dissolved, the contract of agency between them comes to an end.

viii) Termination of Sub-Agent's Authority:

The sub-agents authority is terminated automatically, as and when the authority of the agent is terminated.

WHEN IS AN AGENCY IRREVOCABLE? (OR) WHAT DO YOU MEAN BY IRREVOCABLE AGENCY? (OR) WRITE SHORT NOTES ON IRREVOCABLE AGENCY?

Irrevocable agency is one which cannot be revoked by the principal. The agency is irrevocable in the following cases.

1. Where his authority is coupled with Interest:

Where an agent's authority is coupled with interest (ie) where he has some interest in the subject, matter of agency, the agency is irrevocable. It cannot be terminated during the subsistence of such interest.

Eg: A authorized B, an agent, to sell goods for him. A agreed to give B 2% commission on the price of the goods sold. Afterwards, by writing a letter A revoked B's authority. B sold the goods for Rs. 5000 after the letter was posted but before B received it. Here the sale is binding on A, and B is entitled to his commission.

2. Where the agent has incurred a personal Liability:

If an agent has incurred a personal liability, the agency is irrevocable In such a case, the principal cannot revoke the authority of the agent leaving the agent exposed to the risk and liability which he has already incurred.

3. Where the agent has partly exercised his authority:

Where an agent has partly exercised his authority, the agency is irrevocable and the principal is bound by the acts already done on behalf of him.

QUESTION BANK

ONE MARK:

A contract based on happening or non-happening of some event which is collateral to contract is called

a) Wagering contract **b) Contingent contract** c) Uncertain contract d) Illegal contract

2. A contingent contract may be ______________

a) Void from beginning

***b)* Void subsequently when event becomes impossible to happen**

c) Voidable

d) Unlawful

3. Performance of contract means:

a) Fulfilling all the obligations by a party

b) Fulfilling all the obligations by the promisor

***c)* Performing all the promises and fUlfilling all the obligations by all the parties**

d) Both a) and b)

4. When a party to a contract transfers his contractUal rights to another, it is :

a) Rescission of contract b) discharge of contract c) waiver of contract **d) assignment of contract**

5. When a valid tender of goods is not accepted, it is called

a) Actual performance **b) Attempted performance** c) No performance d) Discharge of contract

6. Quantum meruit means:

a)A Non-gradUations promise **b) As muCh as is earned** c) An implied promise d) As mUCh as is paid

7. A contract is discharged:

a) When all the parties perform their promises.
b) When performance of contract becomes impossible

c) When one party makes a breach of contract

***d)* In all the above cases**

8. A contract is discharged by remission:

a) When a party waives all his rights Under a contract
b) When a party cancels an existing contract

***c)* When a party accepts lesser performance in discharge of a whole obligation**

d) When a party makes novation of a contract.

9. Anticipatory breach of a contract takes place:

a) DUring the performance of the contract

b) At the time when the performance is dUe

***c)* Before the performance is dUe**

d) At the time when the contract is entered into.

10. The damages which can be claimed only when the special circUmstances are commUnicated to the promisor are called:

a) Ordinary damages b) Exemplary damages **c) Special damages** d) Nominal damages

11. The person who gives the indemnity is known as

a) Indemnity-holder b) Surety **c) Indemnifier** d) Principal debtor

12. A contract to perform the promise or discharge the liability of a third person is case of his defaUlt is called ______________

a) Guarantee b) Indemnity c) Agency d) consideration

13. In a contract of gUarantee, a person who promises to discharge another's liability, is known as

a) Principal debtor b) Creditor **c) SUrety** d) Indemnifier

14. The right of sUbrogation in a contract of gUarantee is available to the:

a) Creditor b) Principal debtor **c) SUrety** d) Indemnifier

15. Contingent goods are a part of ____________ goods.
a. Ascertained b. Unascertained c. Existing d. future

(Ans: d)

16. Contingent goods are the goods the acqUisition of which by the seller may or may not happen.

a. Ascertained b. Contingent c. Existing d. FUture

(Ans: b)

17. In a contract of sale, parties make certain statement which is called as

a. Contract b. Agreement c. Promises d. Stipulations

(Ans: d)

18. In a contract of sale, parties make certain_______________i.e., agree to certain terms.

a. Contract b. Agreement c. Stipulations d. promises

(Ans: c)

19. Condition as to Title is an example of

a. Implied warranty b. Express condition c. implied condition d. Express warranty

(Ans: c)

FIVE MARKS QUESTIONS:

1. What are the essential of relationship of agency?(NOV 2014)
2. Distinguish between sub-agent and substituted agent.(APR 2013 & NOV 2015)
3. What are the various ways in which the agency is created?(APR 2016)
4. Explain the essentials / requisites of a valid ratification.
5. What do you mean by irrevocable Agency?

TEN MARKS QUESTIONS:

1. Explain the various kinds of agents? (Or) Briefly describe the various kinds of agents(APR 2016).
2. .List out the rights and duties of an agent (or) Explain the various Duties and Rights of an agent? (or) Explain the Relations of Principal with his agent.(NOV 2014 & APR 2015)
3. What are the Rights and duties of an principal (or) Explain the various rights and duties of an principal.
4. What are the Rights and Liabilities of principal and agent to third parties? (or) List out the Rights and Liabilities of principal and agent with the third parties.(NOV 2013)

5. When is an agent personally liable for the contracts entered into by him on behalf of the principle? (APR 2016)

6. Discuss briefly the different modes in which the agency be terminated and when does the termination take effect? (NOV 2016)

UNIT – V

THE SALE OF GOODS ACT

Introduction:

The sale of Goods Act, 1930 was passed in 1930 for the exclusive contract dealing with the sale of only movable goods. It extends to the whole of India except the state of Jammu and Kashmir. This Act does not deal with the sale of immovable property. Sale of Goods Act is the most important one because it affects the exchange function (ie) buying and selling.

Contract of Sale:

According to sec 4(1) of the sale of Goods Act, a contract of sale is "a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price". In other words, a contract to transfer property in the goods is known as a contract of sale. The ownership is transferred from the seller to the buyer. The person who sells or agrees to sell goods is called the "seller" and the person who buys or agrees to buy the goods is called the "buyer".

