MODULE I

1

THE INDIAN CONTRACT ACT 1872: INTRODUCTION TO LAW OF CONTRACT

Agreements & Contracts

Unit Structure

1.0 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the meaning of Law.
- Know the meaning of Agreement and kinds of Agreement.
- Explain the meaning Contract and essentials of valid contract.

1.1 INTRODUCTION

'Law in simple term means 'rules or the system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties. It is a very wide term and includes different sets of rules regulating external human actions and conduct of individuals in their dealing with other individuals and with the Government.

Definitions of Law:

Salmond defined law as "the body of principles recognized and applied by the State in the administration of justice"

Holland defined law as "rule of external human action enforced by Sovereign Political Authority".

Austin has defined law as "A law is a rule of conduct imposed and enforced by the Sovereign".

The Indian Contract Act was passed and implemented to control various kinds of commercial and business activities. It deals with general principals of the Law of Contract and Special Contract.

The Contract Act came into force on 1st September 1872. The act is applicable to the whole of India except for the **State of Jammu and Kashmir**. The preamble of the Contract Act states where it is expedient to define and amend certain parts of the law relating to contracts. Therefore, this act is not a complete code of contracts.

The Law of Contract is the most important branch Business Law. It plays an important role in our day to day life and more in case of Trade, Commerce and Industry. The partnership Act, The sale of Goods Act, The Maharashtra Co-Operative Societies Act, The Negotiable Instruments Act, The Companies Act, Corporate Laws, The Consumer Protection act belongs to the law of contract but for technical reason are covered by separate Act

• Meaning of Business Law:
Business law may be defined as that branch of legal system that regulates business activates and provides for an orderly conduct of business affairs and also for settlement of genuine disputes in a systematic manner.

In commercial and ordinary life, promises are made. Promise arises out of the acceptance of an offer or proposal. Sometimes, promises are performed, sometimes breach is committed. The Law of Contract deals with such promises which create legal obligations. This excludes those promises made in common life which may be morally binding but create no legal obligation. These promises are made without a view to obtain the assent of the other. No value is given to such promises made. Such promises are not covered by the Indian Contract Act except for those provides under section 24 of the Act. Certain promise do not create legal obligation. Promises which do not give rise to legal obligations are not contracts. *For example,* A promise B to attend the dinner and fails to attend. This promise certainly does not create a legal obligation on the part of A to enable B to sue A for the price of non- consumed food. Law of Contract thus deals with agreements which create obligation. The Law of Contract creates *jus in personam and not jus in rem*. Right in personam means a right against a particular person or persons. Right in Rem on the other hand, is available against the whole world.

Examples:
1. Amit Sells his Vehicle to Balram for Rs. 2 lakh. Amit has right to recover the price of the car from Balram only. The right of Amit is a ''right in personam'' i.e. against a particular person Balram. This is *jus in personam*.

2. Savitri buys a Car and becomes the owner of the car. She has right to have a quiet possession of the car and enjoy against the whole world. Nobody in the world can disturb her right. The right of Savitri is *jus in rem,* i.e. right against the whole world.

1.2 MEANING OF AGREEMENTS

1.2.1 Meaning:

Section 2 (e) of the Indian Contract Act defines an agreement as under:
"Every promise and set of promises, forming the consideration for each other is an agreement".

The term 'agreement' for a common man means "to agree". Here, one person offers or proposes to another, and the later agrees to the offer or proposal made. This results in an agreement.

Example: P offers to take **Q** for Movie and **Q** agrees to with **P** this results in an agreement. in the above example. **P** may be called an 'Offeror' or 'Proposer' or 'Promisor' While **Q** may be called an 'Offeree' or Acceptor or 'Promise'.

It should be noted that a mere promise by two parties would not constitute an agreement. Offer and acceptance together constitute an agreement. Agreement is a promise or a set of reciprocal promises.

Hence: **Agreement = Offer + Acceptance.**

Agreement can also be a set of Promises, like **' P'** offers to take '**Q'** for movie and '**Q'** agrees to take **'P'** to a restaurant after the show. Both agree**.**

The scope of an agreement is infinite, as one can enter into any kind of an agreement be it legal, illegal, impossible to perform etc. Though one can enter into any kind of agreement, all agreements may not be enforceable in the court of law if any party does not fulfill his obligation. In the above example if **'Q'** fails to turn up at the thereafter agreeing to come. 'P' cannot go to the court. On the other hand, contract is an agreement which is enforceable. So Contract is an offer which when accepted is enforceable in the court of law, if any of the party backs out of his obligation.

Hence:

Contract = Offer + Acceptance+ Enforceability What is Enforceability?

It means an agreement which create some legal obligation; if this agreement is not followed by any party to contract, he can be sued.

1.1.2 Kinds of Agreements:

1. Valid Agreement:
A valid agreement is one which is enforceable by law.

2. Void Agreement:
An agreement not enforceable by law is said to be void [U/s 2(g)]. It has not legal existence at all and is without any legal effect. It does not give rise to any rights and obligations. Unlawful agreements are examples of void agreements. A Void agreement is not enforceable by law as they are opposed to the public policy like agreements in restraints of trade or in restraint of marriage or in restraint of legal proceedings.

3. Enforceable Agreement:
An agreement enforceable by law is a contract [Sec. 2(h)]

4. Voidable Agreement:
A voidable agreement is one which is enforceable by law at the option of one or more of the parties thereto but not at the option of the other or others. A Voidable agreement is valid so long as it is not avoided by the party entitled to do so.

5. Unenforceable Agreement:
An unenforceable agreement is valid in law but is incapable of proof because of some technical defect, for example, Promissory note which is not at all stamped or is insufficiently stamped. Law recognizes the validity of the promissory note but cannot enforce the same due to it being not at all stamped or insufficiently stamped.

6. Illegal Agreement:
An illegal agreement is something against the law and public policy. It is *void ab-inito*. Illegal agreement often involves a commission of crime. They are opposed to the public morals and as such, parties to such agreements are punishable under Indian Penal Code (IPC).

1.3 MEANING OF CONTRACT

1.3.1 Meaning:
Law of Contract is that branch of law which deals with making of legally valid agreements and also for interpreting these agreements. The law of Contract is the basis of business law because majority of the transactions in business, trade occupation, commerce and ever in profession and our day-to-day life are based on contracts.

In the words of Pollock **'every agreement and promises enforceable by law is contract'** Section 2(h) of the Indian Contract Act, 1872 states that **"an agreement enforceable by law is contract".** This definition gives us two ingredients are as under:

- An agreement
- Enforceable by law.

It means: **Contract=an agreement + enforceable by law**.

An agreement which is enforceable by a court or law is called a Contract. An agreement which is not enforceable by a court of law cannot be called contract. **For example:** An agreement between A & B to stab C and share the belongings of C acquired through such crime.

An agreement becomes a Contract when:-

1. Agreement is **not** declared void by law.
2. Agreement is made **for a lawful object**.
3. It is made by **free consent of parties**.
4. Parties are **competent to contract**.
5. Agreement is made for **lawful consideration.**

All of us enter into contracts everyday knowingly or unknowingly.

For example

a. Purchasing goods from a shop
b. Going to watch a Cinema
c. Boarding a train
d. Boarding a bus
e. Buying milk or newspaper in the morning. Etc.

1.4 ESSENTIAL ELEMENTS OF VALID CONTRACTS- SECTION 10

An agreement, to be enforceable by law, must possess the essential elements of a valid contract as contained in section 10 of the Indian Contract Act. According to Section 10, "All agreements are contract if they are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void."

Essentials valid contracts:

1. Offer and Acceptance.
In order to create a valid contract, there must be a 'lawful offer' by one party and 'lawful acceptance' of the same by the other party.

2. Intention to Create Legal Relationship.
In case, there is no such intention on the part of parties, there is no contract. Agreements of social or domestic nature do not contemplate legal relations.

For Example:

- P invites Q to have a dinner and Q accepts it. If P fails to serve the dinner, Q cannot sue 'P' for non-performance. The invitation for dinner is a social agreement.
- An agreement to have a cup of tea at a friend's house is a social agreement. A friendly agreement cannot be called Contract.
- 'A' gives a promise to his son to give him a pocket allowance of Rupees one hundred every month. In case A fails or refuses to give his son the promised amount, his son has no remedy against A.

Case: -[Balfour vs. Balfour(1919)2 K.B.571].
Facts of the Case: A husband agreed to pay £30 to his wife every month while he was abroad. As he failed to pay the promised amount, his wife sued him for the recovery of the amount.

Held: She could not recover as it was a social agreement and the parties **did not intend to create any legal relations**

3. Lawful Consideration:
In other words of Pollock, "Consideration is the price for which the promise of the another is brought. "consideration is known as quid pro-quo or something in return. Consideration must be real and lawful. An agreement to do something for others without getting anything in return is not enforceable.

Example: P promises to pay Rs.1,00,000/- on a certain date to Q without any promise in exchange. This is not a valid contract**.**

Example: A agrees to sell his pen to B for Rs.300/- . Here for A, the consideration for the watch is the money he gets from B and for B, the consideration for the money he gives, is the watch**.**

- Consideration may be …
- In cash or kind
- A promise to do or not to do something
- Past, Present, Future.

4. Capacity of parties:
The parties to an agreement must be competent t contract. If either of the parties does not have the capacity to contract, the contract is not valid.

According the following persons are incompetent to contract.

(a) Minors

(b) Persons of unsound mind, and

(c) Persons disqualified by law to which they are subject.

5. Free Consent:
'Consent' means the parties must have agreed upon the same thing in the same sense. A contract is made when one person makes an offer and another person accepts the offer. This acceptance of the offer should be made without any force or threat or coercion. According to Section 14, Consent is said to be free when it is not caused by-(a) Coercion (b) Undue influence (c) Fraud (d) Mis-representation, (e) Mistake.

An agreement should be made by the free consent of the parties.

6. Lawful Object:
The object of an agreement must be valid. Object has nothing to do with consideration. It means the purpose or design of the contract. Thus, when one hires a house for use as a gambling house, the object of the contract is to run a gambling house.

For Example: A promised to pay Rs.2,00,000/- to B to kill Q. The killing of a person is punishable under the IPC. Therefore, the promise is unlawful and void.

The Object is said to be unlawful if-

(a) It is forbidden by law;
(b) It is of such nature that if permitted it would defeat the provision of any law;
(c) It is fraudulent;
(d) It involves an injury to the person or property of any other;
(e) The court regards it as immoral or opposed to public policy.

7. Legal Formalities:
An oral Contract is a perfectly valid contract, expect in those cases where writing, registration etc. is required by some statute. In India writing is required in cases of sale, mortgage, lease and gift of immovable property, negotiable instruments; memorandum and articles of association of a company, etc. Registration is required in cases of documents coming within the scope of section 17 of the Registration Act.

8. Certainty of Meaning:
According to Section 29,"Agreement the meaning of which is not certain or capable of being made certain are void." An agreement contains terms as decided by the parties. The terms of agreement must be certain and unambiguous. If the terms of an agreement are uncertain, it is not a valid contract.

For Example: A agreed to pay Rs.3 lakh to B for an ultra-modern decoration of his drawn room. The agreement is void because the meaning of the term 'ultra- modern' is not certain.

However, an agreement to agree is not a concluded contract [Punit Beriwala v. Suva Sanyal AIR 1998 Cal. 44]

9. Possibility of Performance:
If the act is impossible in itself, physically or legally, if cannot be enforced at law.

For Example: Mr. A agrees with B to discover treasure by magic. Such Agreements are not enforceable.

10. Not Declared to be void or Illegal:
The agreement though satisfying all the conditions for a valid contract must not have been expressly declared void by any law in force in the country. Agreements mentioned in Section 24 to 30 of the Act have been expressly declared to be void for example agreements in restraint of trade, marriage, legal proceedings etc.

All the elements mentioned above must be present, in order to make a valid contract. If any one of them is absent the agreement does not become a contract.

1.5 SUMMARY

- Law of Contract is that branch of law which deals with making of legally valid agreements and also for interpreting these agreements.
- Every promise and set of promises, forming the consideration for each other is an agreement.
- Contract = Offer + Acceptance+ Enforceability
- **Essential Elements of Contract:** Offer and Acceptance. Intention to Create Legal Relationship. Lawful Consideration, Capacity of parties, Free Consent,

Lawful Object, Legal Formalities, Certainty of Meaning, Possibility of Performance, Not Declared to be void or Illegal,

1.6 QUESTION

1. What is an agreement?
2. Distinguish between Agreement and Contract.
3. Distinguish between Void Contract and Voidable Contract.
4. Enumerate the essentials of Valid Contract.
5. Explain the following terms:
   a. Business b. Law c. Agreement
   d. Contract e. Voidable agreement f. Void agreement
   g. Illegal Agreement h. Unenforceable Agreement

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2

KINDS OF CONTRACT: CLASSIFICATION OF CONTRACTS

Unit Structure

2.0 OBJECTIVES

After studying the unit, the students will be able to:

- Classify the contracts on various basis.
- Understand the validity of each type of contract.

2.1 CLASSIFICATION OF CONTRACT ACCORDING TO VALIDITY OR ENFORCEABILITY

Following are the kinds of contract according to Validity of Enforceability:

1. Valid Contract:
A valid contract is one which has all essential elements and is enforceable by law.

For Example: A' contracts with B' for sell of his furniture for Rs. 2,00,000/- A delivered his phone to B in exchange B transfers Rs. 2,00,000/- As both parties have fulfilled their contractual obligations and with lawful consideration contract is valid.

2. Voidable Contract:
An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract. A contract is voidable when one of the parties to the contract has not exercised his free consent. One of the essential elements of a

formation of a contract for example, free consent, is absent. All voidable contracts are those which are induced by coercion fraud or misrepresentation. The person whose consent is not freely given may avoid a contract. It therefore continues to be valid till the party whose consent is caused by coercion, undue influence, fraud or misrepresentation chooses to avoid the contract within a reasonable time. Contract then is not binding on the other party.

3. Void Contract:
A contract which ceases to be enforceable by law becomes void, when it ceases to be enforceable. A void contract is a nullity from its inception. No rights accrue there under. A contract may also be originally valid when entered into but subsequently due to change in the events or circumstances, it may become void. It should be noted that there cannot be a void contract because when the contract is void, it is no contract at all. **A void contract is not enforceable by the court of law.**

For Example. A says to B will you buy my mobile phone in exchange of a consideration of AK47. As the consideration is void the contract is not enforceable. Hence it is Void.

4. Unenforceable Contract:
A contract which satisfies all the requirements of the contract but has technical defects is called unenforceable contract. A contract is said to have a technical defect when it does not fulfill the legal formalities required by some other act. When such legal formalities are complied with later on, the act becomes enforceable.

2.2 CLASSIFICATION OF CONTRACTS ACCORDING TO MODES OF FORMATION

2.2.1 Following are kinds of Contracts according to its mode of formation:

1. Express Contract:
When the terms of a contract are reduced in writing or are agreed upon by spoken words at the time of its formation, the contract is express.

For Example: A says to B Will you purchase my SONY Television for Rs.50000/- by the words spoken or written.

2. Implied Contract:
The terms of a contract are inferred from the conduct or dealing between the parties. When the proposal or acceptance of any promise is made otherwise than in words, the promise is said to be implied. Such an implied promise leads to an implied contract.

For Example: 'A' boards a bus. It is implied from his conduct that A has entered onto an implied promise to purchase a ticket.

2.3 CLASSIFICATION ACCORDING TO PERFORMANCE

Following is the classification of contract on the basic of performance:

1. Executed Contract:
Where both the parties have performed their obligation, it is an executed contract. Even when one party to the contract has performed his share of the obligation, the contract is executed through to the other party is still under an outstanding obligation to perform his part of the promise.

For Example: A sells his car to B for Rs.2.00 lakh. A delivered the car and B paid the Price. This is an executed contract.

2. Executory Contract:
Here neither party to the contract has performed his share of the obligation, for example, both the parties have yet to perform their promises, the contract is executory. In an executed contract one party has already performed his part of the agreement while the other party has to perform his par. In an executory contract both the parties have to perform their mutual promises and the fact that they have to perform their parts of the contract does not affect the validity of the contract.

For Example: A sells his car to B for Rs.2 lakh. If A is still to deliver the car and B is yet to pay the price, it is executor contract.

3. Partly Executed and Partly Executory Contract:
In a partly executed and partly executor contract, one party has already performed his promise and the other party has yet to execute his promise.

For Example: 'A' sells his Vehicle to 'B'. 'A' has delivered his Vehicle; 'B' has yet to pay the price. For 'A' it is an executed contract whereas it is an executor contract on the part of 'B' since the price has yet to be paid.

4. Unilateral Contract:
A unilateral contract is also known as a one-sided contract. It is contract where only one party has to perform his promise. In such a contract, the promise on one side is exchanged for an act on the other side. After the formation of a unilateral contract, only one party remains liable to perform his obligation because the other party has already performed his obligation.

For Example: Aruna promises to pay Rs 2000/- to anyone who finds his lost Golden Ring. **Varun** finds it and returns it to **Arun**. From the time **Varun** found the Golden Ring, the contract came into an existence. Now **Arun** has to perform his promise, that is the payment of Rs.2000/-

5. Bilateral Contract:
In a bilateral contract both the parties have to perform their respective promises. It is also known as a two-sided contract. Here, the obligation is outstanding on the part of both the parties.

For Example: 'A' promises to sell his car to 'B' for Rs. 2.00 lakh and agrees to deliver the car on the receipt of the payment by the end of the week. The contract is bilateral as both the parties have exchanged a promise to be performed within a stipulated time.

2.4 DIFFERENCE BETWEEN AGREEMENT AND CONTRACT

DIFFERENCES	AGREEMENT	CONTRACT
Definition	Section 2(e) of the Indian Contract Act Defines agreement as – "Every promise and every set of promises, forming the consideration for each other is an agreement"	Section 2(h) of the Indian Contract Act 1872 defines Contract as – "An agreement enforceable by law is a Contract"
Validity based on	Mutual acceptance by both (or all) parties involved.	Mutual acceptance by both (or all) parties involved.
Does it need to be in writing?	No.	No, except for some specific kinds of contracts, such as those involving land or which cannot be completed within one year.
Consideration required	No consideration required.	Yes consideration is an essential factor.
Legal effect	An agreement that lacks any of the required elements of a contract has no legal effect.	A contract is legally binding and its terms may be enforceable in a court of law.
One another	All agreements are not contract.	All contracts are agreement.

2.5 DIFFERENCE BETWEEN VOID AND VOIDABLE CONTRACT

Differences	VOID CONTRACT	VOIDABLE CONTRACT
Definition	When a contract ceases to be enforceable at law, it becomes void contract	Voidable contract is a contract which is enforceable by law at the option of one or more parties thereof, but not at the option of others.
Status	A void contract cannot create any legal rights. It is a total nullity.	A voidable contract takes its full and proper legal effect unless it is disputed and set aside by the person entitled to do so.
Nature	A void contract is valid when it is made. But subsequently it becomes void due to one reason or the other.	A contract may be voidable since very beginning, or may subsequently become voidable.
Rights	A void contract is valid when it is made. But subsequently it becomes void due to one reason or the other.	A voidable contract gives rights to the aggrieved party to rescind the contract, and claim the damages, etc. in certain cases.

2.6 SUMMARY

Kinds of Contract: Valid Contract, Voidable Contract, Void Contract , Unenforceable Contract , Express Contract, Implied Contract, Executed Contract, Executory Contract, Partly Executed Partly Executory Contract, Unilateral Contract, Bilateral Contract

2.7 QUESTIONS

1. Enumerate various types of contracts.
2. Distinguish between Agreements & Contracts.
3. What is void and voidable contract?
4. Distinguish between Contingent Contract and Wagering Agreement.
5. Define the following terms:
   a. Valid Contract
   b. Void Contract.
   c. Unilateral contract
   d. Executory contract.

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3

OFFER/PROPOSAL
U/s 2(a) & ACCEPTANCE U/S 2(b)

Unit Structure

3.1 OBJECTIVES

After studying the unit, the students will be able to:

- Know the meaning of and elements of offer.
- Discuss about the essentials of valid offer.
- Explain the types of offers.

3.2 INTRODUCTION

The words 'offer' and 'proposal' are synonymous and they mean one and the same thing. Offer is the first step in the formation of contract. When a valid offer is made and accepted, contract comes into existence, provided the other essential elements are present.

3.3 MEANING OF OFFER

3.3.1 Meaning:

Section 2 (a) of the Contract Act defines Offer as – '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 an offer'.

3.3.2 Elements of Offer:

The analysis of the definition would show that the following elements are present in an offer:

a. There is an expression of willingness to do or abstain from doing something;

b. The expression is from one person to another;

c. The expression is for seeking the assent of that other person.

d. The person making the offer is called the 'offeror' and the person to whom the offer is made is called the 'offeree'.

e. An Offer is the first step in the formation of contract. Offer or Proposal is a medium through which person **signifies to another his willingness to do not to do anything with a view to obtaining *assent of that other to such act or abstinence.

(***Assent:*** Means acceptance has been signified either in writing or by words of mouth or by performance of some act.).

(** **Signify Means:** a sign, symbol)

Section 2(a) of the Indian Contract Act, 1872 defines the term "Proposal" as when one person signifies to another his willingness to do or to abstain from doing something with a view to obtaining the assent of the other to such an act or abstinence, he is said to make a proposal."

- The person making the 'proposal' or 'offer' is called the '**promisor'** or '**offeror'**,
- The person to whom the offer is made is called the **'offeree' or Promise**. or **Acceptor**

Example:
Ram asked to Shyam "Will you buy this Furniture for Rs.2,00,000/-?. Here Ram is making an offer to Shyam, because he signifies to Shyam his willingness to sell his furniture for Rs.2,00,000/- with a view to obtaining Shyam's assent to purchase furniture.

3.3.3 Modes of Giving an Offer:

An offer can be made by an act in the following ways:

a. By Spoken or by written (Express offer):
The written offer can be made by letters, telegrams, telex messages, advertisements, etc. The oral offer can be made either in person or over telephone.

Examples:

- A proposes, by letter, to sell a house to B at a certain price. This is an offer by an act by written words (i.e., letter). This is also an express offer.
- A proposes, over telephone, to sell a house to B at a certain price. This is an offer by act (by oral words). This is an express offer

b. By conduct (Implied):
The offer may be made by positive acts or signs so that the person acting or making signs means to say or convey.

However, silence of a party can in no case amount to offer by conduct. An offer can also be made by a party by omission (to do something). This includes such conduct or forbearance on one's part that the other person takes it as his willingness or assent. An offer implied from the conduct of the parties or from the circumstances of the case is known as implied offer.

- BEST runs a bus on a particular route. It is an **implied offer** by the transport company to carry a passenger for a certain fare.
- A owns a motor boat for taking people from **Mumbai to Alibag**. The boat is in the waters at the Gateway of India. This is an offer by conduct to take passengers from **Mumbai to Alibag**. He need not speak or call the passengers. The very fact that his motor boat is in the waters near Gateway of India signifies his willingness to do an act with a view to obtaining the assent of the other. This is an example of an implied offer.

3.3.4 To whom offer can be made?

a. To definite person-Specific Offer:

Example: Zahir Proposes to sell his horse to **Mihir** for Rs. 80,000/- This offer is made to a **definite person** i,e to **Mihir.**

X offers to buy car from **Y** for Rs 1.0 lakh. This offer is a specific offer which has been made to a definite person **Y** No person other than **Y** can accept this offer

b. To definite Class of Person:

Example: School put up a notice to offer a reward of Rs.500/- to any students who returns the lost cell phone of a teacher. This is an offer to a definite class of persons i,e **the Students of School.**

c. To the world at large. - General Offer:
A general offer is one which is not made to a definite person, but to the world at large or public in general. A general offer can be accepted by any person by fulfilling the terms of the offer. In case of general offer, the contract is made with person who having the knowledge of the offer comes forward and acts according to the conditions of the offer.

Example: X advertiser! the newspaper that he would pay Rs. 5,000 to anyone who traces his missing boy. Y who knew about the reward traced that boy and sent a telegram to X that he had found his boy; It was held that X was entitled to receive the amount of reward. [Harbhajan Lal v. Harcharan Lal (AIR All 539)]

Case Laws: Carlill v. Carbolic Smoke Ball Co. [1893 1Q.B.256]

Facts of the Case:
The Carbolic Smoke Ball Company, advertised in the several newspapers, that a reward of 100 pounds would be given to any person who suffered from influenza after using smoke ball of the company according to its printed directions. The company's advertisements also stated that 1000 pounds had been deposited at a London bank as a sign of the company's good faith in offering such a reward.

Mrs. Louisa Carlill purchased one of the Carbolic Smoke Balls and, following the instructions as per the direction of given by the Co.(i.e. how to use the product), used it three times daily for a period of two months. She subsequently contracted influenza at the end of this period. Represented by her husband, a qualified solicitor, she attempted to claim the 100-pound reward from the company. **It was held**, she could recover the amount as, by using smoke balls, she had accepted the offer.

Source:
https://www.google.com/search?q=carlill+v/s+carbolic+smoke+ball&rlz=

3.4 ESSENTIALS OF VALID OFFER

3.4.1 Valid Rules As To Offer.

An offer to be valid must **satisfy** the following conditions.

They are the essentials of a valid offer.

1. Offer may be express or implied:
An offer may be made either by words or by conduct. When an offer is made by words, written or spoken, it is called an express offer. When the intention to make an offer is gathered from the conduct of the person, it is called an implied offer.

2. The terms of the offer must be certain:
If the terms of the offer are not certain or definite, it is not a valid offer. It is rightly observed that unless all the material terms of the contract are agreed, there is no binding obligation. Therefore, the terms of the offer must not be loose or vague. They should not be capable of different or various interpretations and it must be possible to correctly ascertain the intention of the parties.

3. Offer must be distinguished from invitation to make offer:
An offer is different from 'invitation to offer'. In the case of invitation to offer, the person sending his invitation is merely calling upon the others to place their offers. Price Tags on a product is the good example of an invitation to make the offer. Similarly, an advertisement for sale of goods by auction, quotations, catalogues of prices are examples of invitations to offer.

For Example: Job or Tender advertisement inviting applications for a job or inviting tenders is an invitation to an offer.

4. Offer may be general or specific:
An offer is said to be general when it is made to the public at large and anyone may accept the same. A specific offer is made to a definite person or persons and hence can be accepted only by the person to whom it is made.

For Example: A offers to **B** to sell his Car for Rs.90, 000/-, it is a case of specific offer. Whereas **A** offers a reward of Rs. 5000/- to whosoever finds his lost scooter is a general offer.

5. Offer must be communicated:
Offer must be communicated to the offeree; otherwise, it is not effective in the eyes of law. There cannot be any acceptance without the knowledge of offer. Thus, where **A** finds an article lying on a street and restores it to the owner without any knowledge about the reward offered by the **owner**, he **cannot claim** the reward from the owner because there was no **communication of offer to him.** A person cannot accept an offer as long as he is **unaware of its existence.** Unless an offer is properly communicated there cannot be an acceptance of it. An acceptance of an offer, in ignorance of the offer is no acceptance at all and does not create any legal rights or obligations.