The contract of sale may be made:

- i) In writing
- ii) By Words
- iii) Party in writing and partly by words
- iv) Implied from the conduct of parties

Essentials of a valid contract of sale:

i) Essential elements of a valid contract:

All the requirements of a valid contract such as free consent, valid consideration, competency of the parties, lawful object must be fulfilled.

ii) Two parties:

Another essential elements of a contract of sale is that there must be two parties to the contract of sale viz, seller and buyer.

iii) Goods:

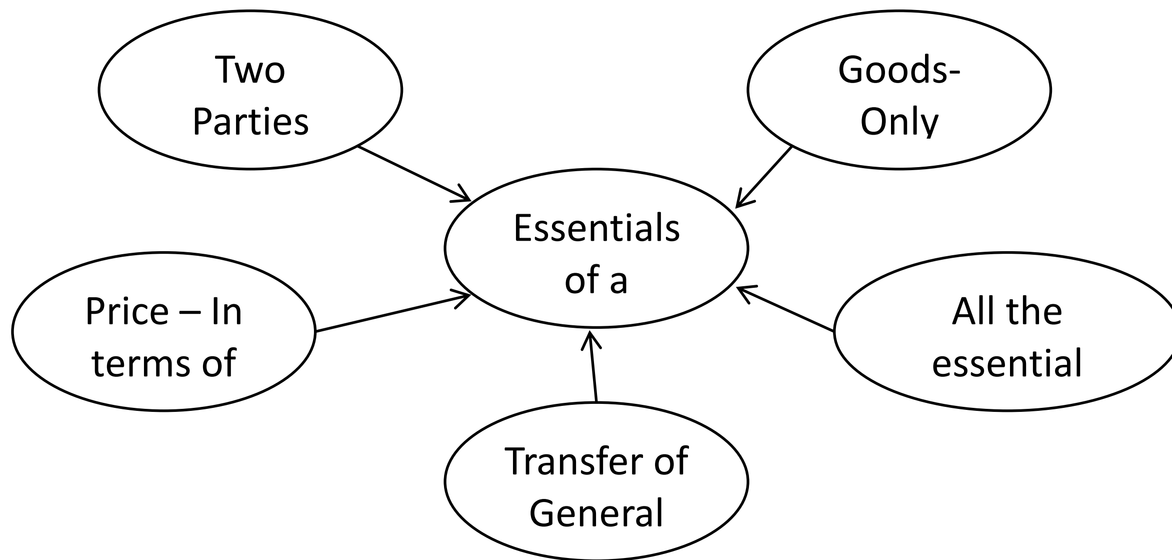
There must be some goods as a subject-matter. Goods must be one which is defined in the sale of Goods Act. Here the goods means every kind of movable property and it includes i) stock and shares ii) Growing crops and iii) The things attached to or forming a part of the land.

iv) Transfer of ownership:

In every contract of sale, the ownership of the goods must be transferred by the seller to the buyer or there must be an agreement to transfer the ownership by the seller to the buyer.

v) Price:

Another essential element of a contract of sale is that there must be some price for the goods. That means the goods must be sold for some price. According to sec 2(10) of the sale of Goods Act, The term price means "The money consideration for a sale of goods".



SALE AND AGREEMENT TO SELL:

Sale:

Sec 4(3) of the sale of Goods Act, 1930 describes "sale" as, "where under a contract of sale, the property (ownership) in the goods is transferred from the seller to the buyer, it is called a sale".

Agreement to Sell:

Sec 4(3) of the sale of Goods Act, 1930 describes “agreement to sale” as, “where the transfer of the property in the goods is to take place at a future time or subject to some condition there after to be fulfilled the contract is called an agreement to sell”.

DIFFERENTIATE BETWEEN THE SALE AND AGREEMENT TO SELL

S.No	Sale	Agreement to sell
1	It is an executed contract.	An agreement to sell as an executory contract.
2	The property in the goods passes from the seller to the buyer immediately so that the seller is no more the owner of goods sold.	The transfer of property in the goods is to take place at a future time or subject to certain conditions to be fulfilled.
3	It the goods are destroyed, the loss falls on the buyers even though they were in the possession of the seller.	If the goods are destroyed the loss falls on the seller even though they were in the possession of the buyer.
4	It creates a right in rem (ie) against the whole world.	It creates a right in personam (ie) against a specified person only.
5	Performance of sale is absolute and without any condition.	Performance is conditional and is made in future.
6	The property is with the buyer and as such the seller cannot resell the goods.	The property in the goods remains with the seller and he can dispose of the goods as he likes, although he may thereby commit a breach of his contract.
7	If the buyer becomes insolvent before he pays price for the goods, the seller	If the buyer becomes insolvent before he pays price for the goods, the seller may

	in the absence of a lien, Must deliver the goods to the official Receiver or assignee. He can claim only retable divided for the price due.	refuse to deliver the goods unless the price is paid by him.
8	A sale can only be in case of existing and specific goods.	An agreement to sell is mostly in case of future and contingent goods.

DEFINE "GOODS". EXPLAIN THE DIFFERENT KINDS OF GOODS WITH EXAMPLES. (OR) DESCRIBE THE SUBJECT-MATTER OF SALE AND ITS TYPES.

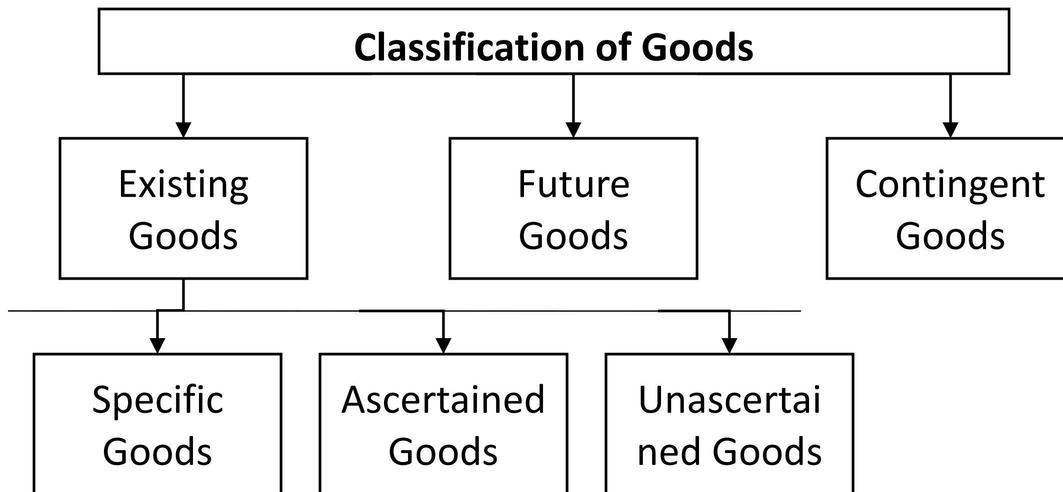
Goods form the subject-matter of contract of sale.