Case Law: Lalman Shukla vs Gauri Dutt. (1913) All LJ 489]
Facts of the Case: Lalman Shukla is an employee with Pt. Gauri Dutt. When the nephew of Pt. Gauri Dutt was found missing, Lalman Shukla was sent for the search. It was announced later that who so ever finds the missing nephew will be rewarded with Rs.501/-. Unaware of the announcement of the reward, Lalman Shukla located the missing nephew and brought back.

It was held that Lalman Shukla has no right in the reward because he has no knowledge of the proposal. Hence, an action without the knowledge of the proposal is no acceptance at all.

6. Offer must not thrust the burden of acceptance:
Offer should not contain the term the non –compliance of which may be assumed to amount to acceptance.

Example: 'X' writes to 'Y', I will sell you my motor car for Rs.50000/- If you do not reply I shall assume you have accepted the same.

7. A statement of price is not an offer:
A mere statement of price is not an offer to sell.

Case Laws: Harvey V/s Facey
The case involved negotiations over a property in **Jamaica**. The defendant, Mr. **Facey**, had been carrying on negotiations with the Mayor and Council of Kingston to sell a piece of property to Kingston City. On 7 October 1891, **Facey** was traveling on a train between Kingston and Pours and the **appellant, Harvey**, who wanted the property to be sold to him rather than to the City, sent Facey a telegram.

It said….

Q 1."Will you sell us Bumper Hall Pen?

Q 2. "Telegraph lowest cash price-answer paid".

Facey replied on the same day: **"Lowest price for Bumper Hall Pen £900."**

Harvey then replied in the following words. "We agree to buy Bumper Hall Pen for the sum of nine hundred pounds asked by you. Please send us your title deed in order that we may get early possession."

Held: No contract between **Harvey & Facey** because **Facey replied only Q no 2.** He supplied merely the information and no offer has been made by him to sell.

3.4.2 Difference between Offer and Invitation to an Offer:

	Offer	**Invitation to an offer**
Meaning	When one person signifies his willingness to do or abstain from doing anything with a view to obtaining an assent of another person is called offer.	It is not an offer in real sense, but an indication of the person's willingness to enter into a contract.

Sections	Section 2 (a) of Indian Contract Act 1872.	Not defined in Indian Contract Act 1872.
Modes	Can be express of Implied	Cannot be implied
Acceptance	Offer becomes an agreement when accepted.	An invitation to offer becomes an offer.
Example	A' offering to sell his car to his friend B for INR 4,00,000/-	Book Seller sending catalogue of books indicating prices of various books.

3.5 CLASIFICATION/TYPES OF OFFER

1. Express Offer:
The offer made by using words spoken or written is known as an express offer.

Example. Viral says to Kiran-"Will you purchase by Computer for Rs.10,000/-?

2. Implied Offer:
The offer which could be understood by a conduct of parties or circumstances of the cases is implied offer.

Example-Withdrawing money by the card holder from the ATM it creates an implied contract between the Card holder and Bank

3. General Offer:
If the offer made to the world at large, it is known as the general or public offer. The general offer is one which is not made to a specific person. The General Offer can be accepted by anyone.

For Example: An advertisement in a newspaper 'Anyone who will find my lost Envelop will be rewarded with Rs.5,000/-.

4. Specific Offer:
The offer made to a specific person or a particular person or two or more than two specific persons. The offer is made to an ascertained person.

Example: 'A' offers to sell his house to 'B'for Rs. 40,00,000/- price. The offer has been made to a definite person, i.e., 'B'. It is only 'B' who can accept it [Boulton v. Jones (1857) 2H.and N. 64].

5. Cross Offer:
If two parties made offer to one another in ignorance of the offer made by other party, and terms-conditions in both the offer are same. Two cross offer do not conclude a contract.

Example: "A" by a letter offered to sell his car to "B" for Rs 2lacs. Without knowing about "A"s offer "B" also by a letter offered to buy "A"s same car for Rs 2lakhs. Both the offers cross each other.

6. Continuous Offer: (standing offer)
An offer of a continuous nature is known as 'standing offer'. A standing offer is in the nature of a tender.

Example: X Ltd. requires a large quantity of certain goods during the 12 months period and gives an advertisement inviting tender in the leading newspaper Z submitted the tender to supply those goods at a specific rate. Z's tender is accepted or approved. Now, Z's tender becomes a standing offer. Each order given by X Ltd. will be an acceptance of the offer.

7. Counter Offer:
Counter offer is the rejection of the original offer by the offeree and giving new offer.

Example: A offers to sell his car to B For Rs. 80,000/-, but B is ready to buy it for Rs.50,000/-. This new offer by B of Rs.50000/- to A is called a counter- offer. Now, it is for A to accept this new offer or reject it. If A accepts this offer, it will become a binding contract.

3.6 ACCEPTANCE OF AN OFFER

3.6.1 Rules of Valid Acceptance:
A contract comes into existence when a valid offer is validly accepted. Section 2 (b) of the Contract Act states that, 'when the person to whom the offer is made **signifies his assent** thereto, the offer is said to be accepted. (An offer when accepted becomes promise) A valid acceptance must be in conformity with the following rules:

1. Acceptance must be given by the person to whom the offer is made:
An offer can be accepted only by the person or persons to whom the offer is made; no one else can accept the offer. For Example if A intends to contract with B and therefore makes an offer to B, C cannot intervene and accept the offer made to B, without the consent of A.

2. Acceptance must be by certain person:
An offer may be made to an unascertained number or to the world at large but no contract can arise until it has been accepted by a certain person who first gives information either by words or by conduct. Such an offer is known as **General Offer**. The general offer is closed as soon as it is accepted by a definite person.

Example: A gives an advertisement in the newspaper offering Rs.25,000/- to one who gives information of his lost daughter. B gives the information. **B** is entitled to have reward of Rs.25000/- Similarly, an offer to class of

persons, can be accepted by any member of that class or group only and not by any other person not belonging to that group.

3. Acceptance must be Absolute and Unconditional or Unqualified:
An acceptance must be unconditional. A conditional or qualified acceptance is no acceptance in the eyes of law. Even a slight deviation from the terms of the offer would make the acceptance invalid. In fact, a conditional acceptance by itself is a counter-offer and not an acceptance.

Example: If A offers an article to B for Rs. 100/-, the acceptance by B to buy the article for Rs. 90/- is no acceptance in the eyes of law.

X inquires with **Y "**Will you purchase my dog for Rs.100"/-B replies, I shall purchase your dog for Rs.100/-, provided you should purchase my cat for Rs. 90/-

In this example, there will be no contract because the acceptance is **conditional.**

4. Acceptance must be Communicated:
Mere mental acceptance is not acceptance. But there is no requirement of communication of acceptance of the general offer. The general offer can be accepted by the performance of a condition.

Example: Maria tells **Peter** that she intends to marry **Stiven,** but does not tell anything to **Stiven**. There is no contract even if **Stiven** is willing to marry Maria.

Case Laws:Brogden V/s Metropolitan Railway Company.

Facts of the Case: The Manager of Railway Company received a draft agreement relating to the supply of Coal. The manager marked the draft with the words **" Approved",** and put the same in the drawer of his table and forgot all about it.

Held: There was no contract between the parties as the acceptance was not communicated. It may, however, be pointed out that the Court construed a conduct of parties, as railway company was accepting the supplies of coal from time to time.

5. Mental Acceptance is not sufficient in Law:
Silence cannot amount to acceptance. Mere un communicated or mental acceptance is not enough. Acceptance to be complete must be communicated by words or conduct by an offeree to the proposer. Mental Acceptance is no acceptance at all. The proposer cannot prescribe that the offeree's silence shall be deemed to an acceptance.

Example: X tells Y that he intends to buy Z's house, but does not tell anything to Z of his intention. This is no contract.

Case Law: *Felthouse v Bindley* [1862] EWHC CP J35:
A nephew discussed buying a horse from his uncle. He offered to purchase the horse and said if I don't hear from you by the week end, I will consider him mine. The horse was then sold by mistake at auction. The auctioneer had been asked not to sell the horse but had forgotten. The uncle commenced proceedings against the auctioneer for conversion. The action depended upon whether a valid contract existed between the nephew and the uncle.

Held: There was no contract. You cannot have silence as acceptance.

6. Acceptance must be expressed in some reasonable manner:
If the terms of the offer stipulate certain period within which the offer has to be accepted, the acceptance must be effected within the time so stipulated. Acceptance may be made either by words or by conduct; It may also be expressed by post or telegram. If the proposer prescribes the manner in which the proposal is to be accepted and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him insist that his proposal shall be accepted in a prescribed manner, and not otherwise; but if he fails to do so; he accepts the acceptance. Therefore, if the proposer prescribes a method of delivery of goods at a particular place, he is not bound to accept delivery at any other place.

Usual and reasonable manner would mean the parties intended to perform the contract in the ordinary course of trade or business. The proposer is at liberty to prescribe the mode in which his offer or proposal shall be accepted. The proposer has the right to prescribe the manner in which the proposal can be accepted but not the manner in which it may be refused.

7. Acceptance must be given within a reasonable time:
M offered to take share in a company on 9th June and received a acceptance on 24th November. **M** refused to take the shares. As the reasonable period of acceptance had elapsed, he was entitled to refuses to take the shares.

3.7 SUMMARY

- **Section 2 (a) of the Contract Act** defines Offer as – '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 an offer'.
- **Modes of Giving an Offer:** By Spoken or by written (Express offer) By conduct. (Implied):
- **To whom offer can be made?** : To definite person-Specific Offer, To definite Class of Person, To the world at large. - General Offer:,

- **Essential Elements of Valid Offer:** Offer may be express or implied, The terms of the offer must be certain, Offer must be distinguished from invitation to make offer, Offer may be general or specific, Offer must be communicated, Offer must not thrust the burden of acceptance.
- **Types of Offer:** Express Offer, Implied Offer, General Offer, Specific Offer, Cross Offer: Continuous Offer: (standing offer), Counter Offer:

3.8 QUESTIONS

1. What is offer? Enumerate essentials of a valid Offer?
2. What are the various types of Offers?
3. State briefly the Ingredients of Offer.
4. What is acceptance of an offer?
5. Explain the difference between Offer and an Invitation to offer.
6. What are the essential elements of acceptance of an offer?
7. Define the following terms:
   a. Offer
   b. Valid offer
   c. Cross offer
   d. Specific offer
   e. Implied offer

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4

COMMUNICATION OF OFFER AND ACCEPTACE

Unit Structure

4.0 OBJECTIVES

After studying the unit, the students will be able to:

- Understand when the communication of offer is complete.
- Understand the communication of offer and acceptance of offer.
- Discuss about the meaning and modes of Revocation of proposal.

4.1 INTRODUCTION

The **offer** must be communicated to the other party so that its **acceptance** may constitute a contract.

An offer must be communicated to the person to whom the offer is made (the **offeree**) if the offer is to be effective. If an offer is sent in the post, it will have no effect until it reaches the offeree, that is to say when it is communicated not when the offer letter is posted.

4.2 MEANING OF COMMUNICATION OF OFFER COMPLETE

The communication of offer is complete when it comes to the knowledge of the person to whom it is made. In case an offer is made by post, its communication will complete when the letter containing the offer reaches the offeree.

Example: **X** of Chennai sends a letter by post to **Y** of Madurai offering to sell his car far Rs 1,00,000. The letter is posted on 1st January and this

letter reaches on 7th January. The communication of the offer is complete on 7th January.

Note: An offer accepted without its complete communication does not bind the **offeror.**

Example: In case of **Lalman V/s Gauri Dutt**, G sent his servant L to trace his lost nephew. When the servant had left, G announced a reward to anyone who traces the boy. L found the boy and brought him home. When L came to know of the reward, he claimed the reward. It was held that L was not entitled to the reward because he did not know about the offer when he found the missing boy.

A proposal is an expression of willingness to do contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the other person to whom it is addressed.

4.3 COMMUNICATION OF ACCEPTANCE

Let's try to understand the communication of offer and acceptance with the help of following example: -

X of Agra sends a letter by post to **Y** of Delhi offering to sell his car for Rs. 1,00,000. This letter is posted on 1st January and reaches Yon 7th January Y sends his acceptance by post on 10th January but X receives this letter of acceptance on 15th January. Answer each of the following questions.

(a) When is the communication of offer complete: - **7th January**

(b) When is the communication of acceptance complete as against the offeror: -**10th January**

(c) When is the communication of acceptance complete as against the acceptor:**15th Jan**

(d) If X sends a telegram on 8th January revoking his offer and this telegram reaches Y before the letter of the acceptance is posted. Is revocation of offer is valid? **Yes it is valid**

(e) If Y sends a telegram on 14th January revoking his acceptance and this telegram reaches X before the letter of acceptance is received by X. Is revocation of acceptance is valid? Yes it is valid

As against the proposer:
The communication of acceptance is complete, when it is put a course of transmission to him, so as to be out of the power of the acceptor. In the case of acceptance through post, the contract is complete on the date when the letter of acceptance is posted. Whether or not the letter is received by the offeror is absolutely immaterial. The offeror, however, becomes bound only when a properly addressed and adequately stamped letter of

acceptance is posted. The contract is complete when acceptance of offer is put in the course of transmission to the offeror.

As against the acceptor:
When it comes to the knowledge of the proposer (Section 4)

Example: 'B' accepts **'A's** proposal by a letter sent by post. The communication of the acceptance is complete as against A, when the letter is posted, as against B, when the letter is received by A.

If communication of the acceptance is made by telephone, teleprinter, telex and fax machines, it completes when the acceptance is received by the offeror. The contract is concluded as soon as the offeror receives or hears the acceptance.

4.4 REVOCATION OF PROPOSAL SECTION: 5

4.4.1 Meaning:
Revocation means **'taking back'** or **'cancellation'**. **When can the proposal be revoked?**

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Example: A proposal is sent by **Yameen** to **Yasir** and is accepted by **yasir** by letter. The proposal might have been revoked any time before the letter of acceptance was posted but it cannot be revoked after the letter is posted.

Example: A proposes, by a letter sent by port, to sell his house to **B**. **B** accepts the proposal by a letter sent by post. **A** may revoke his proposal at any time before or at the moment when **B** posts his letter of acceptance, but not afterwards may revoke his acceptance to any time before or at the moment when **B** posts his letter of acceptance, but not afterwards.

4.4.2 Modes of Revocation of Proposal (Section 6):

1. By notice of revocation:
Offer may be revoked by a communication of a notice of revocation by the offeree to the other party before acceptance is complete against the offeror himself. An offer made in writing may be revoked by words of mouth. The notice of revocation may not always be express. A notice of revocation to be effective must be communicated to the offeree.

2. By lapse of time:
A proposal will come to an end by the lapse of time prescribed in such proposal for its acceptance or, if no time is so prescribed by the lapse of

time of reasonable time is a question of fact depending upon the circumstances of each case. Where the subject matter of the contract is an article, like gold, the parties of which fluctuate daily in the market, very short period will be regarded as reasonable made late in November.

3. By non-fulfillment of condition precedent:
A proposal is revoked when the acceptor fails to fulfill a condition precedent to the acceptance of the proposal which was conditional offer. Thus, X may offer to sell certain goods to Y on a condition that Y pays a certain amount before a certain date.

4. By death or insanity:
A proposal is revoked by the death or insanity of the proposer if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

5. By counter offer:
An offer comes to end when the offeree makes a counter offer or rejects the offer. Where an offer is accepted with some modification in the terms of the offer or with some other condition not forming part of the offer, such qualified acceptance amount to a counter offer.

6. By the non-acceptance of the offer according to the prescribed or usual mode:
The offer will also stand revoked if it has not been accepted according to the prescribed.

7. By subsequent illegality:
An offer lapses if it becomes illegal after it is made and before it is accepted. Thus, where an offer is made to sell 10 bags of wheat for Rs. 2500 and before it is accepted, a law prohibiting the sale of wheat by private individual is entered, the offer comes to end.

4.4.3 Revocation of Acceptance:
An acceptance may be revoked at any time before communication of the acceptance is complete as against the acceptor, but not afterwards.

Example: Shahid Proposes by a letter sent by post to sell his Shop to **Bilal. Bilal** accepts the proposal by a letter sent by post. **Shahid** may revoke his proposal at any time before or at the moment when **Bilal** post his letter of acceptance, but not afterwards.

Bilal may revoke his acceptance at any time before or at the moment when the letter communicating it reaches **Shahid** but not afterwards.

Time for revocation of Proposal and Acceptance:
A Proposal may revoke at any time before the communication of the acceptance is complete as against the proposer and not afterwards.

For Example: 'A' proposes by a letter sent by post to sell his house to 'B'. The letter is posted on 1st July, 2011. 'B' accepts the proposal by a letter sent by post on 4th July, 2014. The letter reaches 'A' on 6th July, 2014.

- **'A'**may revoke his offer at any time **before 'B'**posts his letter of acceptance i,e 4th July,2011 and not afterwards.
- **'B'**may revoke his acceptance at any time **before** the letter of acceptance reached **'A'**i,e before 6th July,2011 and not afterwards.

Communication of Revocation of an offer:
As far as the revocation of the offer is concerned, the offeror is bound by revocation of the offer as soon as he duly posts the letter of revocation of the offer. He cannot cancel the revocation made by him. But revocation of the offer is binding on the offeree only if the letter of revocation of the offer is received by the offeree before the letter of acceptance is duly posted by the offeree.

4.5 SUMMARY

- An offer must be communicated to the person to whom the offer is made (the **offeree**) if the offer is to be effective.
- **The communication of offer is complete** when it comes to the knowledge of the person to whom it is made.
- A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. **Modes of Revocation of Proposal:** By notice of revocation, By lapse of time, By non-fulfillment of condition precedent, By death or insanity, By the non-acceptance of the offer according to the prescribed or usual mode, By subsequent illegality.

4.6 QUESTIONS

1. What is Communication of Offer? Illustrate with suitable case laws.

2. Why Communication of offer is essential?

3. Short Note:

a) Revocation of Acceptance.

b) Modes of Revocation of Proposal.

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5

CAPACITY OF PARTIES U/S 10-12

Unit Structure

5.0 OBJECTIVES

After studying the unit, the students will be able to:

- Discuss about the meaning of Minor and effects of Minor agreement.
- Meaning of Sound mind and the effects of the agreement done by the unsound mind person.
- Know the capacity of contract.

5.1 INTRODUCTION

For construction of valid contract, the parties to a contract must have capacity i.e., **competency** to enter into a contract. Every person is assumed to have capacity to contract but there are certain persons whose age, condition or status makes them incapable of binding themselves by a contract.

Section 11 of the Contract Act deals with the competency of parties and provides that "every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from disqualified from contracting by any law to which he is subject."

Hence: Section 10 says, all agreements are contracts, if they are made by the parties competent to contract.

Section. 10 require that the parties shall be competent to contract.

Section .11 Who is competent to contract.? –

Every person is competent to contract who is of ….

- 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.

Hence:

Following persons are not competent to contract.

(a) Minor

(b) Person of unsound mind, and

(c) Person disqualified by any law to which they are subject. Contract entered into by the persons mentioned above are void.

Every person is competent to contract who is:

(a) Of the age of **majority.**

(b) Of **sound mind.**

(c) N**ot disqualified** from making a contract.

Therefore, the following persons are not competent to contract

(a) A person who is a **minor.**

(b) A person of **unsound mind.**

(c) A person who is **disqualified** from making a contract.

Although the above-mentioned categories of persons are not competent to contract, yet they may sometimes be making some bargains, taking some loans, or be supplied with some goods by third parties, or be conferred with some benefits etc., the position of such person in such like situations is being discussed below.

5.2 MEANING OF MINOR AND EFFECTS OF MINORS AGREEMENTS

5.2.1 Meaning of Minor:

A person who has not attained the age of majority is a minor. Section 3 of the Indian Majority Act, 1875 provides about the age of majority. " **Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before**." It states that a person is deemed to have attained the age of majority when he completes the age of 18 years, except in case of a person of whose person or property a guardian has been appointed by the Court in which case the age of majority is 21 years.

5.2.2 Effects of Minors Agreements:

A minor's agreement being void is wholly devoid of all effects. When there is no contract there should be no contractual obligation on either side.

1. An agreement with or by minor is void:
Section 10 of the Indian Contract Act requires that the parties to a contract must be competent and Section 11 says that a minor is not a competent. But either section makes it clear whether the contract entered into by a minor is void or voidable. Till 1903, court in India we were not unanimous on this point the privy council made it perfectly clear that a minor is not competent to a contract and that a contract by minor is void *ab initio*.

The leading case is:

MOHRI BIBI V. DHARMO DAS GHOSE (1903):
"A minor borrowed Rs. 20,000/- from B and as a security for the same executed a mortgage in his favor. He became a major a few months later and filled a suit for the declaration that the mortgage executed by him during his majority was void and should be cancelled. It was held that a mortgage by a minor was void and B was not entitled to replacement of money.

2. No ratification:
An agreement with the minor is completely void. A minor cannot ratify the agreement even on attaining majority, because a void agreement cannot be ratified. A person who is not competent authorize an act cannot give it validity by ratifying.

But if on becoming major, minor makes a new a new promise for fresh consideration, then this new promise will be binding.

3. Minor can be a promise or beneficiary:
If a contract is beneficiary to a minor it can be enforced by him. There is no restriction on a minor from bring a beneficiary, for example, being a payee or a promisee in a contract. Thus a minor is capable of purchasing immovable property and he may sue to recover the possession of the property upon tender of the purchase money. Similarly, a minor in whose favor a promissory note has been executed can enforce it.

4. No estoppel:
Where a minor by misrepresenting his age has induced the other party enter into a contract with him, he cannot be made liable on the contract. There can be no estoppel against a minor. It means he is not estoppel from pleading his infancy in order to avoid a contract.

5. Liability for Torts:
A trot is a civil wrong. A minor is liable in tort unless the tort in reality is a breach of contract. Thus, where a minor borrowed a horse for riding only, he was held liable when the he lent the horse to one of his friends who jumped and killed the horse. But a minor cannot be made liable for a breach of contract by framing the action on tort. you cannot convert a contract into a tort to enable you to sue an infant.

6. No insolvency:
As he is incapable of contracting debts and dues are payable from the personal properties of minor and he is not personally liable. A minor cannot be declared insolvent

7. Partnership:
A minor being in competent to contract cannot be a partner in a partnership firm, but under Section 30 of the Indian Contract Act , he can be admitted to the benefits of partnership.

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

5.3 AGREEMENTS BY PERSONS OF UNSOUND MIND

As stated earlier, as per Section 11 of the Contract Act, for a valid contract, it is necessary that each party to it must have a 'sound mind'.

5.3.1 Meaning of Sound Mind:

Section 12 of the Indian Contract Act defines the term 'sound mind' as follows: "A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effects upon his interests."

Therefore, the person entering into the contract

- Must be a person who understands the terms of Contract.
- What he is doing and is able to form a rational judgment.

(i) A person who is **usually of unsound mind**, but **occasionally of sound mind**, may make a contract when he is of sound mind." Thus, a patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(ii) A person who is **usually of sound mind**, but **occasionally of unsound mind**, may not make a contract when he is of unsound mind." Thus, a same man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interest, cannot contract whilst such delirium or drunkenness lasts.

In Halsbury's Laws of England, it is stated: "The general theory of the law in regard to acts done, contracts of unsound mind are generally deemed to be invalid; or in other words, (subject to exceptions), there cannot be a contract by a person of unsound mind."

5.3.2 Unsoundness of mind may arise from:

- **Idiocy:** It is permanent and congenital (by birth), and therefore he can never understand the contract and make rational judgments. The mental powers of an idiot are completely absent because of lack of development of the brain.

- **Lunacy or Insanity:** It is a disease of the brain. A lunatic loses the use of his reason due to some mental strain or disease, of course, he may have lucid intervals of sanity.

- **Drunkenness:** Drunken state of mind is a hurdle to enter into a contract. When a person is so drunk that he cannot form a rational judgment about the terms and conditions of the contract then such contract is a void contract. But if he can still understand the terms and conditions of the contract even though he has consumed alcohol then that contract is valid as he could understand the terms and conditions of the contract, that is why it is said that mere drinking is not a hurdle to contract.

- **Hypnotism**: It also produces temporary incapacity, till the person is under the impact of artificially induced sleep;

5.3.3 Effects of agreements made by persons of unsound mind:
An agreement entered into by a person of unsound mind is treated on the same as that of minor's and therefore an agreement by a person of unsound mind is absolutely void and inoperative as against him but he can derive benefit under it.

The property of a person of unsound mind is, however, always liable for necessaries supplied to him or to any one whom he is legally bound to support, under Section 68 of the Act.

5.4 CAPACITY TO CONTRACT: PERSONS DISQUALIFIED TO ENTER INTO A CONTRACT

The third type of incompetent persons, as per section 11, are those who are "disqualified from contracting by any law to which they are subject."

Who are disqualified Persons?

1. Alien Enemies:
An alien that is citizen of a foreign country living in India can enter into contracts with citizens of India during peace time, by observing the restrictions imposed by the government in that respect. On the declaration of a war between his country and India, he will become an alien enemy and cannot enter into contracts

2. Convicts:
A convict is a person, who is sentenced by any competent court to the imprisonment. A convict cannot enter into a valid contract while he was undergoing sentence, His incompetency is over, when the period of his sentence is over or his punishment is suspended.
.

3. Foreign sovereigns and ambassadors:
While entering into contracts with foreign sovereigns and ambassadors, one must be cautious because whereas they can sue others to enforce the contracts entered upon with them, they cannot be sued without obtaining the prior sanction of the central Government as they are in a privileged position and are ordinarily considered incompetent to contract.

5.5 SUMMARY

- For construction of valid contract, the parties to a contract must have capacity i.e., **competency** to enter into a contract.
- A person who has not attained the age of majority is a minor. Section 3 of the Indian Majority Act, 1875 provides about the age of majority.
- **Effects of Minors Agreements:** An agreement with or by minor is void, No ratification, Minor can be a promise or beneficiary, No estoppel, Liability for Torts, No insolvency, Minor can be an agent.
- **Persons are not competent to contract-** Minor, Person of unsound mind, and Person disqualified by any law to which they are subject.

5.6 QUESTIONS

1. Discuss briefly the capacities of parties to enter into a contract.
2. Short Note: Agreements by persons of Unsound Mind.

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6

CONSIDERATION (SEC 2 and 25)

Unit Structure

6.0 OBJECTIVES

After studying the unit**,** the students will be able to:

- Understand the meaning and definition of Consideration
- Know the essentials of valid consideration.
- Discuss the cases where an agreement though made without consideration will be valid.
- Explain the types of consideration.
- Know the meaning of Stranger to Contract and strange to consideration.

6.1 INTRODUCTION

Consideration is the foundation stone of every contract. The law enforces only those promises which are made for valid consideration. Where one party promises to do something, it must get something in return. This **'something in return'** is called consideration. Consideration is the **life-blood** of every contract.

If a promise is to be enforced as creating legal obligations, the law insists on the existence of consideration. A promise without consideration is null and void. It is called a naked promise or "***Nud***um Pactum." **Thus**, if A promise to pay B Rs. 1000 without anything in return, this **constitutes** a bare promise and gives no right of action.