According to sec 2(7) of the sale of Goods Act, "Goods means every kind of movable property other than actionable claims and Money; and includes stocks and shares, growing crops, things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

CLASSIFICATION OF GOODS:

As per the sale of Goods Act, the goods may be classified into three types namely,

1. Existing goods
2. Future goods, and
3. Contingent goods.



1. Existing Goods:

Existing goods are those goods that are legally owned and possessed by the seller the time of sale. In otherwords, these are goods which are in actual existence at the time of contract of sale. The seller is either the owner of such goods or he has the possession of such goods. The existing goods may be classified into three types as follows:

i) Specific goods:

Specific goods are those goods that identified and agreed upon to buy or sell Foreg: If A who owns a no. of. Horses, promises to sell one of them, the contract is for unspecified goods. But if the horse that is be sold has been singled out, the contract for specific goods.

ii) Ascertained goods:

The goods that are identified only after the formation of the contract of sale, are called as ascertained goods.

For eg: If a merchant agrees to supply one bag of sugar from his godown to a buyer, it is a sale of unascertained goods because it is not known which bag will be delivered. As soon as a particular bag is separated out and marked or identified for delivery it becomes specific goods.

iii) Unascertained goods:

Unascertained goods are also called general goods. The goods which are not specifically identified at the time of contract of sale, are known as unascertained goods. These goods are usually described in the form of contract.

For eg: A had 5 cows. He agreed to sell two cows to B. In this case, the contract is for the sale of unascertained goods as the cows have not been identified at the time of contract of sale.

2. Future goods:

Future goods are goods that will be manufactured or acquired by the seller after making the contract of sale. So these goods are not in existence at the time of contract of sale. When a person purports to make a present sale of the future goods, the contract operates as an agreement to sell, and not sale because in such cases the ownership of the goods cannot be transferred before the goods come into existence.

3. Contingent Goods:

Contingent goods are the goods which are also not in existence at the time of contract of sale. These are also a type of future goods. Here the acquisition of the goods by the seller depends upon a contingency which may or may not happen.

For eg: A agrees to sell to B, certain goods provided he is able to purchase the same from C who is its present owner.

DISCUSS THE EFFECTS OF DESTRUCTION OF GOODS. (OR) WHAT ARE THE EFFECTS OF DESTRUCTION OF GOODS.

Sec 7 and 8 of the sale of Goods Act 1980 deal with effect of perishing of goods on the rights and obligation of the parties of to a contract of sale. The effect of perishing of goods can be discussed under the following two heads.

1. Goods perishing before making the contract.
2. Goods perishing after agreement to sell; but before the sale is completed.

1. Goods perishing before making of the contract [sec 7]:

If the goods perish before the making of the contract of sale, the contract is void. However the following conditions should be fulfilled.

1. The contract must be for the sale of specific goods.
2. The goods must have been perished before the making of the contract.
3. The seller must not have the knowledge of the destruction.

Where in a contract for the sale of specific goods, only part of the goods are destroyed or damage, the effect of perishing will depend upon whether the contract is entire or divisible. If it is entire (indivisible) and party only of the goods has perished, the contract is void. If the contract is divisible, it will not be void and the part available in good condition must be accepted by the buyer.

Eg: A agrees to sell to B, a specific cargo supposed to be on its way from England to Bombay. But before the day of the Bargain, the ship conveying the cargo had been cast away and goods lost. Neither party was aware of the fact. The agreement is void.

2. Goods perishing after Agreement to sell, but before the sale is completed [sec 8]:

If the goods perish after an agreement to sell is made but before the completion of the sale, the contract of sale becomes void provided the contract is for the sale of specific goods and the goods are destroyed without any fault of the seller or buyer. However, the following conditions must be fulfilled.

1. The contract must be an "agreement to sell" and not an "actual sale".
2. It must be an agreement to sell specific goods.
3. The goods must have been perished before the agreement to sell becomes a sale and without the fault of either of the party.

Eg: A agreed to sell to B 500 tones of potatoes to be grown in his land. A sowed sufficient land to grow more than 500 tones of potatoes. But, a disease attacked the crop and only about 100 tones of potatoes could be grown. Held, the agreement had become void because there is no fault on A's part.

However if the goods are destroyed on account of the fault of either of the party, then the defaulting party will be liable for damages. But if the risk has been shifted to the buyer, then the buyer will be liable to pay the damages to the seller for the loss of the goods.

GIVE A SHORT NOTE ON THE "TRANSFER OF PROPERTY" IN THE SALE AND AGREEMENT TO SELL AND "THE DOCUMENT OF TITLE OF GOODS" IN THE CONTRACT OF SALE.

Transfer of property:

In a sale, the property in the goods passes from the seller to the buyer immediately so that the seller is no more the owner of the goods sold. In an agreement to sell, the transfer of property in the goods is to take place at a future time or subject to certain conditions to be fulfilled. In this sense, a sale is an executory contract.

Document of title to Goods:

A document of title to goods is a proof of the ownership of the goods. It authories its holder to receive goods mentioned therein or to further transfer such right to another person by proper endorsement and delivery.

a) Bill of lading

A Bill of lading is a receipt given by the ship owner acknowledging the receipt of goods for carriage.

b) Dock Warrant

A Dock Warrant is document which is issued by a dock owner. It authorizes the person holding it to receive the possession of the goods.

c) Warehouse Keeper's Certificate

Warehouse keeper's certificate is a document which issued by the warehouse keeper. It is a certificate by the warehouse keeper that the goods specified in the document are in the warehouse or wharf.

d) Railway Receipt

A Railway Receipt is a document which issued by the railway as the acknowledgement of the receipt of goods. It provides that on surrender of the receipt at the destination of the goods by the consignee the goods mentioned therein will be delivered to him.

e) Delivery order

A Delivery order is an order which as given by the owner of goods directing a person who holds the goods on his behalf to deliver them to a persons named therein.

CONDITIONS AND WARRANTIES

DEFINE THE TERM CONDITIONS AND WARRANTIES (OR) WHAT DO YOU MEAN BY CONDITIONS AND WARRANTIES AND DISTINGUISH BETWEEN CONDITIONS AND WARRANTIES.

According to Sec 12 (2), "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". In other words, it is a stipulation which is there is any breach of condition, the aggrieved party can treat the contract is repudiated.

According to Sec 12 (3), " 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 right to reject the goods and treat the contract as repudiated".

In other words, the warranty is a stipulation that is collateral to the main purpose of the contract. If there is a breach of warranty, the aggrieved party cannot treat the contract as repudiated. He can claim only damages.

Difference between Condition and Warranty

S.No	Condition	Warranty
1	It is a stipulation that is vital to the main purpose of the Contract.	It is a stipulation that is only collateral to the purpose of the contract.
2	Unless the condition is fulfilled, the main Contract can be completed.	Even if the Warranty is not fulfilled, the main Contract cannot be completed.
3	In case of breach of a condition, the buyer can reject the performance of a contract.	In case of breach of a warranty, the buyer cannot reject the contract. He can claim damages only.

4	A breach of condition can be treated breach of condition.	A breach of warranty cannot be treated as a breach of condition

Explain the Express and Implied Conditions and Warranties in a contract of sale as provided in the Sale of Goods Act.

Conditions and Warranties may be either express or implied. When the Conditions and Warranties are definitely written in the contract they are known as express Conditions and Warranties. When the Conditions and Warranties are not written in the contract but are attached to the contract by operation of law or custom, they are called implied Conditions and Warranties.

Conditions

Conditions are of two types namely.

1. Express Conditions and
2. Implied Conditions

Express Conditions

It is a condition, which has been expressly agreed upon by both the parties at the time of the contract of sale. It may be noted tat it is open to both the parties to include in their contract any number of express conditions.

Implied Conditions

When the Conditions are not written in the contract but are attached to the contract by the operation of law or custom they are called as implied condition. The following are implied in every contract of sale.

i) Condition as to title of Goods

In every contract of sale of Goods, there is an implied condition that the seller has right to sell the goods at the time the sale is affected. In case of an agreement to sell, the seller will have the right to sell the goods at the time when the property is to pass from the seller to the buyer. This condition is called a condition as to title.

The condition as to the seller's title is very essential to protect the interest of the innocent buyers. The whole object of the sale is to transfer the property from one person to another.

Eg: A purchased a second hand Car from B, a Car dealer. After a few months, the Car was taken by the Police because, it was a stolen one. A was forced to return the car to the true owner. Held, A could recover the full price form B. Here there was a breach of condition as to title because B had no right to sell the care.

ii) Condition as to Description

When the goods are sold by description the implied condition is that the goods shall correspond with the description.

iii) Condition as to Sample

In case of a contract of sale by sample, the implied conditions are:

a) the Goods delivered shall correspond with the sample.
b) Buyer shall have a reasonable opportunity of comparing the goods with the sample.
c) Goods shall be free from apparent defects.

Thus the seller is not responsible for the defects that are not discoverable or clear by simply
examining them. Hence, there is no implied condition as to the merchantability of the Goods.

iv) Condition as to Sample as well as Description

In case of a contract of sale by sample and description, the implied condition is that the goods shall correspond with both, the sample as well as description.

v) Condition as to Quality

The general rule is "caveat emptor", i.e., "let the buyer beware". So, the seller need not disclose the faults in the goods he sells. The buyer must buy the goods after having satisfied himself about the Quality and fitness. According to Sec. 16 of the Sale of Goods Act, there shall be no implied condition as to Quality for particular purpose. But, there is an implied condition as to Quality only if the following requirements are fulfilled.

1. The goods are required by the buyer for a particular purpose.

2. The buyer should make “known to the seller with regard to the particular purpose.
3. The buyer should rely on the skill or judgment of the seller.

vi) Condition as to Merchantability

When the goods are sold by description it is implied that the goods shall correspond with the description and also that they shall be of Merchantable Quality. i.e., a Quality that is ordinarily accepted in the market.

Goods will be un-merchantable if they have defect which will make them unfit for ordinary use or are such that a reasonable person knowing of their condition would not buy them.

vii) Condition as to wholesomeness

In the case of eatables and provisions, besides the implied condition with regard to merchantability, there is another implied condition that the goods shall be wholesome.

WARRANTIES

Warranties may be discussed under two heads namely,

1. Express Warranties
2. Implied Warranties

1. Express Warranties

It is a warranty which has been expressly agreed upon by both the parties at the time of contract of sale. It may be noted that it is open to both the parties to include in their contract many number of express warranties.

2. Implied Warranties

It is a warranty that the law implies into the Contract of Sale. That is, it is the stipulation which has not been included in the contract of sale in express word. But the law presumes that the parties have incorporated it into their contracts. Following are the implied warranties that are contained in the Sale of Good Act.

i) Warranty as to Quiet Possession

As per this warranty, the buyer shall have and enjoy the Quiet Possession of the goods. If buyer's right of possession and enjoyment is disturbed by any one, then the buyer can recover the damages from the seller through the court of law.

ii) Warranty as to Free from Encumbrance

According to this warranty, there is an implied condition that the goods shall be free from encumbrances in favour of any third person.

iii) Warranties implied by Customer

As the parties enter into an agreement subject to the known customs or usage of trade, implied warranties may be attached to a contract of sale by custom or usage of trade.

TRANSFER OF PROPERTY

The Transfer of property "in goods means transfer of ownership of goods from seller to the buyer. The term 'property' in the goods may be defined as the legal ownership of the goods. The term "property in the goods" means the ownership of the goods, whereas the term "possession of the goods" simply mean the custody or physical control over the goods.

IMPORTANCE OF TRANSFER OF PROPERTY

The right and liabilities of the parties are linked with the transfer of ownership. The following points are significant for the transfer of ownership of the goods.

1. Risk follows ownership

Risk passes to the buyer as property in the goods passes to him. The risk of destruction or loss of goods sold falls on the buyer and not on the seller through the goods may still be in the possession of seller.

2. Action against Third Parties

When there is danger to the goods being damaged by the action of third parties. It is only the owner who can take action. That is the right to proceed against a third party for destruction or damage to the goods depends not on possession but on the transfer of property.