For a contract to be binding there must be valid consideration. Consideration is the promise given by both parties as the "price" of entering into the agreement. Without consideration there will be no contract.

For example, if **Anil** entered into an agreement with **Bhanu** for purchase of a Motor Car in exchange of nothing. Here there is no contract as the consideration value is nil.

In other case Anju entered into an agreement with Manu for Purchase of Motor car for Rs. 80,000/-, here the motor car is **consideration** for Manju and Rs.80,000/- is consideration for Anju. Hence here is a valid contract. Consideration is in **Latin** term ***quid pro quo*** means something in return, it means Price for the Promise.

6.2 MEANING AND DEFINITIONS CONSIDERATION

6.2.1 Meaning and Definition:

- Section **2(d)** of the Indian Contract Act defines consideration as under:

'When, at the desire of the promisor, the promise or any other person (i) has done, or abstained from dong or (ii) does or abstains from doing, or (iii) promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise'.

Section 23 provides that agreement without consideration is void.

Definition: Consideration has been defined in many ways. According to **pollock" *Consideration is the price for which the promise of some other is brought and the promise thus given for value is enforceable*."**

According to **Section 2 (d)** of the Indian Contract Act defines consideration as

(a) when at the desire of the promisor,

(b) the promise or any other person,

(c) has done or abstained from doing, or does or abstain from doing, or promises to do or abstain from doing,

(d) something, such act or abstinence or promise is called a consideration for the promise.

Example: A agrees to dell his horse to B for Rs. 1000. Here A's promise to sell his horse is for B's consideration to pay Rs. 1000 is A's consideration to sell his horse to B.

6.3 LEGAL RULES OF CONSIDERATION

Presence of consideration is one of the requisites of Valid Contract. Consideration must be of two directional natures. That means both parties

should get benefited mutually. Then only the Contract becomes capable of creating legal relations. Consideration may be in the form of cash, goods, act or Abstinence.

1. **Consideration must move at the desire of the promisor.** The consideration must move at the desire of the promisor. It is not necessary that it must be for the benefit of the promisor. It can be for the benefit of the third person also.

Example: Prof. Vinayak is employed by an Institution to teach **Mercantile** Law, but he teaches "Economics". Prof. Vinayak has done **nothing** at the desire of the appointing authority i,e **Promisor**.

2. Consideration may be Past, Present or Future:
Consideration are of three types namely Past, Present and Future consideration.

- The consideration which is sent before formation of contract is called past consideration.
- The consideration which gets passed at the time of formation of contract is called Present Consideration.
- The Consideration which is to be passed in future i.e. after the contract is called Future Consideration. As per Indian Law three types of considerations are Valid. But as per England law Past Consideration is not valid.

3. Consideration need not be adequate:
Consideration need not be required to be adequate it can be inadequate. It means if a person sell a Mobile Phone worth Rs.10,000/- in Rs. 5,000/- , it is a valid contract, provided mutually agreed upon by both the parties.

Example: There is a Contract between A and B according to the terms of which A has to provide his house to B at a rent of one rupee. Court decides that it is a Valid Contract because Consideration need not be adequate.

4. Consideration must be Lawful:
Consideration must be lawful. Presence of unlawful consideration makes the contract illegal and hence Void.

Example*:* There is a Contract between X and Z according to which Z has to murder Y for a Consideration of Rs. 10000 from X. Here Consideration from Z to X is unlawful and it is illegal contract.

5. Consideration must be real and not illusory:
Consideration must be real and of some value in the eyes of law. Consideration is not real when it is uncertain illusory or when it is physically or legally impossible to perform. Hence consideration should

be possible to perform. An act does not recognize impossible performance. It may be physically impossible or can be legal impossible.

Example: Ajay promises to discover treasure by magic if **Atul** pays him Rs.5000/- Consideration from Ajay is void because it is impossible to perform the promise.

6.4 NO CONSIDERATION NO CONTRACT EXCEPTIONS

Every agreement to be enforceable at law must be supported by valid consideration. An agreement made without consideration is void and is unenforceable except in certain cases. Section 25 specifies the cases where an agreement though made without consideration will be valid.
They are as follow:

1. Natural love and affection [Sec. 25(1)]:
An agreement though made without consideration will be valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other. An agreement without consideration will be valid provided-

- It is expressed in writing;
- It is registered under the law for the time being in force;
- It is made on account of natural love and affection;
- It is between parties standing in a near relation to each other.
- All these essentials must be present to enforce an agreement made without consideration.

2. Compensation for services rendered [Sec. 25(2)]:
An agreement made without consideration will be valid if it is a promise to compensate wholly or in a part a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do.

To apply this rule, the following essentials must exist:

(a) The act must have been done voluntarily;
(b) For the promisor or it must be something which was the legal obligation of the promiser;
(c) The promisor must be in existence at the time when the act was done;
(d) The promisor must agree now to compensate the promisee.

3. Time-barred debt [Sec. 25(3)]:
A promise to pay a time-barred debt is also enforceable. But the promise must be in writing and be signed by the promisor or his agent authorized

in that behalf. The promise may be to pay the whole or part of the debt. An oral promise to pay a time-barred debt is unenforceable.

4. Promise to Charities:
A mere promise to contribute to charity is not enforceable by law because it is without consideration.

If a person promises to contribute to charity and on this faith, the promise undertakes a liability to that extent not exceeding the promised **subscription**, the contract shall be valid and enforceable by law.

For Example: Anurag promises to pay Rs.12,000/- to the Management Committee of the school by way of donation. The Management on the basis of Anurag's Promise, gets a Water Purifier system installed in the school at the cost of Rs. 8,000/- on credit. Now Anurag refuses to pay the donation.

In the above case Anurag will have to pay Rs. 8,000/- to the school on account of donation as the management had incurred a liability on the faith of Anurag. Here is valid contract even though the consideration is absent.

6.5 TYPES OF CONSIDERATION

There are three different types of consideration are as under: -

1. Past Consideration:
When something is done before the date of the agreement, at the desire of the promisor, it is called 'past consideration.

Let us discuss an example of this.
A teaches the son of **B** at **B'**s request in the month of January, and in February **B** promises to pay **A** a sum of Rs 200 for his services. The services of **A** will be past consideration.

2. Present consideration.
Consideration which moves simultaneously with the promise, is called 'present consideration' or 'executed consideration'.

Example: A sells and delivers a book to **B,** upon **B**'s promise to pay for it at a future date. The consideration waiting from **A** is present or executed consideration since **A** has done his act of delivering the book simultaneously with the promise of **B.**

3. Future Consideration:
When the consideration on both sides is to move at a future date, it is called 'future consideration' or 'executory consideration'. It consists of an exchange of promises and each promise is a consideration for the" other.

Example: X agrees to sell a Sofa-cum-Bed for Rs. 20,000/- on first of the next month and **Y** agrees to pay the price 15 days after the date of delivery. In this contract, consideration for both the parties is future is future or executor.

6.6 STRANGER TO CONTRACT& STRANGER TO CONSIDERATION

6.6.1 Stranger to Contract:

Stranger to Contract means the person who is not party to contract. The stranger to contract is also known as third party. The stranger to contract is cannot bring suit except in recognized cases.

It is general law of contract that a person who is not a party to the contract cannot sue upon it.

Dunlop Pneumatic Tyre Co. v/s V. Selfridge & Co. (1915)

A large quantity of tyres sold by X to Y at a certain price on entering into a agreement that he should not sell the tyres below the price mentioned in price list supplied by X. Y sold the tyres to Z a retail dealer under a contract stipulating the same covenant as between X and Y. Z sold the tyres at less than the list price. X sued Z for breach of contract. It was held that X could not sue Z as X was not a party to contract between Y and Z.

6.6.2 Stranger to Consideration:

Under the Indian Contract Act 1872 consideration for a contract may move from the promisee or any other person i.e. a stranger to the consideration can also enforce the contract. But under the English Law the consideration for the contract must move from the promisee and promisee only, therefore a stranger to consideration cannot enforce it.

So, in India the consideration may move from stranger. This law was established in the case of **CHINAYYA Vs. RAMAYYA.**

Facts of the Case:

An old lady **Laxmi Rani** gifted her property to her own daughter Ramayya, with the instructions to pay a certain sum of money annually to chinayya, her maternal uncle. On the same day Ramayya refused to honour the agreement on the ground that there is no consideration. Chinayya sued for the recovery of the annuity. It was held that there was **sufficient** consideration i.e. the property given to her by the sister of Chinayya.

6.7 UNLAWFUL CONSIDERATION

Legality of Object and Consideration.

Two things are categorically prerequisite to form a valid contract. That is, lawful object and lawful consideration. Indian Contract Act provides us the criterion that accordingly we could make up such lawful object and lawful consideration. Let us discuss the legality of object and consideration of a contract.

Lawful Consideration and Lawful Object:

Indian Contract Act Section 23 provides that consideration and / o object of a contract is considered unlawful unless they are…

- Forbidden by law
- That they would defeat the purpose of the law
- Are fraudulent
- When it involves injury to any other person or property
- The courts regard them as immoral
- Are opposed to public policy.

Object or Consideration of a contract are not lawful when it is prohibited by law, they become unlawful in nature and such contract cannot be valid forever.

Forbidden by Law.

Unlawful consideration of object includes acts that are categorically punishable by the law. This also includes those that the appropriate authorities restricted through various rules and regulations.

Example: A received a license from the Excise Department Forest Department to sell a liquor in a certain area. The authorities at the department told him he cannot pass on such interest to another person. But the Excise Act has no such statute. So, A sold his interest to B and the contract was held as valid.

Consideration / Object Defeats the Provisions of the Law

When the contract is defeats the intention of the law and the court finds the actual intention of the parties to agreement is to defeat the provisions of the law the said contract will keep aside as it is not effective and non-enforceable as it is against the public policy.

For example:

- Amit agrees to sell his house to Balram for 3,00,000 rupees. Here, Balram's promise to pay the sum of 3, 00,000 rupees is the consideration for Amit's promise to sell the house and Amit's promises to sell the house is the consideration for Balram's promise to pay the 3,00,000 rupees. These are lawful considerations.
- Amar, Akbar and Anthony enter into an agreement for the division among them of gains acquired or to be collected, by them by fraud. The agreement is void for being object is unlawful.

- Hamid promises to obtain for Veena an employment in the public service and Veena promises to pay 1,00,000 rupees to Hamid. The consideration for the same is unlawful and hence the agreement is void.

Consideration / Object is Fraudulent:
Agreement involving unlawful and fraudulent consideration or objects are void by nature.

For example: Amar decides to sell new born baby to Bankim which he had stolen from the nearby maternity home and smuggle the outside the country. This is a fraudulent transaction as so it is void. Now Bankim cannot recover the money under the law if Amar does not deliver on his promise.

If Consideration is Immoral:
If the court has regarded that the object or consideration is immoral, then such object and consideration are treated as immoral.

For example:
Arvind lent money to Mala to obtain a divorce from her husband Kumar. It was agreed once Mala obtains the divorce Arvind would marry her. But the court passed the judgement that Arvind cannot recover money from Mala since the contract is void on account of unlawful consideration.

Consideration is Opposed to Public Policy

We prohibit certain contracts in the name of public policy for the betterment of the community.

Examples:

An Agreement to Traffic in Public Offices

Agreements to create Monopolies

An agreement to brokerage marriage for rewards

Interfering with the Courts: An agreement whose object is to induce a judicial or state officials to act corruptly and interfere with legal proceedings.

6.8 SUMMARY

- Consideration is the foundation stone of every contract. Where one party promises to do something, it must get something in return. This **'something in return'** is called consideration. Consideration is the **life-blood** of every contract.
- **Legal Rules as to consideration**: Consideration must move at the desire of the promisor, Consideration may be Past, Present or Future,

Consideration need not be adequate, . Consideration must be Lawful, Consideration must be real and not illusory,

- **Unlawful Consideration:** Forbidden by law, That they would defeat the purpose of the law, Are fraudulent, When it involve injury to any other person or property, The courts regard them as immoral, Are opposed to public policy.

6.9 QUESTIONS

1. What is consideration and state its essential elements of consideration?
2. *"No consideration No contract"* Discuss.
3. Short Notes:
   a. Types of Consideration.
   b. Strangers to Contract.
   c. Unlawful Consideration

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MULTIPLE CHOICE QUESTIONS WITH ANSWERS
(MODULE I)

1. When predefined rules are enforced or bind on people it is called as

a) Act
b) Law
c) Section
d) all of the above

Answer. b) Law

2. Contract Act deals under which branch of Law

a) Commercial
b) International
c) Cyber
d) None of the above

Answer. a) Commercial

3. Which of the following is not a branch of Law

a) Commercial
b) International
c) Mercantile
d) Legal

Ans. d) Legal

4. A contract is a/an _____ made between two or more parties which the Law will enforce.

a) Offer
b) Transaction
c) Agreement
d) none of the above

Answer. c) Agreement

5. All Contract is a/an _____

a) Offer
b) Agreement
c) Acceptance
d) Transaction

Ans. b) Agreement

6. A/an _____ is every Promise and every set of promises, forming consideration for each other

a) Offer

b) Agreement

c) Acceptance

d) Transaction

Ans. b) Agreement

7. Every agreement and promise enforceable by law is _____

a) Offer

b) Contract

c) Acceptance

d) Consideration

Answer. b) Contract

8. _____ contract is made by spoken words

a) implied

b) Express

c) void

d) special

(Ans: b)

9. Where a contract is been understood by from the conduct of parties it is _____ contract

a) implied

b) Express

c) void

d) special

(Ans: a)

10. The person who makes an offer is called _____

a) seller

b) offerer

c) offeree

d) Promisee

(Ans: b)

11. Contract = _____ + _____

a) Agreement+ Offer

b) Agreement + consideration

c) Agreement + enforceable by law

d) None of the above

(Ans: c)

12. Agreement =_____+ _____

a) Consideration + Offer
b) Acceptance + consideration
c) Offer + Acceptance
d) None of the above

(Ans: c)

13. The party who initiates the offer is called as

a) Offeror
b) offeree
c) Acceptor
d) First Party

(Ans: a)

14. The requirement that the parties to an to agreement must be competent to contract, is laid down in

A. Sec 10
B. Sec 11
C. Sec 24
D. Sec 25

15. The capacity to contract (i.e.. Competence of the parties) is defined in

A. Sec 10
B. Sec 11
C. Sec 24
D. Sec 25

16. The capacity to contract means

A. Willingness of the parties to enter into a contract
B. Intention of the parties to enter into a contract
C. Competence of the parties to enter into a valid contract.
D. Certificate to enter into a valid contract

17. The Capacity to contract is

A. A legal rule of validity
B. An essential element of a valid contract
C. An essential element of competency
D. None of these

18. An agreement by or with a party not competent to contract is

A. Minors
B. Voidable
C. Forbidden
D. Void

19. Which of the following persons are not competent to contract ?

A. Minors

B. Persons of un sound mind

C. Persons disqualified by law

D. All of these.

20. Every person is competent to contract who is of the

A. Age of majority

B. Age of minority

C. Sound reputation

D. Sound financial

21. Every person Is competent to contract who is

A. Of sound mind

B. Not disqualified from contracting

C. Both (a) and (b)

D. None of these

22. For the purposes of entering into contract, a minor is a person who has not completed the age of

A. 15 yrs

B. 18 yrs

C. 21 yrs

D. 25 yrs

23. Under English Law, for all purposes, a minor is a person who is under the age of

A. 15 yrs

B.18 yrs

C. 21 yrs

D. 25 yrs

24. A minor is defined as a person who has not completed eighteen years of age in section 3 of the

A. Guardians and Wards Act, 1890

B. Indian Contract Act, 1872

C. Indian Majority Act, 1875

D. Court of Wards Act

25. For the purposes of validity of contract, a person entering Into contract should be of sound mind

A. Only at the time when he makes the contract

B. Only at the time when he enforces the contract

C. Both at the time of making as well as enforcement of contract

D. Throughout his life

26. The soundness of mind for the purposes of entering into a valid contract is defined In

A. Sec lO

B. Sec ll

C. Sec l2

D. Judicial decisions

27. A drunken or intoxicated person Is not competent to contract as he falls in the category of

A. Persons disqualified by law

B. Persons of unsound mind

C. Persons discarded by society

D. Enemies of society

28. Which of the following are the persons of unsound mind?

A. Idiot

B. Iunatic

C. Drunken

D. All of these

29. An Idiot can enter Into a valid contract at a time when he Is of sound mind

A. Alien enemies

B. Insolvents

C. Convicts

D. AII of these

30. Which of the following persons are not competent to contract being the persons disqualified by law?

A. Alien enemies

B. Insolvents

C. Convicts

D. All of these

31. Which of the following persons are not competent to contract being the persons disqualified by law?

A. Idiots

B. Lunatics

C. Alien

D. Drunken persons

32. Flaw in capacity to contract may arise form

A. Uncertainty of object

B. Unsoundness of mind

C. Want of consideration

D. Illegality of object

33. Incompetency to enter into a contract, Includes

A. Minority

B. Disqualification

C. Unsoundness of mind

D. AII of these

*****

MULTIPULE CHOICE QUESTIONS FOR PRCTICE
MODULE 1

1. An agreement consists of reciprocal promises between at least

(a) four parties.

(b) six parties.

(c) three parties.

(d) two parties.

2. Every promise and every set of promise forming the consideration for each other is a/an

(a) contract.

(b) agreement.

(c) offer.

(d) acceptance.

3. In agreements of a purely domestic nature, the intention of the parties to create legal relationship is

(a) to be proved to the satisfaction of the court.

(b) presumed to exist.

(c) required to the extent of consideration.

(d) not relevant at all.

4. A makes a contract with B to beat his business competitor. This is an example of

(a) valid contract.

(b) illegal agreement.

(c) voidable contract.

(d) unenforceable contract

5. Agreement the meaning of which is uncertain is

(a) Void

(b) Valid

(c) Voidable

(d) Illegal

6. As per section 2(e) of the Indian Contract Act, "Every Promise and every set of promise forming the consideration for each other is a/an

(a) Contract

(b) Agreement

(c) Offer

(d) Acceptance

7. A promises to deliver his watch to B and, in return, B Promise to pay a sum of ‘ 2,000. There is said to be a/ an

(a) Agreement

(b) Proposal

(c) Acceptance

(d) Offer

8. For an acceptance to be valid, it must be

(a) Partial & qualified

(b) Absolute & unqualified

(c) Partial & unqualified

(d) Absolute & qualified

9. over a cup of coffee in a restaurant, X Invites Y to dinner at his house on a Sunday. Y hires a taxi and reaches X’s house at the appointed time, but x fails to perform his promise. Can Y recover any damages from X?

(a) Yes, as y has suffered

(b) No, as the intention was not to create legal relation.

(c) Either (a) or (b)

(d) None of these.

10. Which one of the following has the correct sequence?

(a) Offer, acceptance, consideration, offer.

(b) Offer, acceptance, consideration, contract

(c) Contract, acceptance, consideration, offer.

(d) Offer, consideration, acceptance, contract.

11. Every agreement and promise enforceable by law is …….

(a) Offer

(b) Contract

(c) Acceptance

(d) Consideration

12. Offer implied from conduct of parties or from circumstances of the case is called ……..

(a) Implied offer

(b) Express offer

(c) General offer

(d) Specific offer

13. Consideration in a contract:

(a) May be past, present or future

(b) May be present or future only

(c) Must be present only

(d) Must be future only.

14. Amit helped Ankit to reach the office on time where he had an important meeting to attend. Two days later, Ankit promised to pay Rs. 10000 to Amit in gratitude. This contract is

a) Void because there is no consideration

b) Valid as Amit's action of helping amount to past consideration

c) Valid

d) Voidable

15. Astha promised to give Aarush Rs. 10000. In return, Aarush promised to kidnap Chetan's daughter. This contract is

a) Valid

b) Void

c) Voidable

d) None of these

16. Which of the following is not an exception to the consideration as an essential condition?

a) Natural love and affection

b) Promise to pay a time-barred debt

c) Both (a) and (b)

d) None of these

17. Which of the following is false? An offer to be Valid must

(a) Contain a term the non- compliance of which would amount to acceptance.

(b) Intend to create legal relations.

(c) Have certain and unambiguous terms.

(d) Be communicated to the person to whom it is made.

18. Offer implied from conduct of parties or from circumstances of the case is called ……..

(a) Implied offer

(b) Express offer

(c) General offer

(d) Specific offer

19. An acceptance on telephone should be

(a) Heard by the offeror

(b) Audible to the offeror

(c) Understood by the offeror

(d) All of the above.

20. "Consensus – ad – idem" means ……

(a) General Consensus

(b) Meeting of minds upon the same thing in the same sense

(c) Reaching an agreement

(d) Reaching of contract

*****

MODULE II

7

INDIAN CONTRACT ACT1872 PART II
FREE CONSENT & CONTRACT
Sections. 13 - 22

Unit Structure

7.0 OBJECTIVES

After studying the unit the students will be able to:

- Know the meaning of consent
- Explain the meaning and effects of Coercion
- Know the Meaning and effects of Undue influence.
- Understand the meaning and effects of Misrepresentation.
- Know the Meaning and effects of Mistake.
- Explain the meaning and effects of fraud.

7.1 INTRODUCTION: CONSENT

Section 13 of Indian Contract Act "Consent" has defined as -Two or more persons are said to consent when they agree upon the same thing in the same sense (i, e *Consensus ad idem*)

The word Consent means agreeing that something should be happen. An agreement is valid only when it is the result of the free consent of all the parties to it.

7.2 FREE CONSENT

Section.14 defines "Free consent" as,
Consent is said to be free when it is not caused by-

- Coercion, as defined in section 15, or
- Undue influence, as defined in section 16, or (3) fraud, as defined in section 17, or (4)
- Misrepresentation, as defined in section 18, or
- Mistake, subject to the provisions of sections 20, 21 and 22. Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

Free consent is one of the most important essential elements of a valid contract. The term free consent refers to meeting of free and fresh minds of two parties of an agreement when two parties take and understand, purpose, subject matter and terms and conditions of the agreement in the same sense it is free consent. Both of them must take things in the same way. They must not understand it in different way.

Two persons are said to consent, when they agree upon the same thing in the same sense. It is also known as consensus-ad- idem, which means identity of mind.

7.3 COERCION (SECTION 15)

7.3.1 Meaning:
"**Coercion"** is the committing, or threatening to commit, any act forbidden by the Indian Penal Code under (45 of 1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

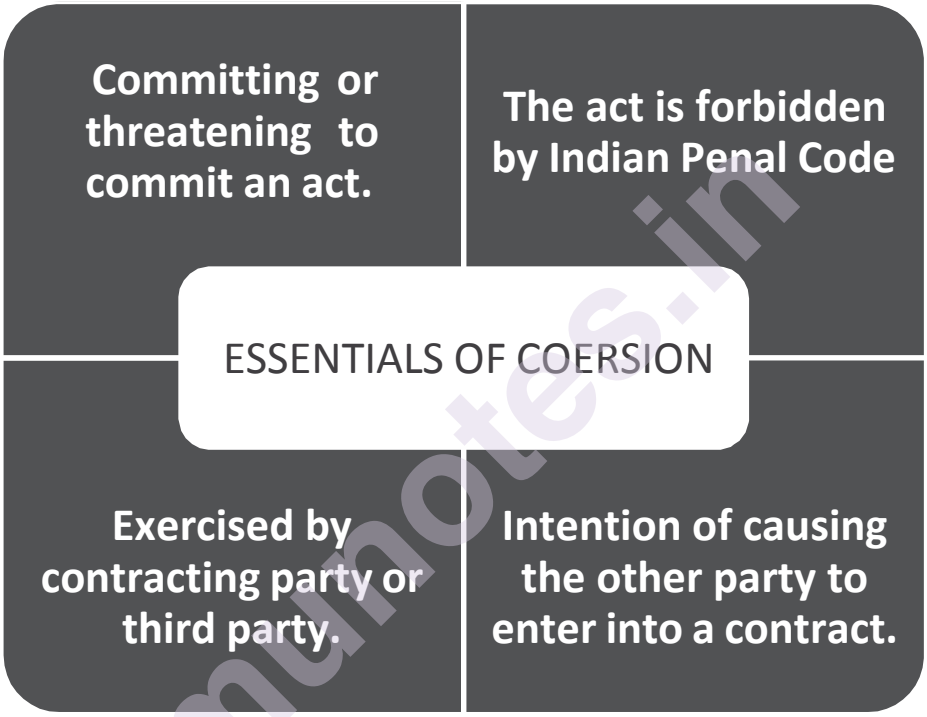
Example, "**A**" threatens to shoot "**B**" if she doesn't marry with him **"B**" marries "**A**" under threat. Since the marriage has been brought about by coercion, such marriage is not valid.

In simple words, coercion is the threat used by one party against another for compelling him to enter an agreement against his or her will. Section 15 of the Indian Contract Act defines coercion as the committing or threatening to commit any act forbidden by Indian Penal Code or an unlawful detaining or threatening to detain, any property of any person with the intention of inducing any person to enter into an agreement. It is immaterial whether the Indian Penal Code is or not in force in the place where the coercion is employed.

When a **person was forced to enter into a contract** by use or under the threat of use of physical force by the other person committing or threatening to commit any act forbidden by Indian Penal Code, Coercion is said to have been employed.

Effect of Coercion on a Contract:

- The contact becomes **voidable** at the option of the aggrieved person/party, the aggrieved party has two options may compel the other party for performance.
- If the aggrieved party decides to set aside the contract, he must compensate any benefits received by him under such contract.



Committing or threatening to commit an act.
Coercion means forcing someone to enter into a contract against their will. When threats are used under pressure to achieve the party's consent, i.e. it is not free consent.

Coercion may involve the actual infliction of physical and psychological harm in order to enhance the credibility of a threat. Then the threat of further harm can lead to the threatened person's cooperation or obedience. Contract entered into by coercion is voidable. It implies that at the option of the party whose consent was not free, the contract is voidable. The aggravated party will, therefore, determine whether to enforce the contract or to cancel the contract.

Example:
'Amar Kaka' went out for an evening walk, 'Mr. Chalu Kishan' approaches 'Amar Kaka' with a stranger, taken out his gun and asks

'Amar Kaka' to give all his belonging to him immediately, otherwise he will shoot Amar kaka. The consent of 'Amar Kaka' was obtained by coercion here.

1. The act must be forbidden by Indian Penal Code:
The word act prohibited by the Indian penal code makes it necessary in a civil action for the court to decide whether the alleged act of coercion is amount to an offence. A threat of bringing a false charm with the object of making another do a thing amount to blackmail or coercion.

In the case of Ranganayakamma v Alwar Setti, where the widow was prohibited from removing the corpse of her husband until she consented for the adoption. The court said that her consent was not free and it was coerced. It is clear that coercion is committing or threatening to commit any act which is contrary to law.