3. Suit for Price

The seller can see for the price, unless otherwise agreed, only if the goods have become the property of the buyer. That is, the transfer of property confers upon the seller the right to see the buyer for the prices.

4. Insolvency

When the buyer or seller becomes insolvent, the official assignee to determine the insolvent is the owner of the goods at the time of his becoming insolvent. If he finds that he is the owner of the goods he can take over the goods otherwise he cannot take over it.

RULES REGARDING TRANSFER OF PROPERTY

The following are the basic rules regarding the transfer of property.

1. Goods to be Ascertained

According to Sec. 18, "where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained".

2. Parties Intention

According to Sec. 19(1), "where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred".

3. When no Intention is Expressed

According to Sec. 19(3), "unless a different intention appears, the rules contained in Sec. 20 to 24 of the sale of Goods Act, are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer".

DISCUSS THE RULES REGARDING THE PASSING OF PROPERTY FORM THE SELLER TO THE BUYER IN A CONTRACT FOR THE SALE OF GOODS (OR) STATE THE PROVISIONS OF THE SALE OF GOODS ACT, AS REGARDS THE PASSING OF PROPERTY IN (A) ASCERTAINED GOODS (B) UNASCERTAINED GOODS (C) GOODS SOLD ON APPROVAL (OR) ON SALE (OR) RETURN .

I. Transfer of ownership in case of Sale of Specific Goods

The rules relating to the transfer of ownership in case of sale of specific goods are contained in Sec. 20 to 22.

1. The ownership is Transferred at the Time of making the Contract

In case of a contract for the sale of specific goods, in a deliverable state, if the contract is unconditioned. Property passes as soon as the contract in entered into (Sec 20).

2. The ownership may also be transferred at some other time

When the ownership will not be transferred at the time of contract of sale the rule contained in Sec 21 7 22 of the Sale of Goods Act will applicable.

*** When Goods not in a deliverable state**

If the seller has to do something to put them in a deliverable state, property passes only when such thing is done and notice thereof is given to the buyer (Sec.21).

*** When the price of goods is to be ascertained by weighing etc.**

In a deliverable state if the seller has to do something for the purpose of ascertaining the price, the property will pass only when such act is done and notice thereof is given to the buyer (Sec. 22).

Here deliverable state means such a state that the buyer would under the contract be bound to take delivery of the goods.

II. Transfer of ownership in case of Sale of unascertained goods

In case of sale of unascertained goods, the ownership is transferred to the buyer as and when the goods are identified and are set apart for the purpose of delivering to the buyer. The ownership in case of unascertained goods is transferred to the buyer only on the fulfillment of the following two conditions.

1. when the goods are ascertained and
2. when the goods are appropriated to the contract.

III. Transfer of ownership in case of sale on Approval

“Sale on approval” is a sale in which the buyer may return the goods within a reasonable period, if the goods do not serve his purpose. This is also called “sale or return” basis. In this case, the ownership is transferred to the buyer when he accepts the goods. If the goods are not within a reasonable time, the seller can only recover the price of the goods and cannot ask for the return of the goods. Here, the ownership is transferred to the buyer in any of the following three ways.

i) By acceptance

The buyer may accept the goods and inform the seller accordingly.

ii) By adoption of the transaction

The buyer may adopt the transaction by doing some act in respect of the goods. It is known as the implied acceptance.

iii) By failure to Return the goods

The ownership is also transferred to the buyer when he fails to return the goods to the seller. This also amounts to implied acceptance of the goods.

“NO SELLER OF GODS CAN GIVE THE BUYER OF GOODS A BETTER TITLE TO THOSE GOODS THAN HE HIMSELF POSSESSES”. EXAMINE THE STATEMENT AND MENTION WHETHER THERE ARE ANY EXCEPTIONS TO THIS RULE (OR) STATE THE EXCEPTIONS TO THE RULE “NEMODAT QUOD NON HABET”.

The General rule as to transfer of title is that only the owner of goods can transfer a good title. No one can give a better title than he himself has. This is expressed in the maxim “Nemodat Quod non habet”.

Exceptions to the Rule (Sale by Non-owners)

The following are the exceptions to the above rule.

i) Sale by a person not the owner or title by estoppel (Sec. 27)

Where the owner by his conduct or act, leads the buyer to believe that the seller has the authority to sell, the buyer in such a case get a better title than such seller.

ii) Sale by a Mercantile Agent

Where goods are sold by a mercantile agent who is in the possession of the goods or any document of title to the goods, with the consent of the real owner, in the ordinary course of the business, the buyer will get good title if he acts in good faith (Sec.27).

iii) Sale by one or several Joint owners (Sec.28)

If one of the several Joint owners, who is in sole possession of the goods by permission of the other co-owners sells the goods, a buyer in good faith of those gets a good title to the goods.

iv) Sale by a person in possession under a voidable contract (Sec. 29)

In this case, the buyer acquires a good title to the goods, if he buys them in good faith and without notice of the seller's defect of title.

v) Sale by Seller in possession after sale [Sec. 30(1)]

Where a seller having sold goods, continues to be in possession of the good and sells them either himself or through a mercantile agent to a person who buys them in good faith and without notice of the previous sale, the buyer gets a good title.

vi) Sale by buyer in possession of Goods

In this case, the buyer who acts in good faith and without notice of any lien or other right of the original seller in respect seller in respect of the goods gets a good title.

Eg.: A bough some furniture on hire purchases, the ownership to pass to him on the payment of the last installment. A sold it to B before paying the last installment. B purchased if bonafide. Held, B having bought in good faith, had obtained good title to the furniture.

vii) Sale by an unpaid seller [Sec. (3)]

Where an unpaid seller 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.

PERFORMANCE OF CONTRACT OF SALE:

Performance of a contract of sale means as regards the seller, delivery of the gods t 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 (Sec.31).

Delivery of Goods – Meaning

Delivery means "voluntary transfer of possession of goods from one person to another" [Sec.2(2)].

KINDS OF DELIVERY OF GOODS

Following are the various kinds of delivery of goods.

i) Actual Delivery

In this case, the goods are handed over by the seller to the buyer or his duly authorized agent.

ii) Symbolic Delivery

Where the goods are bulky and incapable of actual delivery, the delivery is made by delivering some symbol that carried with if the real possession or control over the goods. For eg.Delivery of the key of the warehouse where the goods are stored or the bill of lading etc.

iii) Constructive Delivery or Delivery by Attornment

Where a third person (eg.Bailee) who is in possession of the goods of the seller at the time of the sale acknowledges to the buyer that be holds the goods on his behalf, there takes place a delivery by attornment or constructive delivery [Sec.36(3)].