The act is forbidden by Indian Penal Code:

Coercion can be exercised by contracting party or third party:

It does not always requires that only contracting party should exercise the coercion. Any third party on behalf of him can also exercise the same,

For Example: Mr. Amar employs Mr. Tapori to bit Mr. Sojwal to make Mr. Sojwal part with Rs. 1,00,000/-

Intention of causing the other party to enter into a contract:

It is required, that the coercion must be committed with the intention to make the person to enter into the contract by inducing the party wrongfully for obtaining assent or consent.

7.4 UNDUE INFLUENCE (SECTION 16)

7.4.1 Meaning:

It is a wrong pressure put on someone which prevents that person from acting independently.

(Section 16(2)) States that "A person is deemed to be in a position to dominate the will of another.

For Example-Spiritual adviser inducing his/her devotee to gift over the property for securing "moksha".

Undue influence means and includes:
Under undue influence a party is compelled to enter into an agreement against his own will as a result of unfair persuasion by other party. It includes mental, moral and physical domination that deprives or makes unable the person to take his own judgement.

In dealings between parent and child, husband and wife, attorney and client, or doctor and patient, undue influence is generally presumed to have been exercised unless proven otherwise.

Following situation or circumstances, a person is deemed to be in a position to dominate the will of others.

- Where he holds **a real or apparent authority over the other**. For example, an employer may be deemed to be having authority over his employee.
  - Master and Servant
  - Parent and child

- Where he stands in a **fiduciary relationship** to other,
  - The relationship of Solicitor with his client,
  - Spiritual advisor and devotee.
  - Doctor and Patient
  - Guardian and Child.

- Where he makes a contract with a person whose **mental capacity is temporarily or permanently affected by the reason of age, illness or mental or bodily distress**"

7.4.2 Effects of Undue Influence:

When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely, or if the party who was entitled to avoid it has received any benefit there under. Only a party to the contract can avoid or rescind the contract. This right does not lie in the hands of a third party.

Illustrations:

1) **A's** son has forged **B**'s name on a promissory note. **B,** under threat of prosecuting **A's** son, obtains a bond from **A**, for the amount of the forged note. If **B** sues on this bond, the Court may set it aside.

2) **A**, a money lender advances Rs 100 to **B**, an agriculturist and by undue influence, induces B to execute a bond for Rs 200 with interest at 6 per cent per month. The Court may set the bond aside ordering B to repay Rs 100 with such interest as may seem just.

Basis	Coercion	Undue Influence
Meaning	It refers to physical threat or force used by one party against the other for making him to enter into a contract.	It is said to exist when one of the parties to the contract obtains, through dominance, consent of another party to enter into a contract.

Nature	Consent is obtained under the threat of an offence	Consent is obtained by the dominant will of another.
Medium	Consent is obtained by force.	Consent is given in good belief but under moral influence.
Liability	Under the Indian Penal Code. Coercion is punishable	There is no criminal liability.
Force	Includes Physical force	Includes Mental force.

7.5 FRAUD (SECTION 17)

7.5.1 Meaning:

"Fraud" means and includes any act or **an active concealment of material facts** or misrepresentation made knowingly by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent or **to induce him to enter into the contract.**

"A false representation of fact made with the knowledge of its falsehood without belief in truth with intention that it should be acted upon by the party and actually inducing him to act upon it."

Section 17 of the Contract Act states,

"Fraud means and any of the acts stated committed by a party to a contract or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into a contract."

It must have been committed by a party to the contract or by his agent in order to deceive the other party.

Example 1: Mr. Shah purchases the lan d from Mr. Khan, who has already sold his land to Mr. Rahul. In this example, Mr. Khan had committed fraud because he did not tell to Mr. Shah that i have already sold this land to Mr. Rahul.

Example 2: Mr. Amur tells Miss. Jolly knowing it to be false that his cow is pregnant. On this suggestion Miss. Jolly agrees to buy cow Rs. 45,000. It is a fraud.

Example 3: Miss. Tina borrow Rs. 10,000 from Mr. Nash and promises to return it after one month without any intention of performing it. In this example Miss. Tina has no intention to return the money when she promises to pay. It is also a fraud.

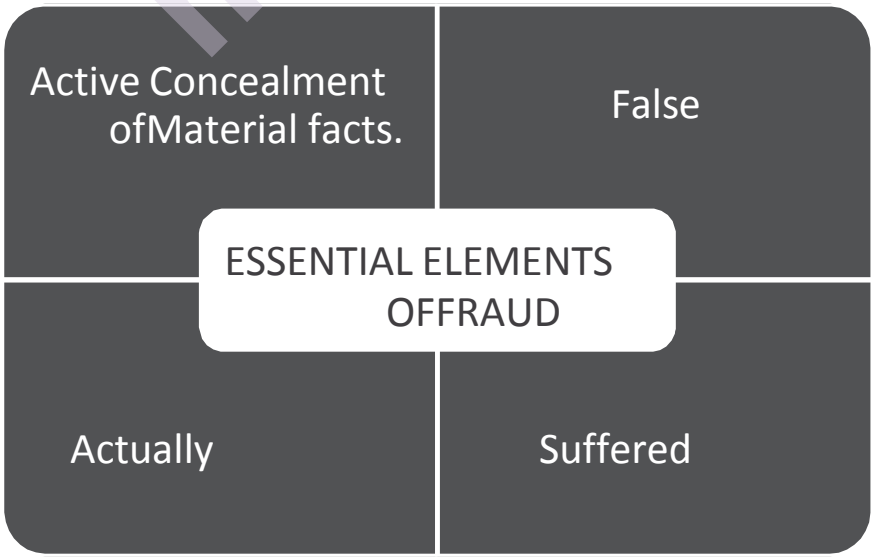
The term 'fraud' includes all acts committed by a person with an intention to deceive another person. Deception means to make the person to enter into a contract by defrauding him.

Fraud is the **willful, deliberate representation** made by a party to a contract with the intent to deceive the other party or to induce such party to enter into a contract. It means made knowingly or without belief in its truth or recklessly without caring whether is it true or false.

According to Section 17, fraud means and includes any of the following acts done with intent to deceive or to induce a person to enter into a contract.

7.5.2 Elements of Fraud:

1. **A False representation must be there:** A False statement made recklessly without inquiring whether it is true or false would amount to fraud. But if a statement which turns out to be false is made in the honest belief that it is true there is no fraud.
2. **The Active concealment of material fact:** If a person conceals or hides a fact which is material or important to the contract and it is duty to disclose it, it will be a case of fraud. Mere non- disclosure is not a fraud, where there is no duty to disclose.
3. **A promise made without any intention of performing it:** Where a person orders and obtains possession of goods with the intention of not paying for them, he commits fraud. The initial intention not to perform the promise that is being made is a necessary element to prove fraud.
4. **Any such act or omission as the law specially declares to be fraudulent:** It is fraudulent to conceive of any act that attempts to deceive law. Thus, where a contract is based against the policy of insolvency law, or a secret agreement is formed between the insolvent and the party, it is nothing short of a fraud on insolvency law.
5. **Suffering Loss:**The other party must have subsequently suffered some loss. There is no fraud without damage or damage without fraud does not give rise to an action.



For Example: Mr.XYZ Manufacturer of hair Shampoo. Claimed that whoever applies it, the hair will turn into Shiny and Smooth. Miss Riya believing in the statement bought the shampoo, applies on her hair, immediately her hair started falling. It is stated the

7.5.3 Whether mere Silence could lead to Fraud?
Mere silence is not fraud. Unless it was the duty of the person to speak or to provide any information as per act. A contracting party is not obliged to disclose each and everything to the other party. There are two exceptions where even mere silence may be fraud, one is where there is a duty to speak, and then keeping silence is fraud. Or when silence is in itself equivalent to speech, such silence is fraud.

A silence to the contract is under no obligation to disclose the whole truth to the other party. 'CAVEAT EMPTOR' *i.e.*, let the buyer beware is the rule applicable to contracts. There is no duty to speak is such cases and silence does not amount to fraud. Similarly, there is no duty to disclose facts which are within the knowledge of both parties.

Example: H sold to W some pings which to his knowledge suffering from fever. The pings were sold 'with all faults' and H did not disclose the facts of fever to W. Held there was no fraud. [Word v. Hobbs.) (1878) 4 AC 13]

Section17 makes it clear that mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of the case are such that regard being had to them it is the duty of person keeping silence to speak, or unless silence is equivalent to speech.

1. Mere silence is not fraud:
A person is not bound to disclose the defect of his articles.

Example: A sells by auction to **B,** a horse which **A** knows to be unsound. **A** says nothing to **B** about the horse's unsoundness. It is not fraud.

2. Silence is fraud if silence is equivalent to speech:
Again, where silence is equivalent to speech, silence amounts to fraud. For example, B says to A "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech and as such, it is fraud.

7.5.4 Duty or obligation to speak:
In certain contracts, the law requires the parties to make full disclosure of material facts. Failure to disclose such facts would make the contract void or voidable. Such contracts are called ***Uberrimae fidei***, i.e., contracts requiring utmost good faith. In such contracts, party having any information regarding the subject-matter which is likely to affect the

willingness of the other party to enter into transactions, is bound to disclose the information.

Following contracts are included in this category:

1. Contracts of insurance:
In contracts of insurance, the insured is required to disclose all material facts concerning the insurance which are likely to affect the risk and thus the willingness of the insurer. Failure to do so will result in avoidance of the policy. The policy can be avoided even if the mistake is innocent.

2. Contract of immovable property:
Under Sec. 55(i) (a) of the Transfer of Property Act, 1882, the seller is under an obligation to disclose to the buyer any material defect in the property or in the seller's title of which the seller is aware and the buyer is not aware, nor he (Buyer) could know with ordinary care.

Example: A knows that there is a crack in the Furniture. He sells this Furniture to **B** but does not disclose this defect to **B**. It is fraud .**B** can avoid the sale when he comes to know of the defect.

3. Allotment of shares in companies:
Companies Act requires the directors to make fullest possible disclosure in the prospectus to protect public interest, If the directors do not disclose the specified facts, the agreement to take shares can be avoided.

4. Contract of marriage:
Each party to an agreement for marriage is duty bound to disclose every material fact, otherwise the party is justified in breaking off the engagement.

7.5.5 Effects and Consequences of Fraud:
When consent to an agreement is caused by fraud, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party whose consent to an agreement was caused by fraud has two remedies, namely:

- He may rescind the contract, or
- He may insist that the contract shall be performed and that he shall be put in the position in which have been, if the representation made had been true.

Example: A fraudulently informs **B** that **A's** estate is free from encumbrance. **B** thereupon buys the estates. The estate is subject to a mortgage. **B** may avoid the contract or may insist on its carried out and the mortgage debt repaid by **A.**

Apart from the above, the person defrauded may obtain rescission, restitution for damages. The aforesaid remedies are subject to an

exception. A contract cannot be avoided on the ground of misrepresentation or silence amounting to fraud. If a party to whom an untrue or misleading statement was made had the means of discovering the truth with reasonable diligence. The party whose consent was obtained by fraud has the following rights:

1. Aggrieved party can avoid the contract.
2. He may also claim damages.
3. He, instead of avoiding the agreement, may insist that the contract shall be performed and may claim the difference or loss due to fraud.

In case of fraud the contract is voidable at the option of defrauded party. A party has the following three options:

1. Contract May be Avoided:
Defrauded party may avoid itself from the contract where his consent was obtained by fraud. In case of fraudulent silence, he cannot avoid if he had the means to discover the truth.

2. Act upon the Contract:
Second option for the defrauded party is that it may act upon the contract and may ask the other party to fulfill the terms and conditions of the contract.

3. Claims for Damages:
Third option for the defrauded party is that may claim for damages. Suit for damage can be filled.

7.6 MISREPRESENTATION (SECTION 18)

7.6.1 Meaning:

Introduction:
The Word '**Misrepresentation**' means a statement or positive assertion made by one party to the other, before or at the time of the contract relating to it.

Therefore, Misrepresentation is a false statement which the person making it **honestly, believes** to be true or which he does not know to be false.

Example: A intends to sell his horse to **B** and says, "My horse is perfectly sound". **A** genuinely believes the horse to be sound, although he does not know that the horse has fallen ill yesterday. **B** there upon buys the horse. There is misrepresentation on the part of **A**.

Thus, misrepresentation means false representation made innocently with an honest belief as to its truth by a party without any intention to deceive.
The leading case on this point is:

DERRY V. PEEK (1889)

Facts of the Case: A representation in the prospectus of the Company that the company has been authorized by a special Act of Parliament to runs trams by steam or mechanical power. The authority to use steam was, in fact, subject to the approval of the board of Trade, but no mention was made of this. The Board refused consent and consequently the company was wound up. The plaintiff having bought some shares, sued the directors for fraud. But they were held not liable.

There is no fraud and they were not guilty of fraud as they honestly believed that once the parliament has authorized the use of steam, the consent of the board was practically concluded.

7.6.2 Essential Requirements of Misrepresentation:

- There should be a representation or positive assertion;
- Such representation must relate to a matter of fact which has become untrue; and
- It was made before the finalization of transaction with a view to induce the other party to enter into contract.
- It must actually have been acted upon by the party.
- It must have been either by the party himself or by his duly authorized agent.

7.6.3 Distinguish between Fraud And Misrepresentation.

FRAUD	MISREPRESENTATION
Defined Under Section 2 (17) of the Indian Contract Act, 1872	Defined Under Section 2 (18) of the Indian Contract Act, 1872
An intentional, deliberate false statement made by the person to deceive the party.	In misrepresentation the person making the false statement honestly believes it to be true.
The purpose of the fraud is to deceive the other parties to the contract.	There is no intention to deceive the other party when there is misrepresentation of fact.
The contract is voidable	Misrepresentation renders the contract voidable at the option of the party whose consent was obtained by misrepresentation.
Fraud, In certain cases is a punishable offence under Indian penal code.	Misrepresentation is not an offence under Indian penal code and hence not punishable.

7.7 MISTAKE (SECTION 20)

7.7.1 Meaning:
Mistake may be defined under **Section 20** of Indian Contract Act, 1872, as **"an erroneous belief about something"**. If the agreement is carried under an erroneous belief, it cannot be said that the parties enjoyed free consent i.e. both the parties shall understand the same thing in the same sense.

7.7.2 Mistake may be of two types:

1. Mistake of law:
Mistake of law does not mean mistake in provisions of law but it means there is mistake in understanding or interpreting the provisions of any law by the party to contract. Hence mistake of law is where you are mistaken or ignorant about the law

2. Mistake of fact:
A mistake of fact is just that: a mistake pertaining to some fact. For example, if you are 35 years old but I think you are 34, I have made a mistake of fact.

A mistake of fact can act as a defense. Mistake of fact can be further divided as **bilateral** and **unilateral** mistake.
A. Bilateral Mistake:

As per Section 20 of the Act, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement shall be void".

Example: A agrees to purchase **B's** Car for Rs. 90,000/- as a consideration. The day before execution of Contract the said car was destroyed by fire along with the garage. Both the party was unaware of the fact and still want to make a contract. This is a bilateral mistake from both the side and contract is not valid but void as the subject matter is destroyed.

B. Unilateral Mistake:
If the mistake is on the part of one person (One of the parties to the contract) the contract is valid.

Example: Amita brought Pickle from the shop keeper a sample of which had been shown to **Amita.** Erroneously **Amita** thought the pickle was old. The pickle was however new.

Hence bilateral mistake would avoid the contract whereas, unilateral mistake cannot.

Therefore, one party to the contract is under a mistake of fact, the contract is not voidable. Unilateral mistakes do not affect the validity of the contract unless they concern some fundamental fact and the other party is aware of the mistake.

A unilateral mistake may be:-

Mistake as to the nature of the transaction:
A contract shall be void if a party to the contract without any fault of his own makes a mistake about the changing nature of the contract. It may be because of blindness, illiteracy, or of the person entered the contract or due to the tactics or deliberate misrepresentation as to the nature of the document.

Case Study: '**Atul'** Agree to sell his horse to **'Bunty'.** But unknown to both the parties, the horse had already died at the time of making of the Contract. Is it a valid contract? Why

7.7.3 Effects of Mistakes:
A contract is **not voidable** because it was caused by a mistake as to any law in force in India: but a mistake as to law not in force in India has the same effect as a mistake of fact.

Illustration:
A and **B** make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation the contract is not voidable. It is expected that everyone is supposed to know the law of the land. Ignorance of law is no excuse. If a person wants to avoid the contract for the reason that there was a mistake, the relief will not be granted to him.

- **Agreement void where both parties are under mistake as to matter of fact.**

Examples:

- '**A**' agrees to buy from **'B**' a certain horse. The horse was dead at the time of the contract, though both the party was aware of the fact. The agreement is void.
- '**A'** being entitled to an estate for the property of **'B'** , agrees to sell it to **'C'** . '**B** 'was dead at the time of the agreement, but both the parties were ignorant of the fact. The agreement is void.

When the type of mistake contemplated is section 20 is present in an agreement, the agreement is void. Section 20 requires that:

- Both the parties to the contract should be under a mistake.
- Mistake should as regard a matter of fact.
- The fact relating to which the mistake is made should be requisite to the agreement.

7.7.4 Distinguish Between Unilateral Mistake and Bilateral Mistake.

UNILATERAL MISTAKE	BILATERAL MISTAKE
One party is at mistake.	Both parties to contract is at mistake.
Contract is not Void or voidable.	Both parties to an agreement are under mistake of facts, agreement is void.
Provisions are applicable under section 22.	Provisions are applicable under section 20.

7.8 SUMMARY

Section 13 of Indian Contract Act "Consent" has defined as -Two or more persons are said to consent when they agree upon the same thing in the same sense (i, e *Consensus ad idem*)

- Consent must be free from Coercion, Misrepresentation, Fraud, Undue Influence, and Mistake.
- "**Coercion"** is the committing, or threatening to commit, any act forbidden by the Indian Penal Code under (45 of 1860),
- Undue Influence- "A person is deemed to be in a position to dominate the will of another.
- "Fraud" means and includes any act or **an active concealment of material facts** or misrepresentation made knowingly by a party to a contract
- Therefore, Misrepresentation is a false statement which the person making it **honestly, believes** to be true or which he does not know to be false.
- Mistake may be defined under **Section 20** of Indian Contract Act, 1872, as **"an erroneous belief about something"**.

7.9 QUESTIONS

1. Define consent. When consent said to be free?
2. What is undue influence? State the effects of undue influence on the contract.
3. What is Coercion? Differentiate Coercion with Undue Influence.
4. What is Fraud? What are its essential elements?
5. Enumerate the effects of Mistakes.
6. Define the following terms:

a. Consent b. Unilateral Mistake
c. Fraud d. Misrepresentation
e. Undue influence f. Coercion

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8

VOID AGREEMENTS: (SECTION.24-30)

Unit Structure

8.0 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the meaning of void agreements.
- Explain the considerations those are lawful and those are not lawful.
- Know the meaning and essentials of wagering agreement.
- Explain the difference between wagering agreement and Contingent agreement.

8.1 WHAT IS VOID AGREEMENT?

8.1.1 Meaning:

"An agreement not enforceable by law is said to be void" **[Sec.2(g)].** Thus, a void agreement does not give effects to any legal consequences and is void ab-initio. In the eye of law such an agreement is no agreement at all from its beginning.

One of the essentials of a valid contract is that the consideration and the object should be lawful. Every agreement of which the object or consideration is unlawful is void. Section 23 mentions the circumstances when the consideration or object of an agreement is not lawful.

"All agreements are contract if they are made by the free consent of the parties competent to contract, for a lawful consideration with lawful object, and not hereby expressly declared to be void."

1. If it is prohibited by Law:

The agreement is unlawful if it involves doing of an act which is forbidden by any law. An act forbidden by law is punishable by the Criminal law or by a special act. The agreement to give bribe if some work will be performed is unlawful and hence unenforceable.

2. Agreement in restraint of marriage. (S.26):
Every agreement in restraint of the marriage of any person, other than a minor's marriage is void.

It is interesting to note that a promise to marry a particular person does not imply any restraint of marriage, and is, therefore, a valid contract.

Examples:

(a) '**A**' Agrees with **B** for good consideration that he will not marry **C.** It is a void agreement.

(b) '**A'** agrees with **B** that she will marry him only. It is a valid contract of marriage.

3. Agreement in restraint of trade. (S.27):
Every agreement, by which one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

4. Agreement in restraint of legal proceedings. (S.28):
Every agreement by which any party thereto is restricted from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary courts is void to that extent.

Section 28, as amended by the Indian Contract (Amendment) Act, 1996, declares the following three kinds of agreements void:

Example: An employee agreed with his employer **not** to sue for his wrongful dismissal. Held that the agreement was in restraint of legal proceeding and is void.

Restriction on Legal proceedings. As stated above Section 28 renders every agreement in restraint of legal proceedings are void.

5. Agreements for uncertainty. (S.29):
Agreements the meaning of which is not certain, ambiguous are void.

Example: A agrees to sell to sell **B** a hundred ton of oil. There is nothing to show what kind of oil was intended. This agreement is void for uncertainty.

6. Agreements Opposed to Public Policy:
Certain types of agreements are harmful to Society. Such agreements are called agreements opposed to public policy. Such agreements are declared as Void by Status.

The following are the agreements opposed to public policy.

- Agreements in Restraint of Trade
- Agreements in Restraint of Marriage

- Agreements in Restraint of Personal Freedom
- Agreements in Restraint of Parental Rights
- Agreements with regard to Compromise of offence
- Agreements with regard to sale of Public Offices and Titles
- Agreements with Alien Enemy
- Agreements based on Bribes
- Agreement to Commit a Crime
- Agreements to defraud Creditors
- Agreements to defraud Government
- Champerty Agreement

a. Agreements in Restraint of Trade:
The agreements which restrict trade business or Profession are called agreements in restraint of trade. One citizen cannot restrict lawful business of the other.

Example: A case on this point is Madhav V/s Raj kumar. A and B enters into a contract according to which B has to close down his business for which he would be paid amount by A. B closes his business but, A fails to pay B the agreed amount. B sues A for recovery and court decides that it is an agreement in restraint of trade and hence void.

b. Agreements in Restraint of Marriage:
The agreements which create restriction on marriage are called agreements in restraint of marriage. One person cannot restrict the other from getting married.

Example: A case on this point is Lowe V/s Peerless. In this case an agreement gets formed between A and B according to which A should marry B only and B should marry A only. If only one of them reaches the agreement a compensation of $ 2000/- is to be paid. Court decides that the language used in the agreement is creating restriction on marriage and hence void.

c. Agreements in Restraint of Parental Rights:
The agreements which restrict rights of Parents on their Children are called agreements in restraint of Parental Rights. By Virtue of an agreement, Parents cannot waive up their rights. Such agreements are harmful to Children.

d. Agreements in Restraint of Personal Freedom*:*
The agreements which restrict Personal Freedom are opposed to public policy. For example: An agreement to do slavery falls under this group.

Example: Related case is **Ramasastry V/s Ambela.** In this case a contract of loan gets formed between A and B and their Contract Specifies

that B has to join as slave at A's house till Settlement of debt. Court decides that the contract is void.

e. Agreements with regard to sale of Public Offices and Titles:
Titles and positions in Government will be given basing on personal talent. That person who has obtained them cannot transfer them to some other person by means of an agreement.

Example: In the case of S V/s Muthu Swamy. a Contract gets formed between A and B according to which A has to transfer his position in government. to B for certain consideration. It is opposed to Public Policy and hence held to be Void.

f. Agreements with Alien Enemy:
Agreements with aliens are Valid so long as there are good relations between two Countries. When War breaks out between the Countries that Contract becomes opposed to public policy and hence void.

g. Agreements based on Bribes:
Whenever there is involvement of Crime or Corruption, Such agreement is said to be opposed to public policy.

Example: There is an agreement between A and B according to which B has to pay Rs.15000 to A and for that A has to arrange for admission of A's Son to a Medical College. The agreement is opposed to Public Policy and hence the same is void.

h. Agreement to Commit a Crime:
In case where objective of the agreement is to conduct a Crime like murder etc., it becomes opposed to public policy.

i. Agreements to Defraud Creditors:
If debtors form an agreement to defraud their Creditors, such agreement is opposed to public policy.

j. Agreements to Defraud Government:
Agreements to evade taxes etc. create loss to government they are opposed to public policy.

k. Champerty Agreement:
It is the agreement where one party agrees to assist the other in receiving property with an object of sharing the profit out of litigation. This is a sort of gambling on litigation, and treated as against public policy, the champerty agreement is void**.**

7. Agreement by way of Wager: (S.30)
Under wagering agreements two persons holding opposite views normally touching the issue of uncertain events and the events must be future.

Examples:

- **A** and **B** mutually agree that if it rains today **A** will pay **B Rs** 100 it does not rain **B** will pay **A** Rs 100.
- **C** and **D** enter into agreement that on tossing up a coin, if it falls head upwards **C** will pay **D** and if it falls tail upwards **D** will **pay C** Rs 50; there is, a wagering agreement.

It is essential to a wagering contract that……

a. each party may under it either win or lose,

b. whether he will win or lose being dependent on the issue of the event, and,

c. therefore, remaining 'uncertain until that issue is known,

d. If either' of the parties may win but cannot lose, or may lose but cannot win, it is not a wagering contract.

Wager is a game of chance in which the contingency of either gain or loss is wholly dependent on an **'uncertain event.**' An event may be uncertain, not only because it is a future event, but because it is not yet known to the parties. Thus, a wager may be made upon the result of the cricket match which is to take place", next month in Calcutta, or upon the result of an election which is over, if the parties do not know the result.

Secondly, the parties to a wager must have no interest in the event's '**happening or non-happening**. There is sole intention to gamble and to make the money.

Essential features of a Wagering Agreement:
The essentials of a wagering agreement may thus be summarized as follows:

a. There must be a promise to **pay money or money's worth**,

b. The **gain** of one party must be the **loss** of the other,

c. The promise **must be conditional on an event's happening or not happening**,

d. The event must be an uncertain one. If one of the parties has the event in his own hands, the transaction is not a wager.

e. Each party must stand to win or lose under the terms of agreement. An agreement is not a wager if one party- may only win and cannot lose, or if he may lose but cannot win, or if he can neither win nor lose.

f. No party should have a proprietary interest in the event. The stake must be the only interest which the parties have in the agreement.

g. The promise must be made with the sole intension to gamble i.e., neither party should have any interest in the happening or non-happening of the event other than the sum or stake he will win or lose.

Section 30 lays down that "agreements by way of wager are void; and no suit shall be brought or recovering anything alleged to be won on any wager.

The Section makes an *exception* in favour of certain prizes for horse racing.

Special Cases.

1. Lotteries:
A lottery is a game of chance. Therefore, the business of lottery is a wagering transaction. Such a transactions has no legal force, because section 294-A of the Indian Penal Code states 'conducting of lottery a punishable offence'. If a lottery is authorized by the Government of that State, the only effect of such permission is that the persons conducting the lottery will notbe guilty of a criminal offence.

2. Games of Skill / Intelligence or Crossword puzzles:
Where prizes depend upon a chance, it is 'a lottery and therefore a wagering transaction. Thus, a crossword puzzle, wherein prizes are depending upon correspondence of the competitor's solution with a previously prepared solution, i**s a wager.** But if prizes depend upon **skill and intelligence**, it is a valid transaction. Thus, prize competitions which are games of skill e.g., picture puzzles, literary competitions and athletic competitions are not wagers as there is efforts are made to select the best competitor.