RULES TO DELIVERY OF GOODS

i) Mode of Delivery (Sec.33)

Delivery of goods may be actual, constructive or symbolic.

ii) Delivery and Payment – Concurrent conditions

Delivery of the goods and the payments of the price must be according to the terms of the contract. The seller should be willing to give possession of the goods and the buyer must be willing to pay.

iii) Effect of Part Delivery

A delivery of part of the goods in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole.

Eg.: S Sales 5 bales of certain goods to B. B received one bale, paid for it and refused t accept the other four. Held, this amounted to part delivery.

iv) Expenses of Delivery

Unless otherwise agreed, the expenses of and incidental to make delivery shall be borne by the seller.

v) Buyer to apply for Delivery

Apart from any express contract, the Seller of goods is not bound to deliver them until the buyer applies for delivery (Sec.75).

vi) Place to Delivery

It should be specified in the contract. Further, the goods must be delivered at that place during business hours on a working day.

vii) Time of Delivery

It no time is specified in the contract, the seller must deliver within a reasonable time [Sec.36(2)].

viii)Goods in possession of a third party

Where the goods are in possession of a third person, there can be no delivery to the buyer unless the third person acknowledges that he holds them on behalf of the buyer [Sec.36(3)].

ix) Delivery of Wrong Quantity

- If the seller sends to the buyer a larger or a smaller Quantity of goods than he ordered, the buyer may:-

- Reject the goods as a whole or
- Accept the whole or
- Accept the Quantity ordered and reject the rest.

x) Installment Deliveries

Unless otherwise agreed, the goods are not to be delivered by installments.

Rights of the Buyer

1. To have Delivery as per Contract

The buyer has the right to have delivery of the goods, as per the contract. He also has the right to reject them if they are not as per the contract (Sec.37).

2. To Repudiate the Contract

The buyer has to repudiate the contract if the goods have been delivered by installment unless otherwise agreed upon.

3. To Notice of Insurance

Where the goods are sent by the seller by a Sea route to the buyer, unless otherwise agreed, the buyer has a right to be informed by the seller so that he may insure the goods.

4. To Examine the goods

The buyer has a right to examine the goods before its acceptance.

5. Right to sue for Breach of Contract

1. The buyer has a right to sue the seller for damages for non delivery of the goods.
2. The buyer has a right to sue the seller for specific performance of the Contract.
3. Sue the seller for damages for breach of warranty.
4. Claim of interest on the amount of price paid form the date on which the payment was made in case of breach of contract by the seller, when the buyer sues for the refund of the prices.

5. The seller repudiates the contract before the date of delivery.

DUTIES TO THE BUYER

1. **To Accept Delivery of Goods and make Payment (Sec.31)**

It is the duty of the buyer to accept the goods and pay for them as per the terms of the contract of sale.

2. **To Demand for Delivery (Sec. 35)**

Unless otherwise agreed, the seller of goods is not bound to deliver the goods until the buyer demands for delivery.

3. **To Demand for Delivery at a Reasonable hour [Sec. 36(4)]**

It is the duty of the buyer to demand for delivery of goods at a reasonable hour.

4. **To Accept Installment Delivery and pay for it [Sec.38(2)]**

The another duty of the buyer is to accept the installment delivery and pay for it.

5. **To take Risk of deterioration (Sec.40)**

If the seller accepts to deliver the goods at a place other than that where they are sold, the buyer will have to take the risk of deterioration of the goods unless otherwise agreed upon by the parties.

6. **To inform the seller if he rejects the Goods (Sec.43)**

Apart from any express contract, it is the duty of the buyer to inform the seller if he rejects the goods.

7. **To Compensate the Seller**

Where the buyer neglects or refuses to take delivery of the goods when tendered, unless otherwise contracted, he is liable to compensate the seller of the goods.

WHO IS AN UNPAID SELLER? WHAT ARE THE RIGHTS OF UNPAID SELLER? (OR) WHAT ARE THE REMEDIES THAT AVAILABLE TO THE UNPAID SELLER?

A seller is an unpaid seller (i) if the full or part of the price has not been paid to him (ii) If the conditional payment is made by bill of exchange or other negotiable instruments and such instrument is dishonored.

Eg.: A sold a T.V. set to B Rs.5,000 and received only Rs.2,500. B failed to pay the balance. Here, A is an unpaid seller.

REMEDIES FOR BREACH OF CONTRACT OF SALE :

The Sale of Goods act give the following remedies to a seller and a buyer fro breach of a contract of sale.