3. Insurance Contracts:
Insurance contracts are valid contracts even though they provide for payment of money by the insurer, on the happening of a future uncertain event. Such contracts differ from wagering agreements mainly in three respects:

a. The contracts of Insurance are entered into to protect an interest. In a wagering agreement there is no interest to protect and the parties bet exclusively because they can thereby make some easy money
b. Contracts of Insurance are based on scientific and actual calculations whereas, wagering agreements are a gamble without any scientific calculation of risks.
c. Contracts of Insurance are regarded as beneficial to the public, whereas wagering agreements do not serve any useful purpose.

8.3 DIFFERENCE BETWEEN WAGERING AGREEMENT AND CONTINGENT CONTRACT

Basis	Wagering	Agreement
Reciprocal promises	It consists reciprocal promises.	It does not contain reciprocal promises.

Nature	It is essentially contingent nature.	It may not be of wageringnature
Void or not	It is void.	It is valid.
Interest subject matter.	Parties have no other interest in happening or non-happening of future uncertain events.	The parties have other interest also in the subject matter.

8.4 SUMMARY

- "An agreement not enforceable by law is said to be void" **[Sec.2(g)].** A void agreement does not give effects to any legal consequences and is void ab-initio.
- **Void Agreements:** If it is prohibited by Law, Agreement in restraint of marriage. Agreement in restraint of trade. Agreement in restraint of legal proceedings.
- Agreements for uncertainty, Agreements Opposed to Public Policy.
- **Agreement by way of Wager**: Two persons holding opposite views normally touching the issue of uncertain events and the events must be future.

8.5 QUESTIONS

1. Enumerate the agreements which have been expressly declared void by the Indian Contract Act.
2. What is Wagering Agreement? Describe its essential elements.
3. When an agreement in restraint of trade is valid?
4. Short Note:
   a. Agreements opposed to the public policy.
   b. Difference between Wagering Agreement and Contingent Contract.

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9

CONTINGENT CONTRACTS (S.31) QUASI CONTRACTS (S.68-72) E-CONTRACTS (S.37)

Unit Structure

9.1 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the meaning of Contingent Contract, Quasi Contract and E-Contract.
- Know the Effects of the above contract and their validity.

CONTINGENT CONTRACT

9.2 INTRODUCTION

9.2.1 Meaning:

Section 31 of the Indian Contract Act defines contingent contract as "*A contract to do or not to do something if some event, collateral to such contract, does or does not happen*"

So, in simple words, it may be defined as a **conditional contract.**

A Contract may be absolute or contingent. The contract is said to be absolute when the promisor binds himself to the performance in any event. **While contingent contract is the contract to do or not to do something, if some event collateral to such contract does or does not happen.**

In case where there is condition, then such contract is called Contingent Contract. Therefore, Contingent Contract means Conditional Contract. When imposed and condition is fulfilled, the Contingent Contract becomes

valid and then parties have to perform their obligations. If imposed and Condition is not fulfilled, the Contingent Contract become Void and then it need not be performed. So Contingent Contract is to be performed under some circumstances only.

Example: A Contract exist between **Bhavna** and **Vibha** according to which **Bhavna** has to sell her goods which are in voyage, to **Vibha** if the ship reaches the harbor safely. Here condition can be seen and it is Contingent Contract. All indemnity contracts, guarantee contracts and insurance contracts are Contingent Contracts. According to Sec. 31 of Indian Contracts Act, a Contract performance of which depends upon happening or non- happening of an un-certain event is called Contingent Contract.

9.3 MEANING AND ELEMENTS OF CONTINGENT CONTRACTS

9.3.1 Essential Elements of Contingent Contract:

- There must be a **valid contract**.
- The performance of the contract **must be conditional**.
- The event must be **future & uncertain**.
- The event must be **collateral to the contract**.

Example: Amir agrees to deliver Sofa-cum-Bed and Salman agrees to pay the price only after the delivery. These are reciprocal promises it is not a contingent contract because the event on which Salman's promise depends is a part of the promise or consideration of the contract, and not a collateral event.

Rules regarding the enforcement of the Contingent Contract:

- It depends on the happening of the specified uncertain event within the fixed time. So, the contract will be enforced only if that uncertain event happens within the fixed time. (Section 35)
- It depends on the non-happening of the specified uncertain event within the fixed time. So, the Contract will be enforced only if the happening of that uncertain event becomes impossible within the fixed time as that event cannot happen. (Section 35)
- Contingent Contract dependent on the impossible event is void and cannot be enforced by law as the impossible event will never happen. This will be void whether the impossibility of the event is known or not to the parties at the time of making the contract.

9.3.2 Types of Contingent Contracts:

1. Depending Upon Happening of an Uncertain Event:
Sometimes Contingent Contract depends upon happening of uncertain event. Then if such uncertain event takes place, the Contingent Contract becomes valid and if that uncertain event does not take place, the Contingent Contract is Void.

Example: According to Contract formed between A and B, A has to sell goods to B, if ship comes there safely, their Contract is valid and if the ship gets drowned, their Contract is void.

2. Depending upon non-happening of an uncertain event:
At times the Contingent Contract may depend upon non- happening of uncertain event. Then if that event does not happen, the Contract is Valid and if that event takes place, the contract is void.

Example: There is a contract between A and B according to which A has to sell goods to B, if the ship does not come back. Here, if the ship comes back, the Contract is void and if the ship gets drowned away, then it is valid.

3. Depending upon happening of an Uncertain event in a fixed period:
At times Contingent Contract may depend upon happening of uncertain event in a fixed period. If such event happens within fixed period, the contract is Valid. If such event does not take place within fixed period, the contract is void.

Example: As per the contract formed between A and B, A has to sell goods to B, if the ship comes back within 10 days. If it comes on 8th day (or) 9th day, the contract is valid and if it comes back on 12th day (or) 13th day, the contract is void.

4. Depending upon non-happening of an uncertain event in a fixed period:
At times the Contingent Contract may depend upon non- happening of uncertain event in a fixed period then if such event place within that fixed period, the contract is void and if that event does not take place within agreed period, then it is valid.

Example: A has to sell goods to B if the ship does not come back within 10 days. If it comes on 8th day (or) 9th day, the contract is void and if it comes back on 12th day (or) 13th Day, the contract is valid.

5. Depending upon an Impossible Event:
Sometimes the Contingent Contract may depend upon impossible event. Such a type of Contingent Contract is void ab initio (Void since inception)

Example: There is a contract between A and B where A will pay Rs.100000/- to B if B marries C. Assume that C was dead 5 years ago, now element of impossibility can be seen and their contract is void AB initio.

9.4 MEANING AND ELEMENTS OF QUASI CONTRACTS

The term 'Quasi Contract' laws have been derived from the Latin statement 'Nemo debet locupletari ex aliena jactura' which states that no human being should gain an unjust benefit from another's loss. It was one of the main principles of Roman law.

The term 'quasi' means having some to but not all. Similarly, Quasi Contract meaning laws which are like regular contract law but not quite so. A regular contract should have some essential components to be considered valid. It includes offers, acceptance, consideration, two or more parties who are legally and mentally capable etc.

Certain obligations which are, specified in the Indian Contract Act, that are not actually contracts as there is absence of one or the other elements of a contract, but are still enforceable in a court of law. Such obligations are called Quasi-contractual obligations. Each of them has been discussed separately in Sections 68 to 72 Chapter V) of the Indian Contract Act, 1872.

Quasi contracts rise out of obligation enjoyed by one person from the voluntary acts of the other which are not intended to be performed gratuitously. An obligation that the law creates in the absence of an agreement between the parties. It is invoked by the courts where Unjust Enrichment, which occurs when appears on retains money or benefits that in all fairness belong to another, would exist without judicial relief.

A quasi contract is a contract that exists by order of a court, not by agreement of the parties. Courts create quasi contracts to avoid the unjust enrichment of a party in a dispute over payment for a goods or services. In some cases, a party who has suffered a loss in a business relationship may not be able to recover for the loss without evidence of a contract or some legally recognized agreement.

It is not a contract at all. It is deemed to be a contract, because, to form a valid contract, proper offer and acceptance is pre-requisite here in quasi contract offer and acceptance is absent. Certain relations resemble those created by a contract. Certain obligations which are not contracts in fact but are so in the contemplation of law and hence the said contract is valid in the eyes of law. General Contracts created by the parties whereas Quasi Contracts are created by law.

For Example: ‘A’ supplies necessities to ‘B’ who is not capable of contracting and reimbursing to ‘A’. ‘A’ is entitled to be reimbursed from B’s property.

a. Supply of Necessaries to incapable persons:

This is supply of necessaries to a minor or a person of unsound mind. Here the minor on the person on unsound mind is personally liable. The property of the incapable person is liable. And were the in capable person is not own any property nothing shall be payable.

(a) Arjun supplies Balu, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from Balu’s property.

(b) Anurag supplies the wife and children of Romio, a lunatic, with necessaries suitable to their condition in life. Anurag is entitled to be reimbursed from Romio’s property.

a. Obligation of a person enjoying benefit of Non-Gratuitous Act.
A non-gratuitous act means the act which is **not done free**. The person who does some non-gratuitous act another is entitled to recover the compensation for such act. The Obligation of a person
enjoying the benefit of the non-gratuitous act arises in respect of the **lawful act only**.

For example:
A pizza boy delivers a pizza at your doorstep by mistake instead of your neighbor who ordered it. You eat it having knowledge that it was order by your neighbor. You are required to pay for the same. You enjoyed something which was a non- gratuitous act.

b. Finder of goods:
A finder of goods means a **person who finds the goods belonging to another** and takes them into his custody is subject to the same responsibility as a bailee.

A finder of goods has the duty to find the real owner and returned the same. He can get the reimbursement of the expenses, which he has incurred in preserving and maintaining the goods from the real owner.

c. Payment by Interested person:
A person who is interested in the payment of money which another is bound by law, and who therefore pay it is entitled to be reimbursed by the other.

For example: A supplies to **B**, a lunatic, the necessaries for maintaining his life. Here, **A** is entitled to recover the amount from **B’s** property.

d. Money paid under mistake or delivery of goods under mistake:
If certain amount of money is paid or goods delivered to a person under a mistake, the person receiving the money or goods must repay it.

For Example: A and B jointly own Rs 100 to **C**. **A** pays amount to **C** and not knowing this fact, **B** also pays Rs 100/- to **C.** Here **C** is bound to repay Rs 100 to B.

9.4.1 Difference between Quasi Contract and Contract.

Quasi contract	Contract
It is not intentionally formed but law imposed upon the parties.	It is intentionally formed by the parties.
Quasi contract does not posses all the requirement of valid contract.	Contract possess all the requirement of valid contract.
Obligations are implied upon by the law.	Obligations are mutually created by the parties.
It is full-fledged contract and the same is binding	It is not a full-fledged contract though enforceable.
There is an agreement.	There is no agreement.

9.5 MEANING AND ELEMENTS OF E- CONTRACTS

9.5.1 Meaning:
An E-Contract is a contract that is formed electronically. New laws are needed to govern these contracts however; today most courts have adapted traditional contract law principles and the provisions of the Uniform Commercial Code to cases involving e- contract disputes.

9.5.2 Essentials for the fulfillment of an E-contract:
There are certain essential elements like any other contract that has to be fulfilled to have a valid e-contract. They are-

1. Valid Offer
For a contract to come into an existence it is required to have a valid offer. It is important to note that the items displayed in any e-shopping app are only an invitation to offer and not an offer in itself. There is an offer when the person selects a particular item into the cart or gives an order.

2. An offer needs to be acknowledged with legal consideration
It is important to note that the offer has to be accepted. Any method of acceptance is valid but the acceptance should reach the offeror by any method like, Mail, Message etc. The offer is revocable until the acceptance is made. consideration given from the party should be legal to have a valid e-contract. For example, selling of narcotic drugs or pornography is strictly prohibited and cannot be considered as valid consideration.

3. Object must be Lawful:
Online contract also requires stick to object being lawful. For Example An online Website agreeing to sell Magic Cure of all types of Blindness is not lawful./ I jii

4. Parties must be able to enter a contract with each other:
As there is no real time connection, it is essential to that there should be affirmation that both the parties are humans as the electronic system that is computers are unable to recognize offline and computers are not able to enter into a contract. This is a very crucial part of an e-contract and one should be careful as cases of cyberbullying and online fraud are increasing day by day.

5. Free consent:
Consent should always be free. Consent is said to be free when it is not caused by coercion, misrepresentation, undue influence, or fraud. When it is certain that these above-mentioned elements are present, only then an e-contract is confirmed. Along with these elements, a contract is only possible when there are a lawful object and possibility of performance'.

9.5.3 Forming Contracts Online:

Online transactions can be identified in three ways:

- Business-to-Consumer transactions conducted via the Internet. (B2C)
- Business-to-Business transactions conducted via the Internet. (B2B)
- Consumer-to-Consumer transactions conducted via the Internet. (C2C)

E-Signatures:
An e-signature is an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. E-signatures can be created and verified on e-contracts. Digital signatures are transmitted electronically.

9.6 SUMMARY

CONTINGENT CONTRACT: Section 31 of the Indian Contract Act defines contingent contract as "A contract to do or not to do something if some event, collateral to such contract, does or does not happen.

QUASI-CONTRACT: It is not a contract at all. It is deemed to be a contract, because, to form a valid contract, proper offer and acceptance is pre-requisite here in quasi contract offer and acceptance is absent. Certain relations resemble those created by a contract. Certain obligations which are not contracts in fact but are so in the contemplation of law and hence the said contract is valid in the eyes of law.

- **E-CONTRACT:** An E-Contract is a contract that is formed electronically.

9.7 QUESTIONS

1. Define Contingent Contract. What are the essentials?
2. Discuss the laws relating to the validity of contingent contract with suitable examples.
3. What are the various types of quasi contract?
4. Explain the rights and duties of finder of goods.
5. Explain the essential elements for formation of E- Contracts
6. How E- Contracts satisfies the essentials of a contract under the Indian Contract Act 1872.

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10

PERFORMANCE OF CONTRACT, MODES OF DISCHARGE AND REMEDIES FOR BREACH OF CONTRACT (S. 73-75)

Unit Structure

10.1 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the ways of performance of contract
- Know the modes of discharge of contract and remedies of breach of contract.

10.2 INTRODUCTION

An agreement enforceable by law is called contract. Each and all parties in the contract are required to full fill their respective obligations to finalize the contract.

Example: Amit asks Reena 'will you buy my mobile phone for Rs. 15,000/- 'Reena was ready to buy for the same. Amit delivered mobile to Reena and Reena transferred Rs. 15,000 online, here both parties have fulfilled their respective obligations by performance.

10.3 PERFORMANCE OF CONTRACT.

Section 37-67 deals obligation of the parties to contract.

Section 37- 67 Provides that *"The parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or any other law."*

Illustrations:

(a) Anup promise to deliver goods to Balu on a certain day of payment of Rs.1,00,000. Anup dies before that day. Anup's representatives are bound to deliver the goods to B, and B is bound to pay the Rs.1,00,000 to Anup's representatives.

(b) Sangita promise to paint picture for Heena by a certain day, at a certain price. Sangita dies before the day. The contract cannot be enforced either by Sangita's representatives or by Heena, as it involves expertise.

Section 39. Effect of refusal of party to perform promise wholly.

"*When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance*."

Illustrations:

(a) Balaji, a singer, enters into contract with Laxminand Pyare , the manager of a theatre, to sing at his theatre three nights in every week during next three months, and Laxminand Pyare agrees to pay him INR 5000 for the performance of each nights. On the fifth night Balaji wilfully absents himself from the theatre. Laxminand Pyare is free to put an end to the contract.

(b) Balaji, a singer, enters into contract with Laxmi Nand Pyare, the manager of a theatre, to sing at his theatre three nights in every week during next three months, and Laxmi Nand Pyare agrees to pay him at the rate INR 5000 for each night. On the fifth night Balaji wilfully absents himself. With the **permission** of Laxmi Nand Pyare, Balaji sings on the fifth night. Laxmi Nand Pyare has signified his acceptance in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through Balaji's failure to sing on the fifth night.

Person by whom Promises/Contract is to be performed.

Contract should be performed by the promisor himself; such promise must be performed by the promisor in other words we can say that contract has to be performed by the respective parties or their representatives depending upon the circumstances of the cases.

Illustrations:

(a) Mr. Abhijeet promises to pay Mr. Kawal Singh a sum ofINR 5,00,000/-. In this case Mr. Milan may perform this promise, either by himself paying the money to Mr. Kunal Singh, or by causing it to be paid to Kawal Singh by another; and if Mr. Abhijeet dies before the time appointed for payment, his representatives must perform the obligation promised.

(b) Akhtar Ali promise to paint a portrait of Shilpa. Akhtar Ali must perform this promise personally.

Time for performance of promise, where no time is specified.

Where, by the contract, a promisor is to perform his promise within stipulated time and when no time for performance is specified, the performance must be carried out within a reasonable time.

Illustration:
Shakib promises to deliver goods at Bina's warehouse on first March. On that day Shakib brings the goods to Bina 's warehouse, but after the usual hour of closing it, and they are not received. In this case Shakib has not performed his promise as he has not observed the reasonableness of time.

Order of performance of reciprocal promises.

When contract includes reciprocal promises, it is required that the promisor and promisee must has an intention to perform the same. It not no performance is possible. Hence the reciprocal promises need to be performed.

Illustrations:
(a) Amitabh and Jaya entered in to contract that; Amitabh shall build a house for Jaya at a fixed price. Amitabh's promise to build the house must be performed against Jaya' s promise to pay for it.

(b) Shrikant a builder, entered into a contract with Ms Gayatri that he will construct a house for her in consideration INR 10,00,000/-. Further it has decided that Mr. Shrikant will give the possession first then Ms. Gayatri will make the payment. Accordingly, Mr. Shrikant has to performed first.

10.4 MEANING DISCHARGE OF CONTRACT

Introduction:

The Contractual relation comes to an end, the parties to the contract performed their respective obligation and hence their rights and duties are put to an end. In other words, the termination of the contractual relations is called discharge of contract.

Following are the modes of discharge of contract.

I. Discharge of Contract by Performance:
This is the best way of bringing the contract to an end. Every person who is a party to a contract is bound to fulfil his/her obligation at the time when he/she has promised to perform it. The moment the parties execute their promises the contract the contract comes to an end. This mode of discharge is called discharge by performance.

The performance can be of two types.

1. Actual Performance
2. Attempted Performance

Actual Performance:
In actual performance the parties to a contract have actually performed their respective contractual obligations or promises.
They carried out what they had promised to each other under a contract. They have fulfilled all their obligations under the contract. As a result, the contract put to an end.

Illustration:
On Sunday Chintamani offered to sell her car for rupees thirty thousand to Madhura and Madhura agreed to buy the car and pay in cash by Friday evening. On Friday evening Madhura paid INR 3,00,000 in cash to Chintamani and Chintamani gave the car to Madhura. Thus, the contract came to an end by actual performance.

Attempted Performance:
In this type performance one party offers to perform what he/she had promised but the other party does not want him/ her to perform. The party which is ready to accomplish its obligation is excused from performing and the contract is discharged. However, it can sue the other party for breach of contract.

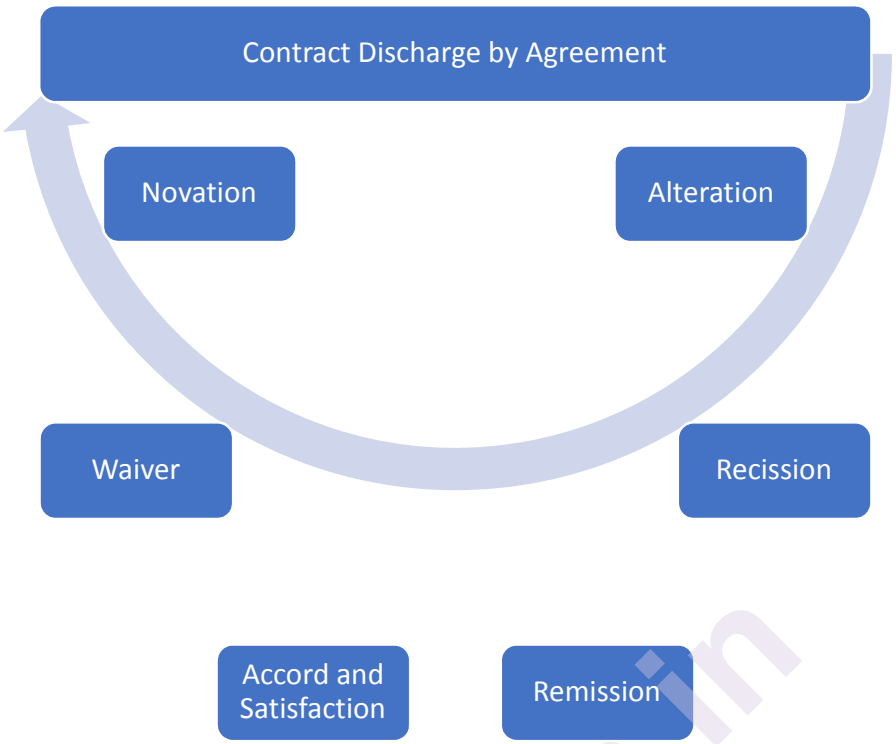
On Sunday, Chintamani offered to sell her car for INR 3,00,000/- to Madhura and Madhura agreed to buy the car and pay in cash by Friday evening. On Friday Madhura refused to buy the car. Hence this was an attempted performance. The promisor Chintamani offered to execute her promise but Madhura denied to buy the car. Thus, Chintamani can sue Madhura for breach of contract.

II. Discharge of Contract by Mutual Agreement or Consent:
Parties willing to terminate or to put a contract at end can discharge the contract without performance. They can do so by mutually agreeing to replace the old contract with a new one. The new contract extinguishes the rights and obligations of the parties under the old contract.

Discharge by Agreement:

Section 62 states that ….
"If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."

Section 63 states that …
"Every promise may dispense with or remit, Wholly or in part, the performance of the promise made to him or may extend the time of such performance, or may accept instead of it, any satisfaction which may thinks fit".



1. NOVATION: (NEW)
In this the parties to a contract agree to substitute the existing contract with a new contract. The new contract is bringing about by either changing the contract between the same parties or by changing the parties in the same contract.

Illustration:
Sanjana offered to keep Vinita as her servant for rupees Five thousand on a monthly basis. Vinita accepted the offer and promised to start work from the first day of the next month. However, she met with an accident and injured her leg. She approached Sanjana and showed her reluctance to join. It was felt that it would take about two months' time for the leg to heal unwillingness and after a little seduction from Sanjana, Vinita made her mind to join as servant after one month. In this case the old contract was substituted with a new one and the parties to the contract are the same.

2. Alteration:
In this the parties agree to make some changes in one or more terms of the contract. By doing so the old contract is discharged and the parties are bound by the changed contract.

Illustration:
Steffina offered to keep Jolly as her secretary on fixed salary of INR 20,000/- on a monthly basis. Jolly accepted the offer and promised to start work from the first day of the next month. Afterwards Jolly felt that this salary was not as per her expertise she possessed and that she denied to

work. She informed to Steffina. After some bargaining with Jolly Steffina decided to increase the salary by rupees ten thousand. Jolly agreed to work for the additional rupees ten thousand offered by Steffina. In this case the parties to the contract agreed to make some changes in the terms of the contract. By doing so the old contract was discharged and the parties were bound by the changed contract.

3. Rescission:
In this the parties decides to put the contract end before the contract is Performed. Rescission can take place by mutual consent or agreement. Here both the parties mutually agree to terminate the contract.

Illustration:
Vandana offered to keep Kashi bai as her maid on salary of Rs. 5000/- per month. Kashi bai accepted the offer and promised to resume an assignment from the first day of the next month. However, Kashi bai met with an accident and injured her head. She contacted Vandana and described her unwillingness to join. It was mutually decided to terminate the contract. Kashi bai was not bound to join as a maid from the next month.

4. Remission:
Remission means acceptance by the promisee of a lesser fulfilment of the promise made by the promisor.

If the promisor has performed less than what he/she had promised and the promisee accepts it without having any say then this is called discharge of contract by remission.

Illustration:
Kunal (Promisee) approached Milan (Promissor) for a loan of Rs. 1,00,000/- and promised that he will square off the same within a couple of months. After the couple of months Kunal showed his inability to return Rs. 1,00,000/- instead he had Rs. 90,000/- to Milan. Milan agrees for such lessor fulfilment and was ready to discharge the contract by remission.

5. Waiver:
Discharge of contract by Waiver is takes place when the party deserts his right for enforcement of contractual performance.

Illustration:
Yogita offered to keep Sunita as her maid for rupees two thousand on a monthly basis. Sunita accepted the offer and promised to start work from the first day of next month. The very next day Yogita forbade Sunita from working as a maid. Thus, Sunita is no longer under any obligation to perform her promise.

III. Discharge by Lapse of Time:
It is expected that a contractual obligation must be performed within a reasonable period. If the contract is not performed within that period, then the contract comes to an end and no legal action can be taken by the promise at later stage. In the case of contracts, the period of limitation is three years. If none of the parties files a suit within this time, the contract becomes time barred. Once the contract becomes time barred, it becomes unenforceable. It cannot be enforceable in a court of law.

Illustration:
Omkar took a loan of rupees ten thousand from Shila on first January 2016. She was to repay the loan with interest on first January 2017. Shila went to the Japan in October 2016 and Omkar did not repay the loan money on first January 2017 to Shila. Three years elapsed and Shila did not take any legal action against Omkar for non-payment of the loan. Thus, the debt became time barred.

IV. Discharge by Operation of Law:

Sometimes the law discharges the contract, i.e. the law treated the contract as terminated in the following circumstances.

1. Death: In the contract as per the contractual term the performance is required to be done by promissor itself and his /her skill and knowledge is required for fulfilling the obligation and if the promissor dies before performance the contract comes to an end automatically. The law discharges the contract.

Illustration:
Pannalal promised Ms. Champa to make a painting of a Portrait on her birthday. Before Champa's birthday Pannalal met with an accident and died. Hence the contract terminated and Pannalal was discharged of all his liabilities.

2. Insolvency: When a person has been declared insolvent by competent Court of law he / she is discharged from all liabilities.

Illustration:
Jeevan entered into an agreement with Prema to buy a seven thousands reems of cloths manufactured by Prema in the first week of April. In the month of March Jeevan was declared insolvent. As a result the contract between him and Prema is dissolved and Jeevan was discharged from his liability to buy shoes from Radhika.

Merger:
In this case the contract giving inferior rights to a person merges into a superior right. The contract giving the inferior right is discharged and is replaced by the one giving superior right.

Illustration:
Ragini mortgaged her gold bangles and took rupees two lakh from Shambhu. She promised to pay Shambhu rupees two lakh with interest within two years. Two years expired and Ragini was unable to pay the money. Hence Shambhu, who was a bailee under the contract became the owner of the gold bangles. The contract originally entered into between Shambhu and Ragini gave the right of a bailee to Shambhu, but after the expiry of two years the contract gave Shambhu the right of an owner, which was a superior right.

4. Unauthorized Material Alteration:
Any alteration made in a contract by one party without proper knowledge to the other party or without the consent of the other party will make the contract void and nonoperative. The contract will no longer be enforceable in a Court of law.

Illustration:
Laxman offered to sell his Flat to Bharat for INR 15,00,000 and Bharat agreed to buy it. The agreement between them was a written agreement. Later without informing or knowledge of Bharat, Laxman enhanced or raised the amount from INR 15,00,000/- to 16,00,000/- Hence the contract become void and not enforceable.

V. Discharge by Impossibility of Performance.

Discharge of contract by impossibility of performance occurs when the contractual obligation cannot be performed because of death, illness, or a reason caused by the other party.

Impossibility of Performance is of two types.

- Pre-contractual Impossibility
- Post – Contractual Impossibility

I Pre-Contractual Impossibility: It is also termed as initial impossibility. At the time of entering into a contract the agreement was such as the parties are not able to perform or as it was impossible for them.

a. Impossibility of Performance known to both the parties: A contract is void when both the parties are aware that the performance is impossible

Example: A enters into a contract with B agreeing that A will discover the tressure through magic in consideration of Rs. 2,00,000/- . Here both parties to the contract were aware that the performance is not possible and contract is void

b. Impossibility unknown to both parties in a Contract: In this case both the parties to the contract are ignorant about the impossibility, contract is void.

Example: Mr. Jaswant enters into a contract with Ms. Reena for purchase of Flat of Ms. Reena situated at Pune. They were discussing about the contractual terms and conditions, but at the same time Flat of Ms. Reema was destroyed by fire, both the parties are unaware at that time, contract is void and not enforceable.

Causes of Subsequent Impossibility or frustration

Destruction of subject-matter of contract:
If the subject matter of a contract is destroyed after the formation of the contract without any fault of the parties, the contract is discharged and no party is liable.

Example. A agrees to sell his car to B for Rs. 2,00,000/- which is kept in Gulbarga. The said car was destroyed by fire along with garage which the fact is unknown to A. There will be no contract as the subject matter is destroyed.

Death or personal incapacity of the party:
When the performance of a contract is based on the personal skill, ability or qualification of a party, then such contract becomes discharged on the death, incapacity or illness of that party. Such contract can not be performed by the agent or any representative of the promisor.

Example: Mr Jafer agrees draw a portrait of Ms. Heer on the occasion of her birthday. All of a sudden Mr. Jafer falls sick and mentally unstable resulting in unable to perform the promise. Contract get discharged by personal incapacity as the relative or any family members did not have that expertise of painting.

Government, Administrative or Legislative intervention:
Sometimes, a contract is lawful and enforceable at the time of its making. However, it may become unlawful due to a subsequent change in law or government policy. Contract is discharged by impossibility of performance.

Example: Mr. Alber enters into an agreement with Principal of one college on 1.07.2021 for selling of Smart Phones to the Students of the said Institution at a concessional rate. On 03.07.201 State Government has come up with a new law that using Mobile Phone by the college students are prohibited. As the law bans such use contract gets discharged.

Intervention of War:
If a war is declared after the formation of a contract; all pending contracts with the residents of enemy country is either suspended or declared as void.

Example: Mr. Sun-Chang of China enters in to an agreement with Mr. Abhishek of India for supply of electronic items. Before the actual performance war declared between two countries. Parties to the contract

has to suspend the contractual relations amongst them if the government of the respective countries does not grant the consent.

Cases in which there is no Supervening Impossibility

- The mere fact that performance is more difficult or expensive than the parties expected does not frustrates the contract.
- Commercial impossibility cannot be a ground for exclusion of performance. A contract, therefore, is not discharged for frustration merely because expectation of higher profit is not realized; or the necessary raw material is available at very high price.
- Strikes, lockouts and civil disturbance like riots do not terminate contracts unless there is clause in the contract providing for or performance in such cases.

VI. Discharge by Breach of Contract

If the parties to the contract denies to perform their promised obligation/s is known as contract is discharged by breach.

Branch of contacts may be of two types:

1. Actual breach of contact.
2. Anticipatory breach of contact.

1. Actual breach: Actual breach means promisor fails to perform the contractual obligation on due date of performance. When a promisor fails or refuses to perform the promise upon the due date for performance then it is called actual breach of contract.

Example: Dinkar Seth promise to supply 500 litter Oil to Ms Ranjana on the day of marriage of her daughter falls on 06.06.2021. If he fails to supply on that day it lead to actual breach of contract.

2. Anticipatory breach of contact: It occurs when a party to executory contract declares his intension of not performing the contract before the performance is due.

Example: A" agrees to sell crops to B" by 30th June 2021, however before the due date that is on 28th June 2021, he wrote a letter to "B" stating his inability to deliver the crops as promised.

10.4.1 Remedies for Breach of Contract:

When a promise is breached by any of the parties, means it is a breach of contract. So, when either of the parties does not keep their end of the agreement or does not fulfil their obligation as per the terms of the contract, it is a breach of contract. There are a remedies for breach of contract available to the wronged party.

• **Recession of Contract**
When one of the parties to a contract does not perform his obligations, then the other party can cancel/ rescind the contract and deny the performance of his obligations.

Provisions under section 65 of the Indian Contract Act, the party that rescinds the contract must restore any benefits he got under the said agreement. And section 75 states that the party that rescinds or cancels the contract is entitled to have damages and/or compensation for such a cancellation.

• **Sue for Damages**
Section 73 provides that the party who had suffered, since the other party has not kept the promises, can claim compensation for loss or damages resulted to them in the normal course of business.

Such damages will not be payable if the loss is abnormal in nature, i.e. not in the ordinary course of business. There are two types of damages according to the Act,

• **Sue for Specific Performance**
The party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the party carry out the agreement or perform in accordance with agreed terms of contract.
If, any of the parties fails to perform the contract, the court may order them to act according to the court orders. This is a decree of specific performance and is granted instead of damages.

• **Injunction**
An injunction is an order or the court, like a decree for specific performance. It simply means to prevent the person from doing something. An injunction is a court order restraining a person from doing a particular act.

So, a court may grant an injunction to stop a party of a contract from doing something he promised not to do. In a prohibitory injunction, the court stops the commission of an act and in a binding injunction, it will stop the continuance of an act that is unlawful.

• **Quantum Meruit**
Quantum meruit is a Latin phrase meaning "what one has earned". In the context of contract law, it means something along the lines of "reasonable value of services**"**

At times when one party of the contract is prevented or interrupted from completing his performance of the contract by the other party, he can claim quantum meruit.

In this circumstances party must be paid a reasonable remuneration for the part of the contract he has already performed. This could be the remuneration of the services he has provided or the value of the work he has already done.

10.7 SUMMARY

- Discharge of Contract & Modes of Discharge:
- The Contractual relation comes to an end, the parties to the contract performed their respective obligation and hence their rights and duties are put to an end.
- Discharge of Contract by Performance:
- Discharge of Contract by Mutual Agreement or Consent:
- Discharge by Lapse of Time
- Discharge by Operation of Law
- Discharge by Impossibility of Performance.

10.8 QUESTIONS

1. What is discharge of contract?
2. What is anticipatory breach of contract?
3. Explain the following concepts with examples: -
   a) Novation
   b) Rescission
   c) Alteration
4. What are the effects of material alteration?
5. What is Quantum Meruit.
6. Discuss the modes of discharge of contract.
7. What are the various remedies available for breach of contract?

*****

MULTIPLE CHOICE QUESTIONS WITH ANSWERS
(MODULE II)

1. The contract in which consent is caused by the way of fraud is

a) Void

b) Voidable

c) Either (a) or (b)

d) Valid

Ans: (b)

2. As per the Indian Contract law, which of the following is not a vitiating factor for free consent?

a) Mistake of law

b) Mistake of fact

c) Fraud

d) Coercion

Ans: (a)

3. Shruti sold a bottle to Ankit and told him that it is a steel flask. Ankit consented for the contract believing the bottle to be a steel flask. If the bottle was not a steel flask, it is a case of

a) Fraud if Shruti knew it was not a steel flask.

b) Misrepresentation if Shruti believed it to be a steel flask

c) Either (a) or (b)

d) None of these

Ans: (c)

4. Which section of the Indian Contract Act defines free Consent?

a) Section 10

b) Section 13

c) Section 14

d) Section 25

Ans: (c)

5. The Indian Contract Act of 1872 defines consent as

a) Agreeing on all the conditions of the agreement.

b) Agreeing on the same thing.

c) Agreeing on the same thing in the same sense

d) None of the above

Ans: (c)

6. A promised to sell the car in the garage to B. There were two cars in the Garage – Maruti and Hyundai. A gave Maruti to B but B said that he agreed for the Hyundai car.

a) This is a valid contract as they both agreed for the car.

b) There is no consent as they did not agree upon the same thing in the same sense.

c) There is no free consent

d) None of the above

Ans: (b)

7. Aarti threatened Archana that she will kill Archana's brother if Archana did not give the tender to Ashu. Archana gave the tender to Ashu under this fear. This contract is

a) Void

b) Voidable under section 16 of the Indian Contract Act

c) Voidable under section 15 of the Indian Contract Act

d) Valid

Ans: (c)

8. Rohan agreed to sell his vintage car to his boss for just Rs. 10000 as his boss promised to give him a due promotion. It is a case of

a) Free Consent

b) Undue Influence

c) Misrepresentation

d) Fraud

Ans: (b)

9. Which of the following is not an essential element for a valid contract?

a) Adequate Consideration

b) Lawful Consideration

c) Lawful object

d) Free Consent

Ans: (a)

10. In which of the following vitiating factors, the intention need not be proved?

a) Fraud

b) Misrepresentation

c) Mistake

d) Both (b) and (c)

Ans: (d)

11. 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

Ans- Contingent contract

12. A contingent contract may be _____

a) Void from beginning

b) Void subsequently when event becomes impossible to happen

c) Voidable

d) Unlawful

Ans- Void subsequently when event becomes impossible to happen

13. 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

Ans- Void subsequently when event becomes impossible to happen

14. 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

Ans- **attempted performance**

15. Quantum meruit means:

a) A non-graduations promise

b) As much as is earned

c) An implied promise

d) As much as is paid

Ans: As much as is earned

16. 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

Ans: In all the above cases

17. 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.

Ans: When a party accepts lesser performance in discharge of a whole obligation

18. 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.

Ans: Before the performance is due

19. The damages which can be claimed only when the special circumstances are communicated to the promisor is called:

a) Ordinary damages

b) Exemplary damages

c) Special damages

d) Nominal

Ans: Special damages

20. Which of the following act does not amounts to fraud?

a) Knowingly making false statement

b) Promise made without intending to fulfil

c) Active concealment of material fact

d) A positive assertion.

ANS: A positive assertion

21. Mistake can be of_____

a) Indian law

b) Foreign law

c) Facts

d) Intentional

ANS: B and C

22. Whether silence is amounts to fraud?

a) Yes always

b) No

c) Sometime

d) Yes, but only equivalent to speak.

ANS: Yes, but only equivalent to speak.

23. Wagering agreements are commonly called as_____.

a) Agreement in respect of wages

b) Agreement in respect of employees

c) Betting

d) Beating.

ANS: Betting

24. The webpage is _____.

a) offer

b) invitation to offer

c) acceptance

d) advertisement

ANS: invitation to offer

25. Substitution of the new term only while a parties in a contracts are same will be treated as _____

a) Novation.

b) Suspension

c) Termination

d) Alliteration

ANS : Novation.

26. Specific performance is granted by the court only if _____ compensation is found to be not adequate.

a) Monetary

b) Anticipatory

c) Remitory

d) Exemplary

ANS: A)Monetary.

27. Rescission of contract means _____of a contract.

a) Cancellation

b) Verification

c) Novation

d) Specialization

ANS: A) Cancellation.

28. Discharge by waiver means where the party _____ his rights.

a) Fulfills

b) Abandons

c) Remitted

d) Accepted .

ANS: B-) Abandons

29. When an innocent party is calming for monetary damages, it may be:

a) liquidated damages

b) ordinary damages

c) vindicative damages

d) all of the above.

(Ans : d all of the above)

30. If a party to a contract does not perform, action can be taken only within a time specified by the Act. Failing which the contract is _____.

a) performed by giving and extra time period.

b) terminated by lapse of time.

c) treated as valid by lapse of time

d) treated as voidable by lapse of time

(Ans : b terminated by lapse of time)

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MULTIPLE CHOICE QUESTIONS . MODULE II
FOR PRACTICE

1. …….. is a one-sided contract in which only one party has to perform his promise or obligation.

(a) Void contract

(b) Illegal agreement

(c) Unilateral contract

(d) Bilateral contract

2. Which of the following is not Competent to Contract?

(a) A minor

(b) A person of unsound mind

(c) A person who has been disqualified from contracting by some Law

(d) All of these

3. " Consensus – ad – idem" means ……

(a) General Consensus

(b) Meeting of minds upon the same thing in the same sense

(c) Reaching an agreement

(d) Reaching of contract

4. A Contract which is formed without the free consent of parties, is …….

(a) Valid

(b) Illegal

(c) Voidable

(d) Void ab- initio

5. The phrase "Quantum Meruit" literally means –

(a) As much as is earned

(b) The fact in itself

(c) A Contract for the sale

(d) As much as is gained.

6. The two types of breach are _____.

(a) Actual breach and Deemed breach

(b) Actual breach and Conditional breach

(c) Actual breach and Anticipatory breach

(d) Actual breach and Remedial breach

7. Consent is free under section 14 if not caused by

a) Coercion and undue influence

b) Fraud and misrepresentation

c) Mistake subject to the provisions of section 20, 21 and 22

d) All the above

8. Ram has age of 17 years 11 months and 29 days. He will be considered as_____

a) Major

b) Minor

c) Cannot be decided.

d) None of the above

9. Contract made with minor's, will be treated as _____-

a) Void

b) Valid

c) Void-ab-initio

d) Voidable at the option of minor.

10. Mohan (age of 17) made a contract with Shaym (age 25 years) to provide a loan of Rs. 100000/- It was decided that Shaym will pay entire amount with interest after 1 years. After the period 1 year Shyam denied to make the payment of entire amount with interest claiming that Mohan had no capacity to contract, hence contract was void from the beginning. Here remedy available to Mohan is _____.

a) Mohan can ratify the contract

b) Mohan can force the Shyam to make the repayment as per contract

c) Mohan can file a suit for recovery.

d) None of the above.

11. Aarti threatened Archana that she will kill Archana's brother if Archana did not give the tender to Ashu. Archana gave the tender to Ashu under this fear. This contract is

a) Void

b) Voidable under section 16 of the Indian Contract Act

c) Voidable under section 15 of the Indian Contract Act

d) Valid

12. In which of the following vitiating factors, the intention need not be proved?

a) Fraud

b) Misrepresentation

c) Mistake

d) Both (b) and (c)

13. B' is blind 'A' agrees to restore B' vision by magic. This agreement is _____

a) Void

b) Voidable

c) Void-ab-initio

d) Legal.

14. Agreement in restraint of trade is _____

a) Voidable

b) Valid

c) Void

d) Wagering type.

15. A' murders B' , to which C' was a witness. A' promises to pay C', a sum of Rs. 1,00,000/- for not exposing him? The agreement is _____

a) Valid for public interest

b) Voidable

c) Void due as it opposes to public policy

d) None of the above.

16. An agreement of marriage brokerage is an agreement _____

a) Against the court

b) Against public policy

c) In favour of the bride and bridegroom.

d) Against the public authority

17. Doctors in government hospitals are restrained from carrying on private practice or consultancy is _____

a) void

b) valid

c) voidable

d) exceptions to the rule.

18. Where the promisor absolutely refuses to perform the contract prior to the due date of performance, it is known as

a) abandonment of contract.

b) remission of contract.

c) actual breach of contract.

d) anticipatory breach of contract

19. Discharge by mutual agreement may involve

a) Novation

b) Recission

c) Alteration
d) All of the above

20. Where the Contracting parties change, then it is a case of _____

a) Remission
b) Recission
c) Novation
d) Alteration

*****

MODULE III

11

SPECIAL CONTRACTS
CONTRACT OF INDEMNITY

Unit Structure

11.1 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the meaning and kinds of Contracts of Indemnity.
- Know the essentials of Contracts of Indemnity.
- Discuss about the Rights of indemnity-holder.
- Discuss about the Rights of indemnifier.

11.2 INTRODUCTION

Definition & Meaning:

The **Contracts of Indemnity** has been defined as: "A Contract wherein one party promises to save the other from loss caused to him by the act of the promisor himself or by the act of any other person is called a **contract of indemnity**." In short Indemnity means and includes making good the loss or compensating a person for any loss.

Indemnity, in simple words, **is protection against future loss**.

The person who promises to save the other is called the **Indemnifier** and the person who is compensated is the

Indemnified. An indemnity can be defined as a sum paid by A to B by way of compensation for a particular loss suffered by B. A, the indemnitor may or may not be responsible for the loss suffered by the B, the indemnitee. Forms of indemnity include cash payments, repairs, replacement, and reinstatement. Contract of indemnities should all satisfy the conditions of a valid contract.

Example:
M and **N** two friends goes to a shop. **M** says to the shopkeeper. "Let **N** have the goods; I shall see that you will be paid." Here is a contract of indemnity.

11.3 ESSENTIALS OF CONTRACT INDEMNITY

A contract of indemnity can be classified into two categories on the basis of expression of the parties at time of its formulation as express and implied.

1. Express contract of Indemnity:
When the parties to contract expressly agreed into a contract of indemnity. A party expressly promises to indemnify the other person from losses.

Example: A promise to compensate **B** if **B**'s goods are damaged due to the conduct of **C.**

2. Implied contract of Indemnity:
When the contract of indemnity deemed to have concluded by the acts of the parties or from the circumstances of the case, it is known as implied contract of indemnity.

Example: Abhijit hires a motorcycle from the **Abdul'**s shop to use for one day. The motorcycle gets damaged due to the accident. Here, **Abhijit** has to compensate for damage to **Abdul,** although he has not agreed expressly to do so.

11.3.1 Essentials or features of a Contract of Indemnity

A valid contract of indemnity should fulfill the following conditions:

1. Anticipated loss: A contract of indemnity is a security for an anticipated loss.

2. Requirements of valid contract: Contract of indemnity being a species of contract must have all essentials of a valid contract like free consent, competence of the parties, consideration, etc.

3. To save other party: There must be a promise to save the other party from some loss.

4. Covers only the actual loss: It covers only the actual loss may be due to the promisor himself or any other person and it covers only the loss caused by an event mentioned in the contract. The event mentioned in the contract must happen.

5. Definition is not exhaustive: As in the definition it is clearly stated that Contract of Indemnity covers only one kind of loss that is loss on account

of human agency. While in fact losses could be by events beyond the control of human agency like on account of Tsunami, Earthquake etc.

11.4 RIGHTS OF THE INDEMNITY HOLDER

11.4.1 Rights of indemnity-holder when sued: Sec. 125

1. Right to Recover Damages:
All compensations which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applicable.

2. Right to Recover Costs:
All costs which he may be compelled to pay in any suit if, in bringing or defending it, he did not act against the orders of the promisor and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit.

3. Right to Recover Amount paid in Compromise:
A contract of indemnity is a kind of the general contract and as such, it must satisfy all the essentials of a valid contract like capacity of parties, free consent, lawful objects, etc. Thus if the object of a contract of indemnity is unlawful, it will be void.

Example: Bakul asks **Alexzander** to beat **Pauras** , promising to indemnify **Alexzander** against its consequences. **Alexzander** beats **Pauras** and in consequence is fined Rs. 50000/-. **Alexzander** cannot recover the amount from Bakul, as the object of this agreement is unlawful.

11.5 RIGHTS OF INDEMNIFIER

11.5.1 Rights of Indemnifier

"*It is a well known principle of law that where one person has agreed to indemnify another, he will on making good the loss, be entitled to all the ways and means by which the person indemnified might have protected himself against or reimbursed himself for the loss".*

11.6 SUMMARY

Contracts of Indemnity: Indemnity means and includes making good the loss or compensating a person for any loss.

KINDS OF CONTRACT OF INDEMNITY:

- Express contract of Indemnity.
- Implied contract of Indemnity:

Essentials or features of a Contract of Indemnity

- Anticipated loss:
- Requirements of valid contract
- To save other party
- Covers only the actual loss:
- Definition is not exhaustive:

11.7 QUESTIONS

1. Explain the provisions under contract of Indemnity.
2. Discuss the essentials of contract of Indemnity
3. What are the rights of Indemnity Holder and Indemnifier?

*****

12

CONTRACT OF GUARANTEE

Unit Structure

12.0 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the meaning and kinds of Contracts of Guarantee.
- Familiar with Kinds of Guarantee
- Discuss the modes of discharge of surety.
- Discuss about the Rights of Surety.

12.1 INTRODUCTION MEANING AND DEFINITION

Meaning and definition:

A guarantee means a contract of a promise to be responsible for something, to perform the promise or to discharge the liability of a third person, in case of his default. Such a contract involves three parties. They are:

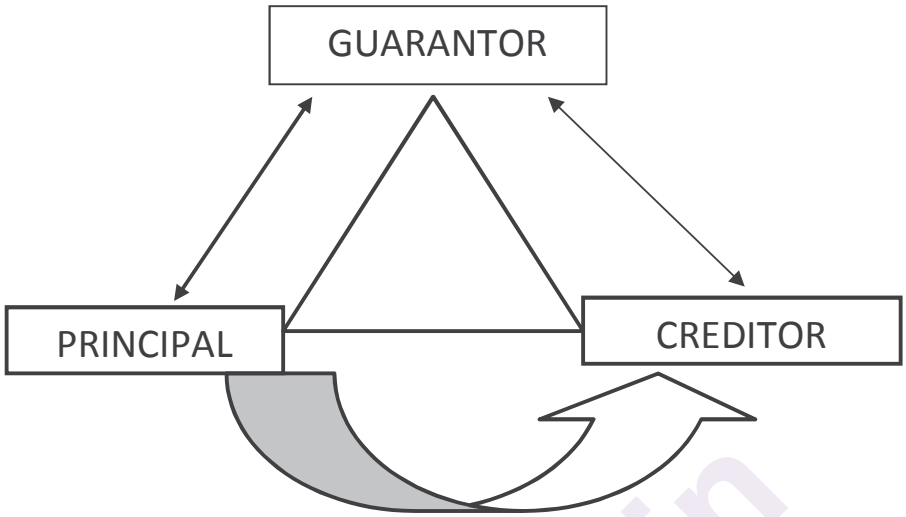
Creditor: the person to whom the guarantee is given;

Surety: the person who gives the guarantee.

Principal debtor: the person, in respect of whose default, the guarantee is given.

12.2 ESSENTIALS OF CONTRACT OF GUARANTEE

CONTRACT OF GUARANTEE



Section 126 of Indian Contract Act, A contract of guarantee is a contract to perform the promise to discharge the liability of a third person in case of his default.

A clear definition was made regarding a guarantee by English Court in the case of **Bricknyrs V/S. Darmell (1704),** 'A contract of guarantee is a contract by one person to discharge the debt, fault or miscarriage of another.'
A contract of guarantee is entered into with the object of enabling a person to get a loan or goods on credit or an employment.

Example: If 'A' advances a loan of Rs. 5000/- to 'B' and 'C' promises to 'A' that if 'B' does not repay the loan, 'C' will do so. Here, this is a contract of guarantee.

Here

- **A Creditor**
- **C is Surety**
- **B is Principal Debtor.**

It will be noticed that in a contract of guarantee there are three separate contracts, i.e.-

- between the principal debtor and creditor,
- between the creditor and surety, and
- between the surety and principal debtor,

Wherein the principal debtor requests the surety to act as surety and impliedly to indemnify the surety in case the surety incurs liability. Thus, the contract of guarantee is of tripartite nature.

The primary liability is of the principal debtor. The secondary liability is of the surety which arises only when the principal debtor defaults. ***PN.Bandak V/S Sri.Vikram Cotton Mills. (1970)***

The surety must have to know all the facts regarding the contract. If any alteration regarding the terms of the contract is made without the consent of the surety, it terminates automatically.

12.3 CHARACTERISTICS OR ESSENTIALS OF CONTRACT OF GUARANTEE

Following are the characteristics or essentials of contract of guarantee:

1. Tripartite agreement:
In a contract of guarantee, there are three parties namely: principal creditor, creditor and surety. Under this contract, three separate contracts are made among them and consent of all the three parties is necessary. The contracts connecting each-other as contract between:

a. the principal debtor and creditor,

b. the creditor and surety, and

c. the surety and principal debtor,

2. Liability:
Under such contract the primary liability is of the principal debtor and only secondary liability is of the surety. As a conditional contract, liability of the surety arises only when the principal debtor (primarily liable) defaults.

3. Essentials of valid contract:
It is also as same as other general contract in respect of essentials. All the requirements for valid contract, i.e. free consent, consideration, lawful object, competency of the parties etc. are necessary to form this kind of contract. But, in respect of consideration, no direct consideration in the contract between the surety and creditor. Consideration of principal debtor is considered to be adequate for the surety.

4. Written form:
A contract relating to guarantee must be concluded in writing in Nepal and England. But, the Indian legal framework does not compel to form such contract in written form. Both written and oral is valid in India.

12.4 FEATURES OF A CONTRACT OF GUARANTEE

A contract of guarantee is a type of general contract and as such all the essentials of a valid contract must be present. However, it has the following special features:

1. Surety's Liability on principal-debtor's default:
There must be a conditional promise to pay on the default of the principal debtor. If the promise is not conditional on default, it will not be a contract of guarantee but of indemnity.

Examples:

a) '**A**' asks '**B**' to sell certain goods on credit to **'C'** promising "I will pay the amount in case '**C**' fails to pay." It is a contact of guarantee as the promise is contingent on the default of '**C'**.

b) 'A' asks a shopkeeper to sell certain goods to '**C'** promising, "I **will see that you are paid."** This is **not** a contract of guarantee as the promise of the guarantee is not conditional on default of the buyer. It is a contract of indemnity.

2. Principal debtor need not be competent to contract:
Although the creditor and the surety must be capable of entering into contract, yet, the principal-debtor need not be competent to contract. In such a case, the principal-debtor is not liable but the surety is liable as the principal- debtor.
[Kashiba v/s Shripat],

3. Surety's Distinct Promise to be answerable:
In order to constitute a guarantee, there must be a distinct promise on the part of surety to be answerable for the debt.

Example: A goes with B to Titan Watch Company says to the proprietor " let B have this watch , and if he does not pay I will pay you". This is a Contract of Guarantee.

12.5 KINDS OF GUARANTEE

Contracts of guarantee may be

1.Specific guarantee:
Specific guarantee means a guarantee given for one particular transaction. In this case the liability of the surely extends only to a particular transaction and not other than that.