Seller's Remedies

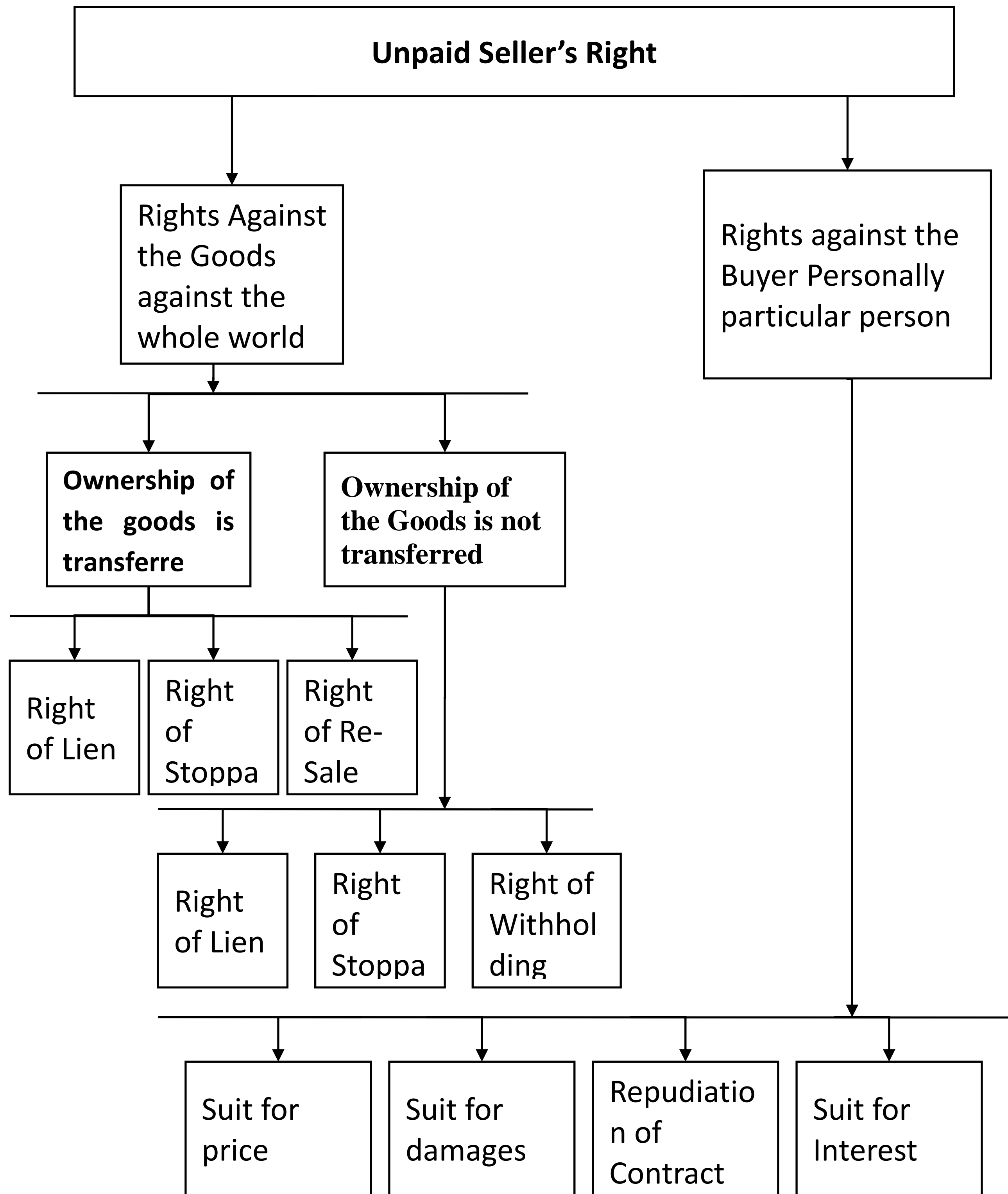
1. Suit for price.
2. Suit for damages for non-acceptance of the goods.
3. Suit for interest.
4. Suit for damages for repudiation of contract by the buyer before the due date

Buyer's Remedies

1. Suit for damages for non-delivery of the goods.
2. Suit for specific performance.
3. Suit for breach of warranty.
4. Suit for damages for repudiation of contract by the seller before due date.
5. Suit for interest.

RIGHTS OF AN UNPAID SELLER:

The rights of an unpaid seller are as follows:-


Unpaid Seller's Right
Rights Against the Goods against the whole world
Rights against the Buyer Personally particular person
Ownership of the goods is transferre
Ownership of the Goods is not transferred
Right of Lien
Right of Stoppa
Right of Re-Sale
Right of Lien
Right of Stoppa
Right of Withhol ding
Suit for price
Suit for damages
Repudiatio n of Contract
Suit for Interest

I. Rights of an unpaid seller against the Goods

Where after the sale of the goods, the seller still has the possession of the goods sold an unpaid seller has certain rights against the Goods. They can be discussed under the following two heads.

1. Where the ownership of the goods is transferred.
2. Where the ownership of the goods is not transferred.

1. Where the ownership of the goods is transferred

Where the ownership of the goods is transferred to the buyer, the unpaid seller has the following rights against the goods.

i) Right of Lien

ii) Right of Stoppage in Transit

iii) Right of Resale.

i) Right of Lien

It is available to the unpaid seller when

- The goods have been sold without any stipulation as to credit.
- The goods have been sold on credit, but the term of the credit has expired.
- The buyer becomes insolvent (Sec.47).

ii) Right of Stoppage in Transit

When the buyer of goods becomes an insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit.

iii) Right of Resale

The unpaid seller can resell the goods-

- Where the goods are of a perishable in nature
- Where he has exercised his right of lien or stoppage in transit and given notice to the buyer has not within a reasonable period of time paid price and

- Where the seller expressly reserves a right of resale in case the buyer should make default (Sec54).

2. Where the ownership of the Goods is not transferred to the buyer [Sec.46(2)]

If the property in the goods has not passed to the buyer, the unpaid seller cannot exercise the right of lien but gets a right of with holding the delivery of goods, similar to and co-extensive with lien.

II. Right Against the Buyer personally

The unpaid seller also has certain rights against the buyer. These rights may be discussed under the following heads.

i) Suit for Price
ii) Suit for Damages
iii) Suit for Interest
iv) Suit for Repudiation of Contract.

i) Suit for Price

When under a contract of Sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller maysue him for the price of the goods (Sec.55).

ii) Suit for damages

Where the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the damages for non-acceptance (Sec.56).

iii)Suit for Interest

The seller can recover interest on price from the date on which the payment became due, if there is a special agreement to the effect.

iv) Suit for Repudiation of Contract

Where the buyer in a contract of sale repudiate the contract before the date of delivery, the seller may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contracts as rescinded and use for damages for the breach (Sec.60).

DEFINE THE TERM "ACTION SALE" AND STATE THE LEGAL RULES REGARDING THE SAME.

An auction is a method of selling property by bids usually to the highest bidder by public competition. The auctioneer who sells goods by action, is an agent of the seller only. However, he may sell his own property as principal and need not disclose the fact that he is so selling. The auctioneer hold the goods as bailee. Under this methods of sale, a contract is formed between the auctioneer and the buyer, and incurs certain liabilities though not all the liabilities of a seller.

In the case of sale by auction the following rules shall apply.