Example: A guarantee payment to **B** of the price of 5 sacks of flour to be delivered by **B** to **C** and to be paid in a month. **B** delivers sacks to **C. C**

pays for them. Afterwards **B** delivers four sacks 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 the four sacks.

2. Continuing Guarantee (Sec. 129):
A continuing guarantee is that which extends to a series of transactions. When the guarantee is a continuing one surety can fix up a limit on this liability as to time or amount of guarantee,

Example:(i) A, in consideration that B will employ C in collecting the rents of B,s zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection any payment by C of those rents. This is continuing guarantee.

3. Retrospective guarantee:
Retrospective guarantee is given for an existing debt. It is a guarantee issued when the debt is already outstanding.

4. Prospective guarantee:
Prospective guarantee is given for a future debt, i.e., a debt to be taken in future.

12.6 REVOCATION OF CONTINUING GUARANTEE

A continuing guarantee is revoked by any of the following ways.

1. By notice (Sec. 130). By giving an appropriate notice to the creditor a continuing guarantee may at any time be revoked or terminated by the surety as to future transactions.

2. By Death (Sec. 131): Death of the surety will operate as a revocation or termination of the continuing guarantee with regard to the future transactions. No notice of death need be given to the creditor. Heirs of the surety will not be liable for any fresh transactions entered into by the creditor with the principal debtor after the death of the surety without knowledge of such death.

Nature of Surety's Liability:
Whatever amount of money a creditor can legally realize from the principal debtor including interest, cost of litigation, damages etc., the same amount he can recover from the surety.

Example: Anurag guarantees to **Bhama** the payment of a bill of exchange by **Chatur,** the acceptor. The bill is dishonoured by **Chatur**. **Anurag** will be liable **not only for the amount of the bill also for any interest and charges which have become due on**

RIGHTS OF SURETY:

Rights of Surety can be classified into three groups, as follows;

I. Rights against Principal debtor.

II. Rights against Creditor.

III. Rights against Co-Sureties.

I. Rights against Principal Debtor:

a) Right to give Notice: Whenever creditor approaches to surety, for seeking payment, surety can give a notice to principal debtor to settle the debt.

b) Rights of Sub-rogation: Sub -rogation is a procedure where rights will get transferred from one person to the other. If surety makes payment to creditor, surety gets all rights of creditor by sub-rogation and from then onwards surety can act as creditor.

c) Right of Indemnity: Principal of indemnity operates between principal debtor and surety where principal debtor becomes implied indemnifier and surety becomes implied indemnity holder. Therefore, surety can make principal debtor liable for all damages or losses.

d) Right to get Securities: In case where surety makes payment to creditor, surety has right to get the securities given by principal debtor to creditor.

e) Right to ask for Relief: With effect from the date of guarantee, apart creditor, surety also can also bring pressure on principal debtor in relation with settlement of unpaid debts.

II. 12.6.1 Rights against Creditor

a) Right to get Securities: when Surety makes payment to creditor, surety can get all securities into his possession from creditor.

b) Rights of Sub-rogation: Whenever surety makes payment to creditor, creditor foregoes or loses all of his rights in his capacity as creditor and those rights will be attained by surety.

III. 12.6.2 Rights against Co-Sureties

a) Right to ask for Contribution: Surety can ask his co-sureties to contribute the amount in default of principal debtor. If they have given guarantee for equal amounts, they have to contribute equally.

b) Right to claim Share in Securities: When Co-Sureties make payment to creditor, they get securities from creditors procession. Then every surety can claim their share in those securities.

12.7 MODES OF DISCHARGE OF SURTY

1. Revocation of surety by giving a notice (sec-130): Surety cannot revoke specific guarantee if the liability has already accrued. Whereas continuing guarantee may at any time, be revoked by the surety, for future transactions, by giving notice to the creditor. But the surety remains liable for transactions already entered into.

2. Revocation by Death (sec-131): The death of the surety in operation, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. The effect of the death of the surety is that it results in automatic revocation of the guarantee as to future transactions. But such revocation does not affect the transactions which were executed prior to the death of the surety.

Example: In a contract of guarantee, on the death of the surety, his property or his respective legal representatives will be responsible for such liability, in such a case; the guarantee is not revoked even if the surety dies.

3. Variation or alteration in the terms and conditions of the contract between the principal debtor and the creditor without surety's acquiesce leads to discharge the surety.

Example: Amar employed the services of Akbar where Anthony was the guarantor of Akber's performance. Amar has changed the term of services of Akber without knowledge of Anthony. Anthony is discharged from his liability.

4. By release of Principal Debtor: If the creditor releases the principal debtor, the surety also automatically discharges.

Examples: **Babita** appointed **Jethalal** to paint his house in consideration of Rs. 5,00,000/- within a particular time period. **Mr. Popatlal** was the guarantor for the said performance. Here **Ms. Babita** was to supply raw material. If she fails to supply the same. **Popatlal** is released from the liability and discharged.

5. Arrangement for Compensation: If the creditor makes an arrangement for composition or promises to give time or not sue the principal debtor without surety's acquiesce, the surety will be discharged.

6. Act of Creditor's: Any act or omission to do particular act by the creditor which in turns in abusing the rights of the surety, and also prejudice the eventual remedy of the surety himself against the principal debtor, discharges the surety.

7. Loss of Security: Where the creditor loses with any security which he receives from the principal debtor without the consent / permission of the

surety, this discharges the surety to the extent of the value of such security.

12.8 EXTENT OF SURETY'S LIABILITY

"Section 128 provides that, the liability of a surety is alike with that of the principal debtor unless the contract provides to the contrary. As soon as the Principal Debtor makes any delinquency in the payment of the debt, the surety becomes liable. Thus, a creditor is not bound to proceed against the principal debtor first. He can directly sue the surety without suing the principal debtor. However, until the principal debtor makes any default, the creditor cannot ask the surety to pay the debt. Hence, the surety's liability is secondary and the liability of the principal debtor being primary."

12.9. DIFFERENCE BETWEEN CONTACT OF INDEMNITY AND CONTRACT OF GUARANTEE

POINTS	CONTACT OF INDEMNITY	CONTRACT OF GUARANTEE
Meaning	In the contract of indemnity one person promises to save the other from any loss.	Under Contract of Guarantee performance of the contract is guaranteed.
Number of Party	There are two parties	There are three parties.
Liability	Under indemnity contract the basic liability falls on the indemnifies.	In case of guarantee contract surety has the secondary liability.
Number of Contracts	Under the indemnity contract there is one contract between Indemnified and Indemnifier.	Under the contract of guarantee there are three contracts between Surety and Principal debtor, Principal Debtor and Creditor & Creditor and Surety.
Performance of Contract	Contract of indemnity depends upon the possibility of risk or loss.	In case of guarantee there is an existing debt or duty performance about which guarantee is given.

12.10 SUMMARY

A contract of guarantee is a contract to perform the promise to discharge the liability of a third person in case of his default.

CHARACTERISTICS OR ESSENTIALS OF CONTRACT OF GUARANTEE

- Tripartite agreement:
  a. the principal debtor and creditor,
  b. the creditor and surety, and
  c. the surety and principal debtor,
- Liability:
- Essentials of valid contract:
- Written form.

Rights against Principal Debtor	Rights against Creditor
a) Right to give Notice b) Rights of Sub-rogation: c) Right of Indemnity: d) Right to get Securities: e) Right to ask for Relief:	a) Right to get Securities b) Rights of Sub-rogation:

12.11 QUESTIONS

1. Define Contract of Guarantee and enumerates essentials.
2. What are the rights of surety against the principal debtor?
3. What are the various kinds of Guarantees?
4. Distinguish between Contract of Indemnity and Guarantee
5. Explain the modes of discharge of surety.
6. Short Notes:
   a. Rights of Surety
   b. Extent of Surety's Liability.

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13

CONTRACT OF BAILMENT

Unit Structure

13.0 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the meaning of Bailment.
- Explain the Features of Bailment.
- Know the different types of Bailments.
- Discuss about the rights and duties of the Bailee.
- Explain the Duties of Bailor.
- Explain the rights of the finder of the goods.

13.1 MEANING AND DEFINITION BAILMENT

Definition of Bailment:

The term 'bailment' is derived from the French word 'bailor' which means to deliver a thing under a contract. The delivery of movable goods by one person to another person for a specific purpose with a condition to return the goods when the purpose is over or otherwise disposed off according to the direction of the person.

The person who delivers the goods is known as the '**Bailor'** and the person who receives the goods is known as the **'Bailee'** and the transaction is known as the '**Bailment'.**

Definition: 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 direction of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called the 'bailee'.

Examples:

(i) 'A' lends his motor cycle to 'B' for his use.

(ii) 'A' gives a piece of cloth to a tailor to make it into a coat.

(iii) 'A' gives his radio set to a mechanic for repairs.

A bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished be returned or otherwise disposed', of according to the directions of the persons delivering them-Sec. 14.

The person delivering the goods it called the Bailor. The person to whom they are delivered is called the *Bailee*. The transaction is called *Bailment*.

Examples:

'P' lends his book to 'Q'.

'P' delivers a pen to 'Q' for repair.

'P' gives 'Q' his watch as security for a loan.

'P' gives a cloth to his tailor for stitching. It is bailment of the cloth. As soon as the cloth is stitched, it will be returned to 'P'.

In all these cases 'P' is the bailor and 'Q' is the bailee.

13.2 CHARACTERISTIC FEATURES OR THE REQUISITES OF BAILMENT

1. **Delivery:** It is delivery of goods by one person to another.
2. **Purpose:** The goods are delivered for some purpose.
3. **Return:** It is agreed, that when the purpose is accomplished, the goods are to be returned or otherwise disposed of according to the direction of the bailor.
4. **Contract:** Bailment arises from express or implied t contract. (n case of finder of goods bailment arises by implication tit' law.
5. **Ownership:** In bailment the bailor continues to be the owner of the goods. Therefore, bailment does not cause any change of ownership.
6. **Movable goods: Bailment is concerned with only movable goods**. Money is not included in the category in movable goods. A deposit of money is not bailment.

Deposit of money in a bank does not constitute bailment relationship between depositor and the bank is that of borrower and the lender.

7. **Possession:** A person already in possession of the goods may become a bailee by a subsequent agreement, express. or implied.

Example:

'X' is a seller of motor car, having several cars in his possession. '**Y'** buys a car and leaves the car in the possession of **'X'.** *After* the sale is complete, **'X'** becomes a bailee, although originally, he was the owner.

13.3 DIFFERENT KINDS OF BAILMENT/ CLASSIFICATION OF BAILMENT

1. Bailment on the basis of Reward or Charge:

a. Gratuitous Bailment:
A gratuitous bailment is the bailment without any charge or reward. Neither the bailor, nor the bailee is entitled to any remuneration.

Examples:
Mohan lends his car to Sohan without any charges to go to his native place. (No consideration)

b. Non- Gratuitous Bailment:
It is the bailment for some charges or reward. The bailee is required to pay some charges to the bailor

Example: 'A' has given his taxi to the 'B' for two days at the rate of hundred rupees per day. Now, in this 'A' is charging hundred rupees per day this is known as the non-gratuitous bailment.

2. Bailment on the basis of Benefit:
a. Bailment for the exclusive benefit of the bailor:
It is the bailment in which the goods are delivered by the bailor to the bailee only for the exclusive benefit of the bailor himself.

Example: Giving goods to a neighbor for safe custody.

b. Bailment for the exclusive benefit of the bailee:
It is the bailment in which the goods are delivered by the bailor to the bailee only for the exclusive benefit of the bailee.
Example: Lending a Scooter to a friend.

c. Bailment for mutual benefit of bailor and bailee.
It is the bailment in which the goods are delivered by the bailor to the bailee for the benefit of both the parties.

Example: Giving Television for repair, Giving watch for repair.

3. According to Purpose:
a. Bailment by safe Custody:
In such types of bailments, goods are bailed by one person to another person for safe custody.

For example: Having safe deposit locker in a bank.

b. Bailment by hire: Having a Car/ Vehicle on rent.

13.4 RIGHTS & DUTIES OF THE BAILEE

13.4.1 RIGHTS OF THE BAILEE

Following are the rights of the Bailee:

1. Bailment by several joint owners: "If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.**"**-Sec. 165.

2. Bailee not responsible on re-delivery to bailor without title: "If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to directions of the bailor, the bailee is not responsible to the owner in respect of such delivery.**"** Sec. 166.

3. Bailee's Particular Lien:
Lien means the rights to retain property until debt or claim is squared up. The right of lien is given by law in certain cases. Lien may be of two types**:**

General Lien and Particular Lien.

General lien means the right to retain **all the goods** of the other party until all the claims of the holder are paid.

Particular lien means the right to retain **particular goods** until claims on account of those goods are paid.

Example :'**A** 'delivers a rough diamond to**'B**',a jeweler, to be cut and polished, which is accordingly done. '***B***'I s entitled to retain the stone till he *is* paid for the services which he has given.

13.4.2 DUTIES OF THE BAILEE:

1. Duty of reasonable care:
The bailee is bound to take care of the goods bailed to him. The degree of care to be taken by a bailee is that of a man of ordinary prudence. If he

takes that amount of care, he will not be held responsible for loss, destruction or deterioration of the goods bailed. (Sec. 152). The degree of care required from the bailee is the same whether the bailment is for reward or is Gratuitous.

He is also not liable for the destruction or the loss of **goods due to an act of God**

Example: If 'A' bails his ornaments to ''B and 'B' keeps these ornaments in his own locker at his house along with his own ornaments and if all the ornaments are lost/ stolen in a riot, B will not be responsible for the loss to A.

2. Bailee's liability for negligence of servants:
For damages caused by negligence of the servants about the use or custody of the things bailed a bailee is liable, when acting in course of their employment. The bailee is also not liable for unauthorized acts of his servants outside the scope of their employment. Case:***Sanderson v/s Collins.***

3. Unauthorized use of goods:
If the bailee makes unauthorized use of goods bailed, i.e., uses them in a way not authorized by the terms of the bailment, he is responsible for all damages to the goods and must pay compensation to the bailor. This liability arises even if the bailee is not guilty of any negligence, and even if the damage is the result of accident.-Sec. 154.

Examples: *'***A**'lends a horse to '**B**' for his own riding only. **'*B*'** allows '**C'** a member *of* his family, to ride the horse. '**C**' rides with care, but the horse accidentally falls arid is injured. 'B' is liable to make compensation to **'A'** for the injury done to the horse.

4. Mixture of Bailor's goods with the Bailee's:
If the bailee mixes up his own goods with those of the bailor, the following rules apply:

(a) "If the bailee, with consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced."-Sec. 155.

(b) If the bailee, without the consent of the bailor mixes goods of the bailor with his own goods, and the goods can be isolated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of isolation or division, and any losses arising from the mixture. - **Sec. 156.**

Example: ***Hamid bails*** 100 bales of cotton marked with a particular mark to **Salim.** ***Salim*** without **Hamid's** consent mixes the l00 bales with other

bales of his own, bearing a different mark. **Hamid** is entitled to have his l00 bales returned, and **Salim** is bound to bear all the expenses incurred in the separation of the bails, and any other incidental damage.

Without the consent of the bailor, If the bailee mixes goods of the bailor with his own goods, in such a way that it is impossible to segregate the goods bailed from the other that good, and returned them back, the bailor is entitled to be compensated by the bailee for the loss of the goods. -Sec. 157.

Example: D bails superior flour worth Rs. 45 to ***B***. ***B***, without **D's** consent. mixes the flour with inferior flour of his own, – worth only Rs. 25 ***B*** must compensate **D** for the loss of his flour.

5. Duty of returning goods:
It is the duty of the bailee to return or deliver according the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished. —sec160.

If, by the default of the bailee, the goods are not delivered or tendered at the proper time, he is responsible to the bailor, for any loss, destruction or deterioration of the goods from that time.-Sec. 161.

Example: G agreed to carry certain goods of **B** in an efficient manner. The driver of the van which was carrying the goods left the van unattended for one hour for lunch. During that time the goods were stolen, **B** filed a suit for damages against **G**. Held, the carrier has a duty via to deliver the goods or return them. The carrier could not do so. The van driver's departure constitutes a fundamental breach of the contract to carry the goods forthwith to the destination. compensation, were awarded.

6. Accretion to the goods bailed: Sec. 163.
The bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed

Example : C leaves a cow in the custody of ***B*** to be taken care of. The cow has a calf. **B** is bound to deliver the calf as well as the cow to **C**.

13.5 DUTIES OF THE BAILOR

Following are the duties of the Bailor

1. Bailor's duty to disclose faults in goods bailed:
The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extra ordinary risk, and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

Examples:

(i) A lends a horse which he knows to be vicious to B. He does not disclose the fact that the horse is vicious. The horse runs away, B is thrown and injured. .A is responsible to B for damage sustained.

(ii) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. Bis responsible to A for the injury.

2. Payment of expenses in Gratuitous Bailment:
Where by the conditions of the bailment, the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment. -Sec. 158.

13.6 TERMINATION OF BAILMENT

A contract of bailment comes to an end under the following circumstances:

1. Efflux of Time:
If the contract of bailment is for a particular period, the bailment terminates as soon as the same period is expiring.

2. Destruction of the subject matter:
A bailment is terminated when the subject matter of bailment is destroyed.
Example: Suppose

3. Fulfillment of Purpose:
If the bailment is for a specific purpose, the bailment terminates as soon as the purpose is fulfilled.

4. Act Inconsistent with the terms :(Sec. 153.)
If the bailee does any act, with regard to the goods bailed, which is inconsistent with the terms of the bailment, the bailment terminates.

5. Goods Lent Gratuitously: (Sec. 159).
A gratuitous bailment can be terminated any time but if premature termination causes any loss to. the bailee, the bailor must indemnify the bailee.

6. Death:**(Sec. 162.)**
A gratuitous bailment is terminated by the death either of the bailor or the bailee.

13.7 RIGHTS AND DUTIES OF FINDER OF GOODS

13.7.1 Meaning:

Finder of goods means a person who finds a goods belongs to others and takes the custody of the same.

Following are the rights and duties of the finder of goods:

13.7.2 Rights:

A finder of goods is in the position of a bailee if he takes charge of the goods. The rights of the finder of goods can be summarized as follows. - Sections 168 *and* 169:

1. Possession: He can retain possession of the goods against everybody except the true owner.

2. Compensation and Lien: He is entitled to get the compensation for the trouble and expense incurred by him for preservation of the goods and to find out the owner. He has a lien upon the goods for the payment of these sums i.e., he can refuse to return the goods until they are paid.

3. Reward: He can sue for any reward which the owner might have offered for the return of the goods lost.

4. Sale: If the goods found are commonly the subject-matter of sale and if the owner cannot with reasonable diligence be found or if he refuses to pay the lawful charges of the finder, the goods can be sold provided the following further conditions are fulfilled

(a) When the thing is in danger of perishing or of losing the greater part of its value.

(b) When the lawful charges of the finder amount to two thirds of its value.

13.7.3 Duties and Obligations:

The finder of goods is a bailee. Therefore, he has the following duties and obligations:

He must try to find out the true owner of the goods

He should take **reasonable care** of the goods (Sec. 151).

He should not mix the finder's goods with his own goods *(Sec*.

I55-157).

The goods must be returned to the real owner *(Sec*. 160 & 161).

If there is a growth or increase to the goods bailed, it must be given to the real owner (*Sec*. 163).

He must not use the goods for his personal purpose.

13.8 LAW RELATING TO LIEN

13.8.1 Meaning:

A lien is a right of any one person to retain that, which is in his possession, belonging to another, until certain demands of a person in possession are fulfilled. In other words, a lien means the right to 'retain' the possession of the goods or property until the claim is paid or squared off. Possession is essential to create a right of lien.

Hence, Lien is a right of person to retain that which is in his possession and which belongs to another, until the demands of the person in possession are satisfied.

13.8.2 Kinds of Lien:

There are two kinds of liens:

(a) Particular lien,

(b) General lien.

1. Particular Lien or Specific lien (Section 170):

It is a right to retain custody or possession over those particular goods in connection with which the debt is in question. It is restricted to those goods which are subject matter of the contract and are liable for certain demands of the person in possession of those goods.

According to Section 170 where the bailee has, in accordance with the purpose of the contract of bailment, provides any services including an exercise of labour and skill in respect of the goods bailed, he has, in the absence of a contract to contrary, a right to retain such goods in his custody until he gets applicable or due remuneration in respect of them. Besides the bailee, other persons who are entitled to exercise particular lien are unpaid seller of goods, finder of goods, Pawnee, agents, etc.

2. General Lien. (Section 171): [Holding goods until a debt has been paid]

General lien is a kind of a special privilege which the law has granted only to few persons (i) bankers, (ii) factors (iii) wharfingers, (iv) attorney of the High Courts, (v) policy brokers, and (vi) others by agreement. These parties, can exercise general lien against any goods under their possession and for any sum legally due on a general balance of account.

It entitles a person in custody or possession of the goods to retain them until **all claims** of the person in possession against the owner of the goods are satisfied or paid off. It is not necessary that the demands should arise only out of the articles detained under possession. But where the goods are

deposited for some **special purposes, e.g., safe custody**, they will not come under the spell of general lien.

Example:
Paras bhai deposited certain jewels with the Gujrat Bank to secure certain debt, after payment of this debt he demanded the return of these jewels from the bank. He was still indebted to the bank for certain other debts. On the bank's refusal to return, it was held that he was not entitled to recover unless he proved that the bank had agreed to give up its general lien. **(Kunhan V. Bank of Madras, 1895).**

A solicitor has a general lien on all the papers of the client in his possession in his professional capacity as solicitor. He can claim a lien for all costs due to him from the client but not for money loans

13.8.3 Difference between Pledge and Lien:

	PLEDGE	**LIEN**
Creation of right:	In a pledge, goods are bailed as a security for payment of debt or for performance of a promise.	here is no bailment of goods as security. It is only a creation of a right to possession in the hands of the bailee. It is a mere right of retainer.
Right to sell:	It gives a right to sell.	It gives no right to sell
Possession:	It creates a right of security i.e. pledge of goods is not lost by return of goods to the owner or by loss of possession.	Lien is host by loss of possession
Origin	Pledge is created by contract between the parties.	Lien is created by law or by express or implied contract.

13.9 SUMMARY

- **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 direction of the person delivering them.
- **FEATURES OR THE REQUISITES OF BAILMENT**
  Delivery, Purpose. Return, Contract, Ownership, Movable goods: Bailment is concerned with only movable goods.

1. Bailment on the basis of Reward or Charge:

a. Gratuitous Bailment:

b. Non- Gratuitous Bailment**:**

2. Bailment on the basis of Benefit:

a. Bailment for the exclusive benefit of the bailor:

b. Bailment for the exclusive benefit of the bailee:

c. Bailment for mutual benefit of bailor and bailee.

3. According to Purpose:

a. Bailment by safe Custody

TERMINATION OF BAILMENT:

Efflux of Time:

Destruction of the subject matter:

Fulfillment of Purpose:

Act Inconsistent with the terms :(Sec. 153.)

Goods Lent Gratuitously: (Sec. 159).

Death:(Sec. 162.)

There are two kinds of liens: (a) Particular lien, (b) General lien.

13.10 QUESTIONS

1. What is bailment? What are the essential elements of valid bailment?
2. Explain various types of bailments
3. Distinguish between Pledge and Lien
4. Short Notes:
   a. Rights and duties of bailor and bailee.
   b. Rights and duties of Finder of Goods.
   c. Right of Lien.
5. Define the following terms:
   a. Lien
   b. Bailment
   c. Gratuitous bailment
   d. Specific lien
   e. General lien

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14

CONTRACT OF PLEDGE (SECTION 172 TO 179)

Unit Structure

14.1 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the meaning and features of valid pledge.
- Explain the concept Pledge by Non-owner.
- Know the concepts Pawnee and Pawnor and their rights and duties.
- Difference between Bailment and Pledge.

14.2 MEANING AND FEATURES OF VALID PLEDGE

Meaning:
A **Pledge** is a bailment that conveys possessory title to property owned by a debtor (the Pledgor) to a creditor (the Pledgee) to secure repayment for some debt or obligation and to the mutual benefit of both parties. The term is also used to denote the property which constitutes the security. A pledge is type of security interest.

In short Pledge is the bailment of goods as security for payment of a debt or performance of promise. Bailor in this case is called the **'Pawnor'** and the bailee is called the **'Pawnee'** (Sec. 172).

14.2.1 Essential Features of Valid Pledge.

1. Bailment of Movable Property only:
Only movable property like Valuables Jewellery or documents can be pledged. Immovable property like land and building cannot be pledged, that can be treated separately under Transfer of Property Act.

2. Delivery of possession:
It is an essential and important element of a valid pledge that the Possession of the goods must be delivered by the Pawnor to the Pawnee. It

may be noted that only the possession of the goods transfers from one person to the other and not the ownership. The ownership remains with the Pawnor. If the possession is not delivered then there cannot be a valid pledge.

3. Actual delivery Or Constructive delivery:
Actual delivery means the delivery of physical possession. And constructive delivery means when there is no change of physical possession. The delivery of keys of a godown where the goods are stored is the constructive delivery.

4. Delivery should be for the purpose of security:
The goods should be delivered by one person to another by way of a security. The pawnor should deliver the goods to the Pawnee as a security for the payment of a loan or for the satisfaction of an obligation.

5. Delivery should be upon a condition to return:
It is also an important element of a valid pledge. The goods should be delivered to the Pawnee as a security for some loan or for the fulfillment of the promise. When such loan is repaid or promise is fulfilled, the security should be returned to the pawner.

14.3 PLEDGE BY NON-OWNER. (Section: 178 & 179)

Pledge can be made only by the owner of the goods. But there are certain exceptions to this rule. Hence the following persons can also make a valid pledge:

1. Mercantile agent:
According to the Sale of Goods Act, 1930, "Mercantile agent means a mercantile agent having in the customary course of business as such agent authority either to sell goods.

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

2. Pledge by persons in possession of goods under a voidable contract:
A person who is in custody of goods under a voidable contract can make a valid pledge of the goods, if at the time of pledge the contract was not cancelled. The Pawnee will get a good title to the goods provided he acts in good faith and without notice of the pawnor's defect of title (Sec. 178A).

Example:' **A**', by fraud, induced '**B**' to sell goods. **A** pledged these goods with **'C'** who acted in good faith and has no knowledge of the fraud. The pledge is valid.

3. Pledge by a person having only a limited interest: (Section 179)
Where a person pledges goods in which he has a limited interest, the pledge is valid to the extent of that interest only. In such cases it is not important that the Pawnee had no notice of the limited interest of the Pawnor in the property.

Example: '**A**' finds **B's** transistor on the road. In spite of making reasonable search, **A** could not find the true owner. **A** spent Rs. 20/-on its repair and pledged it for Rs. 100/- with **C**. **B** can get the transistor only on paying Rs. 20/-

14.4 RIGHTS AND DUTIES OF THE PAWNOR AND PAWNEE

14.4.1 Rights and Duties of the Pawnor:

Right to receive goods till sold [(Right to redeem) (Sec. 177)].
If a time is assigned for the payment of the debt or performance of the promise, for which the pledge is made, and the Pawnor makes default in the payment of the dues or the performance of the promise at the assigned time he may redeem the goods pledged at any subsequent time, before their actual sale of them, but he must in that case pay, in addition, any expenses which might have arisen from his default.