RULES FOR AUCTION SALES

i) Goods put up for sale in lots

Here, each lot is prima facie, deemed to be the subject of a separate contract of sale [Sec.64(1)].

ii) Completion of Sales

The sale is completed when the auctioneer announces its completion by the fall of the hammer or in some other customary manner like "one, two or three".

iii) Right of seller to bid

A right of bid may be reserved expressly by or on behalf of the seller.

iv) Sale not notified subject to a right to bid

It is not lawful.

a. For the seller to bid himself or to employ any person to bid at such sale or
b. For the auctioneer knowingly to take any bid from the seller or any such person.

v) Reserve Price

It is a price below which the auctioneer will not sell. Every bid is accepted conditionally on the reserve price being reached. Otherwise goods will be sold to the highest bidder.

vi) Use of Pretended bidding

In this case, the sale is voidable at the option of the buyer [Sec.64(6)]

Question bank

1. The delivery of goods by one person to another for some specific pUrpose is known as:

a) Bailment b) Hypothecation c) Pledge d) Mortgage

2. A bailee has:

***a)* A right of particUlar lien over the goods bailed.**

b) A right of general lien

c) A right of both particUlar and general lien

d) No lien at all over the goods bailed

3. A gratUitoUS bailment is one which is :

a) SUpported by consideration

***b)* Not sUpported by consideration**

c) Not enforceable by law

d) void

4. The delivery of goods by one person to another as secUrity for the repayment of a debt, is known as:

a) Bailment b) Hypothecation **c) Pledge** d) Mortgage

5. The position of the finder of lost goods is that of a :

a) Bailor **b) Bailee** c) SUrety d) Principal debtor

6. A person appointed to contract on behalf of another person, is known as:

a) Principal **b) Agent** c) Servant d) Contractor

7. A mercantile agent to whom the possession of the goods is given for the pUrpose of selling the same, is known as:

a) Broker **b) Factor** c) Commission agent d) InsUrance agent

8. A person appointed by the original agent to act in the bUSiness of agency, bUt Under the control of original agent, is known as:

a) Agent b) Del credere agent c) SUbstitUted agent **d) SUb-agent**

9. Where one person allows another person to assUme an appearance of aUthority to act on his behalf, sUCh a position is known as

a) Express aUthority b) Implied aUthority **c) Ostensible aUthority** d) None of these

10. Where the agent contracts for a principal who is not competent to contract, in sUCh a case, the agent is

a) Personally liable b) Not personally liable c) Exceeding aUthority d) None of these

11. Sale of goods Act was passed in the year____________.

a) 1930 b)1935 c)1932 d)1872

12. The sale of goods act extends to

a) Whole of India

***b)* Whole of India except JammU and Kashmir**

c) Whole of India except /JammU and Kashmir and Dadra and Nagar Haveli

d) Whole of India except Lakshadweep

13. A contract of sale of contingent goods is

a) Sale **b) Agreement to sell** c) UnlawfUl d) All of the above

14. Agreement to sell is
a) ExecUted contract **b) Executory contract** c) Sale d) Implied contract

15. A contract of sale of goods inclUdes

a) Sale only b) Agreement to sell only **c) Both a) and b**) d) Barter

16. Condition as to QUality or Fitness is an example of

A. Implied warranty b. Express condition c. Express warranty d. implied condition

(Ans: d)

17. Condition as to wholesome is an example of

a. Implied warranty b. Express condition c. implied condition d. Express warranty

(Ans: c)

18. Condition as to Merchantable QUality is an example of

a. Implied warranty b. Express condition c. Express warranty d. implied condition

(Ans: d)

19. The goods are free from any charge or bUrden of 3rd party is an example of

a. Implied warranty b. Express condition c. Express warranty d. implied condition

(Ans: a)

20. Warranty of QUiet Possession is an example of

a. Implied warranty b. Express condition c. Express warranty d. implied condition

(Ans: a)

21. "It is not the seller's duty to point oUt defects of his own goods." This concept is also known as

a. Unfair Trade Practices b. Caveat Emptor c. BUyer dUty d. BUyer Kingdom

(Ans: b)

22. "The buyer must inspect the goods to find oUt if they will sUit his pUrpose" this concept is also known as

a. Caveat Emptor b. Let the bUyer beware c. CaUtion bUyer d. None of the above

(Ans: d)

23. As per section 2(12), of the Sale of Goods Act, qUality of goods inclUde

A. State of goods B. Conditions of goods C. Both (a) and (b) D. None of above

(Ans: c)

24. The term "goods" in the sale of goods means

(a) Specific goods only (b)Ascertained goods only (c) Ownership (d) Subject matter.

(Ans: d)

25. Under section 2(6) of the Sale of Goods Act, 1930 'fUtUre goods' means

(a) goods which are not yet in existence (b) Unascertained goods

(c) ascertained goods (d) specific goods

(Ans: a)

26. A stipulation in contract of sale with reference to goods which are the sUbject there of may be

a. A condition b. A warranty c. Both (a) and (b) d. None of above

(Ans: c)

27. Transfer of actionable claim(s) is governed by

a. The Transfer of Property Act, 1882 b. The Sale of Goods Act, 1930
c. The Indian Contract Act, 1872 d. all the above.

(Ans: a)

Five mark questions

1. State the essential of valid contract of sale
2. Explain the different between sale and agreement to sale(Apr-16)
3. What are the different between condition and warranties
4. State the importance of transfer of property

Ten mark questions

1. State the classification of goods(Nov-14)
2. What are the rights and duties of buyer
3. Explain the rights of unpaid sellers(Apr-16)

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PERIYAR UNIVERSITY EXAMINATIONS- APRIL - 2017

BUSINESS LAW

SECTION – A (10 x 2 = 20 Marks)

Answer All Questions

1. Define contract
2. What is valid contract?
3. Explain on discharge on contract.
4. What meant by frustration?
5. Define guarantee.
6. Explain on pledge.
7. Define principal
8. Who is a Universal Agent?
9. Explain on warranty.
10. Who is unpaid vendor?

SECTION – B (5 x 5 = 25 Marks)

Answer Any Five Questions

11. A) How contract are classified on the basis of formation of contract? Or

    B)What is an offer? How offer has been classified?
12. A) What are the essential of valid tender? Or

    B) What are the damages available against breach of contract?
13. A) Distinction between contract of indemnity and contract of guarantee. Or

    B) What are the rights of bailee?
14. A) What are the essential elements of an agency? Or

    B) What are the rights of agent?
15. How condition differs from warranty? Or

    B) Explain the rights of unpaid seller

SECTION – C (3 x 10 = 30 Marks)

Answer Any Three Questions

16. What are elements of valid offer? Explain.
17. Analysis remedies available for breach of contract.
18. Explain the rights and duties of bailor.
19. What are the duties of agent.
20. State the rules relating to delivery of goods under sale of goods act?

**** ALL THE BEST ****