14.4.2 Rights and duties of the Pawnee:

1. Right of retainer (Section 173- 174):
As per **section 173**, the Pawnee may retain the goods pledged, not only for a payment of a debt or the performance of the
promise, but also for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

2. Right to receive extraordinary expenses (Sec. 175):
Pawnee is also entitled to receive from the Pawnor any extraordinary expenses which he has incurred for the preservation of the goods pledged.

3. Right of sale (Section 176):
The Pawnee may bring a suit against the pawnor upon the debt or the promise and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the pawnor makes default in payment of the debt or performance at the stipulated time, of the promise, in respect of which the goods were pledged,

4. Right of Particular lien (Sec. 174):
Pawnee has no right to retain his possession over the goods pledged for any debt or promise other than the debt or promise for which they were pledged unless otherwise provided for, by a contract.

5. Pawnee's right where Pawnor makes default (Sec. 176):
In the case of default by the Pawnor in the payment of debt or the performance of promise at the stipulated time or on demand or within reasonable time, the Pawnee can exercise the following rights:

He has a right to bring a suit on the debt or promise and can retain the goods pledged as a collateral security.

He has also a right to sell the goods pledged after giving reasonable notice of sale to the Pawnor.

6. Pawnee must not use the goods pledged:
He must not use goods pledge unless they are such as will not deteriorate by wear.

14.5 DIFFERENCE BETWEEN BAILMENT AND PLEDGE

Bailment	Pledge
Bailment can be for many types from the reward to gratuitous.	pledge is bailment done for a specific type of purpose, which is to secure a loan or performance of a promise
The bailee does not get a right to sell the goods	A Pawnee has a right to sell the goods in case of default.
A Pawnee gets a right of retainer and a special interest in the goods, which is more than just the lien.	The Pawnee has no right to use the goods.
Bailment is the Transfer of movable property to the bailee	Here transfer of object, documents to someone as a security for loan.

14.6 SUMMARY

Meaning: A **Pledge** is a bailment that conveys possessory title to property owned by a debtor (the Pledgor) to a creditor (the Pledgee) to secure repayment for some debt or obligation and to the mutual benefit of both parties.

Essential Features of a Valid Pledge. Bailment of Movable Property only: Delivery of possession: Actual delivery Or Constructive delivery: Delivery should be for the purpose of security: Delivery should be upon a condition to return:

PLEDGE BY NON-OWNER: Mercantile agent: Pledge by persons in possession of goods under a voidable contract: Pledge by a person having only a limited interest: (Section 179).

RIGHTS AND DUTIES OF THE PAWNOR AND PAWNEE :

Rights and Duties of the Pawnor:

Right to receive goods till sold [(Right to redeem) (Sec. 177)].

- Rights and duties of the Pawnee
- Right of retainer (Section 173- 174):
- Right to receive extraordinary expenses (Sec. 175).:
- Right of sale (Section 176):
- Right of Particular lien (Sec. 174):
- Pawnee's right where Pawnor makes default (Sec. 176):
- Pawnee must not use the goods pledged:

14.6 QUESTIONS

1. What are the rights and duties of the Pawnee and Pawnee under Contract of Pledge?
2. When the Non-owner can create the Pledge?
3. Distinguish between Bailment and Pledge
4. Short Notes:-
   a. Rights and duties of bailor and bailee.
   b. Rights and duties of Finder of Goods. Right of Lien.
5. Define the following terms:
   a. Pawnee
   b. Pawnor
   c. Pledge

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MODULE IV

15

LAW OF AGENCY

Unit Structure

15.1 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the meaning of the term Agency and essentials for Valid Agency.
- Discuss about the modes of creating Agency.
- Know the Classification of Agents.
- Discuss about the rights and duties of the agent.
- Understand the Important conditions that should be fulfilled for a valid ratification.
- Know the meaning of Irrevocable agency.

15.2. MEANING AND ESSENTIALS OF LAW OF AGENCY

15.2.1 Definition & Meaning:

Section 182 of the Indian Contract Act defines an agent, as person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented is called the "principal".

When a person employs another person to do any act for himself or to represent him in dealing with third persons, it is called a *'***Contract of**

Agency'. The person who is so represented is called the 'principal' and the representative so employed is called the 'agent (Sec. 182). The duty of the agent is to enter into legal relations on behalf of the principal with third parties. Principal shall be responsible for all the acts of his agent provided they are not outside the scope of his authority.

15.2.2 Essentials for Valid Agency.

The legal definition of the term 'agency', discussed earlier, reveals the essential element of agency, and a valid agency must satisfy these essential requirements. The essential features of agency relationship are discussed below.

1. There should be an agreement between the principal and the agent:
It is an essential element of a agency. According to this element, the agency must be created by an agreement between the principal and the agent. The agreement may be express (i.e., by words of mouth or of the case.)

2. The agent must act in the representative capacity:
The agent must act as representative of principal, i.e., he must represent his relationship of his principal with the third persons. Thus the true nature of the relationship should be seen if the agent acts in representative capacity and had the power to bind his principal with the third persons, the relationship is that of 'agency'.

3. The principal must be competent to contract:
The principal must be competent to enter into a valid contract, i.e., he must be of sound mind, and have attained the age of majority (i.e., he should have completed 18 years of age).

4. The agent need not be competent to contract:
Any person may become an agent and he need not be competent to contract [Section 184]. Even a minor can be appointed as agent, and the principal shall be bound by the acts of such an agent. It may, however, be noted that such an incompetent agent shall not be liable to the principal. Thus, the principal cannot recover any compensation from an incompetent agent for losses caused by misconduct or unauthorized acts of such agent.

5. The consideration is not necessary:
No consideration is essential for the establishment of a valid agency relationship [Section 185]. An agency is valid even without consideration. Mostly, an agent is remunerated by way of commission for the services provided by him.

15.3 MODES OF CREATING AN AGENCY

In ordinary contracts, the parties to the contract act entirely by themselves. When instead another person is engaged to do the acts under the contract,

it is called agency. Agency is a special type of contract. Section 182 of the Contract Act defines the terms Agent and Principal as follows:

1. **Agent** is a person employed to do any act for another or to represent another in relation with third persons.
2. The person for whom such act is done, is called **Principal.**
3. The contract which creates the relationship of 'Principal' and 'Agent' is called an **agency.**

Creation of agency:

A contract of agency comes into existence in any of the following ways.

1. Agency by Express Agreement: Section 186 & 187:

Agency is created by a contract in writing. An Agency may be created by oral contract between principal and agent. The common form of an agreement in writing is "power of Attorney" whereby, authority is given to the power of attorney holder, either generally or specifically, to act on behalf of the principal. A general power of attorney authorizes the Agent to do all things on behalf of the Principal.

2. Agency by Implied Agreement: Section 187:

Implied agency may arise by conduct of the parties of the circumstances of the case. When agency come in to an existence by the conduct of the parties it is called implied agency.

Example: A of Calcutta has a shop in Delhi. B, the manager of the shop, has been ordering and purchasing goods from C for the purpose of the shop. The goods purchased were being regularly paid for out of the funds provided by A. B shall be considered to be an agent of A by his conduct.

- Partners,
- Servants and
- Wives are regarded as agents by implications because of their relationship.
- Wife as an implied agent to her husband

a. When the husband and wife are living together the wife shall have an implied authority to pledge the credit of her husband for necessaries. The implied authority can be challenged by the husband only in the following situations

(1) The husband has expressly prohibited the wife from borrowing money or buying goods on credit.

(2) The things brought did not constitute necessities of her life.

(3) Husband had given requisite funds to the wife for purchasing the articles.

(4) The creditor had been instructed not to give credit to the wife.

b. When the wife lives separate from husband without her fault, she shall have an implied authority to bind the husband for necessaries, if he fails to provide her maintenance.

Such an agency may take any of the following forms:

i. Agency by Estoppel:
Such an agency is based on the principle of estoppel. The rule of estoppel can be stated thus: Where a person, by his words or conduct, has willfully led another to believe that certain set of circumstances or facts exist, and that other person has acted on that belief, he is estopped from denying the truth of such statements. In other words, estoppel arises when one is precluded from denying the truth of anything which he has represented as a fact, although it is not a fact.

ii. Agency by Holding out:
Such agency is based on the principle of holding out which is a part of the principle of estoppel. The only distinction is that in this case some affirmative conduct by the principal is necessary. For example, a dealer in iron usually sent his employee to buy on credit and paid for it afterwards. On one occasion, he sent the employee with cash, who bought the iron on credit and pocketed the money. It was held that the iron merchant was liable to pay for the iron, as the previous dealings justified the seller in assuming that the Agent had authority to buy on credit. The employer's conduct in 'holding out' his employee to be his agent estops him from denying the existence of authority of the employee. However, if the Agent is held out as having only a limited authority to do acts, the principal is not bound by an act outside the authority.

iii. Agency by Necessity:
In certain circumstances, the law authorizes a person to act as agent for another without any regard to the consent of the principal.

Example: A wife deserted by her husband and forced to live separate from him, can pledge her husband's credit to buy all the necessaries of life according to the position of the husband even against the wish of the husband and the husband can be held liable for the same.

In other cases where in order to save the property of another, one has to act before the instructions of the owner can be received, he is, by necessity, authorized to act as Agent and the consent of the owner as Principal is assumed in law. Agency by Ratification: Sections 196 and 197 Ratification means the **subsequent adoption and acceptance of an act originally done without instructions or authority.** Thus, where an Agent exceeds his authority (except under emergency), the **acts of the Agent are not binding on the Principal**. The Principal, however, may afterwards confirm and adopt the contract so made and this is known as ratification. Section 196 of the Contract Act provides for ratification and states that 'where acts are done by one person on behalf of another, but

without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

15.4 CLASSIFICATION / KINDS OF AGENTS

Agents can be classified in various ways:

1. Special Agents:
Agent appointed to carry out a particular task only. The agency in such cases for a specific period of for a particular type of work. When the assigned work is got over the agency gets terminated. For example… An agent has appointed by B to sell Block number 420 in a particular area.

2. Universal Agents:
Universal agent is practically a general agent with very extensive rights. We can say that an universal agent is a substitute of principal for all those transactions where in principal cannot participate. Universal agent can look after all the work of agents in his absent. For example: when a person leaves his country for a long time, he may appoint his son/daughter as his agent to act on his behalf in his absence.

3. General Agents:
The agent has a general authority in such a case. A general agent is one who has authority to do all the acts (generally related to business) in the interest of his principal.

4. Co-Agents:
When two or more persons have been appointed by the principal. It is generally treated as their authority is joint. But when their authority is several, any other of the co-agents can act without the concurrence of the other.

5. Sub-Agents:
A sub-agent would be a person employed and acting under the control of the original agent of the agency In simple words, sub- agent is an agent of the original agent. Agent is responsible to the principal for the acts of sub-agent.

6. Factor:
A Factor is one type of a mercantile agent who sells goods on behalf of his principal. He has wide authority powers to sell goods upon such terms and conditions as he thinks proper. If a factor does any act which is beyond his authority, but which is within the scope of his apparent authority, then his principal is bound by such act.

7. Commission Agents:
For selling or buying goods on behalf of his principal a commission agent is appointed. Such types of agents belong to a indefinite class of agents.

He/She takes care to secure buyer for a seller of a goods and sellers for a buyer of goods and receives a commission in return for his work on the actual sales price.

8. Broker:
A broker is a special type of commercial agent who acts as a middleman between the buyer and the seller. We can say that he is employed to bring about contractual relationship between the principal and the third party. He usually gets commission for the work performed. His function ends when he brings the two parties together. He is never in possession of the subject, therefore cannot exercise the right of lien.

9. Auctioneer:
Auction is usually a public sale of goods made in the highest of several bidders. An auctioneer is a mercantile agent who is appointed to sell goods on behalf of principal, compensated in terms of commission.

10. Del Credere Agents:
A Del Credere agent is a mercantile agent who is employed to sell goods on behalf of his principal. He undertakes to guarantee the payment of dues in consideration for an extra commission. We can say that besides being a mercantile agent a del credere agent finds himself into the shoes of a guarantor as well.

15.5 DUTIES AND RIGHTS OF AN AGENT

15.5.1 Duties of An Agent:

1. Duty not to delegate- Section 190:
The agent cannot delegate his authority to perform his act in express or implied manner unless the custom of trade or the nature of the agency so requires.

2. Duty of Obedience [Duty to follow the instructions of Principal- Section 211]:
Express instructions are paramount and any agent disobeying these will be automatically liable for any loss which is caused to the principal. This duty takes precedence over the duty to exercise all reasonable care and skill. If the agent fails to act according to the direction or custom then he is liable to the principal for the loss suffered by the principal due to such an act of the agent.

Two important issues stem from this point of law. Firstly, it is wise to ask for all significant instructions to be given in writing, both at the initial undertaking and throughout the management of a property. Verbal instructions are more prone to ambiguity and can be forgotten. Secondly, the firm's management agreement should define the professional services provided and what actions will be taken in certain situations. In this way,

the definition of 'reasonable care and skill' will be less open to interpretation by any aggrieved client.

3. Duty to Account:
An agent is obliged to pay over or otherwise account for all monies in his possession where such monies have been received from the principal; that which he receives from a third party to hand over to the principal, and that which he is deemed to receive on behalf of the principal (**e.g. a secret profit**). In connection with the agent's duty to account, it has been held that it is his duty to keep accurate accounts of all his dealings on behalf of the principal. If he does not, everything which is consistent with the proved facts is presumed against him. In accounting for such monies received, the agent may deduct whatever is due to him by way of commission and expenses.

4. Duty of Care and Skill. Section 211:
An agent is under a duty to exercise reasonable care and skill which will be examined in the light of all the particular circumstances of the case. From a professional liability point of view, this duty is one of the most important to consider. It holds the highest penalty since professional negligence claims can be costly in time and any awards for damages made if a matter was to go to court.

5. Duty of Loyalty [Duty not to make secret profit-Section 216]:
This arises automatically out of the fiduciary nature of the relationship between agent and principal. It is the duty of an agent not to make secret profit. If the agent makes secret profit, the principal can claim such a benefit from the agent.

Furthermore, the agent should not take secret profits (which are deemed to include bribes and commissions) without the prior knowledge and authorization of the principal. The implication of this duty is that agents should declare any commissions that may be earned within their agency agreement or terms and conditions.

6. Performance with Honesty:
It is the duty of an agent that he should deal the business honestly. If he conducts the business dishonestly then he is not entitled to receive the reward of his services.

7. Communication with Principal:
It is the duty of the agent that he should give all the information's about the business to the principal. He should seek instructions from his principal. He should not keep anything secrets from his principal.

8. Separate Account:
An agent should not mix his account with the principal. It is the duty that he should keep the accounts of a principal separate.

15.5.2 Rights of Agent:

Following are the important rights of an agent :

1. Right of Remuneration: Section 219 and 220:
It is basic right of an agent that he should receive the remuneration of his services. He has also a right to claim remuneration as may be payable to him for acting as an agent. In the absence of any contract to the contrary, this right to claim remuneration will arise only when he has carried out the object of the agency in full without being guilty of misconduct (Sec. 219). An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of the part of that business which had been misconducted (Sec. 220)

2. Right of Compensation: Section 225:
In case of injury caused to agent by the negligence of the principal may be compensated by the principal.

3. Right to claim reimbursement for expenses: (Right to retainer) Section 217:
Agent has the right to retain, out of the money received on behalf of the principal, money advanced or expenses properly incurred in conducting the agency business. The agent may have paid the money at the request of the principal, or on account of the understanding implied by the terms of the agency or through mercantile usage. In conducting the business if an agent advances or spends some money for the betterment of a business. He has also right to retain that amount from the total sum received by him on account of the principal.

4. Right of Lien: Section 221:
An agent has also a right to retain the goods or property of a principal till the payment in due is received by him.

5. Right to indemnification against consequences of all lawful acts:(Sec. 222):
An agent has a right to be indemnified by the principal against the consequences of all lawful acts done in exercise of his authority.

Example: Salim, a broker at Patna , by the orders of Ahmad, merchant there, contracts with Chaman bhai for the purchase of 10 casks of oil for Ahmed. Afterwards Ahmed refuses to receive the oil and Chaman bhai sues Salim. Salim informs Ahmad, who repudiates the contract altogether. Salim defends, but unsuccessfully, and has to pay damages and incurs expenses. Ahmad is liable to Salim for such damages, costs and expenses.

6. Right of particular lien: 221:
An agent is entitled to retain under the possession both movable and immovable of the property of the principal received by him until the amount due to him for commission, disbursements and services has been

paid or accounted for him, provided the contract does not provide otherwise

15.6 RIGHTS AND DUTIES OF PRINCIPAL

15.6.1 Duties of Principal:

1. To indemnify the agent:
To indemnify the agent against consequences of lawful act (sec 222): the employer is bound to indemnify his great against the consequences of all lawful acts done by such agent in exercise of the authority assigned to him. The principal is liable only for such damages as are direct and immediate and naturally follow the execution of the agency

2. Compensate the agent for injury caused (Sec 225):
The principal must take compensation to his agent in respect of injury caused to the agent by the principal's neglect.

3. Misrepresentations or fraud by agent (sec 238):
Misrepresentations carried out, or frauds committed, by an agent acting in the courses of business for his principal, has the same effect on agreement made by such agent as if such misrepresentations or fraud had been made or committed by the principal. In order that a principal shall be made liable for the misrepresentations and frauds committed by the agent, such misrepresentations or frauds must be committed by the agent —

1) In the course of the business of his principal; and
2) The act must be within the scope of agent's authority.

15.6.2 Rights of Principal:

1. To repudiate/cancel the contract (Sec 215): If an agent deals on his own account in the business of the agency, without taking the consent of his principal and accustom him with all material facts which have come to his own knowledge on the subject, the principal may cancel the transaction, if the case shows either that any material fact has been dishonestly hided from him by the agent or that the dealings of the agent have been harmful to him.

2.To claim benefit (Sec 216): if an agent without the knowledge of the principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is to claim from the agent any advantage which may have resulted to him from the dealing.

3. To ratify (give retrospective effect) to agent's acts (Sec 196): where acts are done by one person on behalf of another but without his knowledge or authority, he may elect to ratify or to give retrospective effect to such acts.

4. To revoke/ to take back agent's authority (Sec 203): the principal may revoke or take back the authority given to his agent by giving a reasonable/ appropriate notice of revocation at any time before the authority has been exercised.

5. To demand accounts (Sec 213): Principal is entitled to demand appropriate accounts from the agent.

6. To refuse remuneration when agent is guilty of misconduct (Sec 220): The principal has a right to refuse remuneration to the agent who is guilty of misconduct in the business of the agency.

15.7 TERMINATION OF AGENCY

An agency may be terminated either by –

1) Act of the parties, or

2) Operation of law.

A. By act of the parties:

1. By agreement:
An agency, like any other contract, can be terminated at any time by a mutual agreement between the Principal and the Agent.

2. Revocation by the Principal:
The principal is empowered to revoke the authority of the Agent at any time. The agency stands terminated from the time such revocation is affected. Revocation can be express or implied.

17. In the case of a continuous agency, it can be terminated by revocation only for the future. It cannot be revoked in relation to the acts already done by the Agent. In other words, revocation cannot be with retrospective effect. Reasonable notice should be given to the Agent and also the third parties before revocation.

18. An agency, which is created for a fixed period, can be terminated by revocation even before the expiry of that period. However, the Principal is bound to pay compensation to the Agent, even if the authority is revoked after giving notice.

3. Renunciation by the Agent:
It is the termination of the agency at the instance of the Agent, when he no longer wishes to continue working as Agent. The Agent has to give a reasonable notice to the principal of his intention to renounce the agency; otherwise, he is liable to compensate the principal for any loss due to renunciation without notice. Further, if the agency is for a fixed period and the Agent renounces it without sufficient cause before the expiry of the period, he shall have to compensate the principal for the resulting loss, if any.

B. By operation of law:

An agency comes to end automatically by operation of law in the following conditions:

1. Completion of business of agency:
If the purpose for which the agency is created is served and achieved, the agency stands terminated, e.g. where an advocate is appointed to appear in a suit, his authority comes to end when the adjudication is complete and the judgment is delivered.

2. Expiry of time:
When the agency is created for a specified period of time, the agency comes to end with that period, even though the business or reason for which the agency was created continues.

3. Death of the Principal or the Agent:
An agency is terminated automatically on the death of the Principal or the Agent. In the event of the death of the Principal, the Agent must take all reasonable care to protect the interests of the deceased Principal, which were entrusted to him.

4. Insanity of the Principal or the Agent:
If the Principal or the Agent becomes of unsound mind, the agency is terminated automatically. Here also, in the case of insanity of the principal, the duty of the Agent is the same as in the event of death of the principal.

5. Insolvency of the Principal:
When the Principal becomes insolvent, the agency is terminated. However, the termination of agency on the insolvency of the Agent is at the discretion of the principal.

6. Destruction of the subject matter:
Where the agency is created with reference to a particular property or subject matter, it stands terminated automatically with the destruction of that property.

For example: Agent is appointed for the sale of a house, the agency is terminated when the house is destroyed by fire.

7. Dissolution of a Company:
It is like the death of the principal or the agent. When Principal or the Agent is an artificial person created only in the eyes of law (such as incorporated companies), the agency is terminated with the dissolution of that company.

8. Becoming an alien enemy:
If the Principal or the Agent is a citizen of another country and the war breaks between India and that country, the contract of agency is automatically terminated, as the continuance of the same is unlawful.

15.8 IRREVOCABLE AGENCY

Irrevocable agency means an agency which cannot be terminated. An agency is irrevocable in the following cases:

1. Where agency is coupled with interest:
Where the agent has himself an interest in the property which forms the subject-matter of agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest (Sec. 202).

Example: A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debt due to him from A. A cannot revoke the authority, nor can it be terminated by his insanity or death.

It is essential that the interest of the agency should be existing at the time of creation of agency. Therefore, if the interest was created subsequently, the agency can be revoked.

There is no absolute restriction on the termination of the agency even when it is coupled with interest but the agent should be compensated for the loss arising from such termination.

2. Where the authority has been party exercised?
The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arisen from acts already done in the agency (Sec. 204).

3. Where the agent has incurred personal liability?
When the agent has purchased the goods on his personal liability, or where he made the payment of the good, the agency cannot be terminated.

Example: Abhimanyu authorized **Bhim** to buy 100 bales of cotton on behalf of Abhimanyu and to pay for it out of Abhimanyu's money in Bhim's hand. Bhim buys 100 bales of cotton in his own name so as to make himself personally liable for the price. Abhimanyu cannot revoke Bhim's authority so far as regards payment for the cotton.

15.9 SUMMARY

Meaning: When a person employs another person to do any act for himself or to represent him in dealing with third persons, it is called a **'Contract of Agency'**. The person who is so represented is called the 'principal' and the representative so employed is called the 'agent.

Essentials For Valid Agency.

- There should be an agreement between the principal and the agent:
- The agent must act in the representative capacity:
- The principal must be competent to contract:
- The agent need not be competent to contract:
- The consideration is not necessary:

Modes of Creation of Agency:	Classification of Agents.	Modes of Termination of Agency
• Agency by Express Agreement: Section 186 & 187: • 2. Agency by Implied Agreement: Section 187 • Agency by Estoppel: • Agency by Holding out: • Agency by Necessity:	• Special Agents: • Universal Agents: • General Agents: • Co-Agents: • Sub-Agents: • Factor: • Commission Agents: • Broker: • Auctioneer: • Del Credere Agents:	**A. By agreement:** • Revocation by the Principal: • Renunciation by the Agent: • **B. By operation of law**: • Completion of business of agency: • Expiry of time: • Death of the Principal or the Agent: • Insanity of the Principal or the Agent: • Insolvency of the Principal: • Destruction of the subject matter: • Dissolution of a Company: Becoming an alien enemy:

15.9 QUESTIONS

1. What are the essentials of valid contract of Agency?
2. Explain the various modes of creation of Agency?
3. What are the different types of Agents?
4. Explain the rights and duties of Principal.
5. Short Notes:
   a. Agency by Ratification.
   b. Rights and duties of Agent.
   c. Termination of Agency

6. Define the following terms:
   a. Agency
   b. Irrevocable agency
   c. Agent
   d. Principal
   e. Del Creder Agent
   f. Universal Agent
   g. Factor
   h. Sub-agent.

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MULTIPLE CHOICE QUESTIONS WITH ANSWERS
(MODULE III)

1. Section ———————— of Indian Contract Act defines a contract of Indemnity.

A) Section 127

B) Section 124

C) Section 125

D) Section 130

ANS: C) Section 125

2. A contract by which one party promises the other party to save from loss which may be caused either by the conduct of the promisor or by the conduct of any other person is called as ————

A) Contract of Bailment

B) Contract of Guarantee

C) Contract of Pledge

D) Contract of Indemnity

ANS: D) Contract of Indemnity

3. In a contract of Indemnity there are ————

A) 3 parties and one contract

B) 2 parties and 2 contracts

C) 3 parties and 3 contracts

D) 2 parties and one contract

ANS: D) 2 parties and one contract

4. A Contract of Indemnity is ———

A) Void Agreement

B) Quasi Contract

C) Contingent Contract

D) Wagering Contract

ANS: C) Contingent Contract

5. A ———————— is a contract to perform the promise or discharge the liability of a third person in case of his default.

A) Contract of Guarantee

B) Contract of Bailment

C) Contract of Indemnity

D) Contract of Pledge

ANS: A) Contract of Guarantee

6. A Contract of Guarantee is a ———————— agreement.

A) Bipartite agreement

B) Tripartite agreement

C) Either (A) or (B)

D) None of these

ANS: B) Tripartite agreement

7. Surety is a person who ————————

A) Who gives the guarantee

B) To whom the guarantee is given

C) In respect of whose default the guarantee is given

D) None of the above

ANS: A) Who gives the guarantee

8. A continuing guarantee applies to ————

A) Reasonable number of transactions

B) Any number of transactions

C) A series of transactions

D) A specific transaction

ANS: C) A series of transactions

9. A surety can be discharged from his liability by ——

A) By Notice

B) By Novation

C) By his Death

D) All the above

ANS: D) All the above

10. Right of Subrogation means ————————

A) The surety will step into the shoes of the another

B) He is entitled to the benefit of every security which the creditor has

C) The surety can claim indemnity from the principal debtor

D) All the above

ANS D) All the above

11. Bailment means ————————

A) The goods delivered to be returned by way of an equivalent in other commodities

B) The goods delivered to be returned by way of an equivalent in money

C) The goods is delivered by one person to another for some purpose to be specifically returned or otherwise disposed of as per the order of the bailor

D) All of these

ANS: D) All the above

12. Bailment is defined under Section ——— of Indian Contract Act, 1872.

A) 144

B) 146

C) 148

D) 149

ANS: C) 148

13. In all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would under similar circumstances. The statement is ————

A) True

B) False

C) Partly correct

D) None of the above

ANS: A) True

14. If the goods are lent free to the bailee for his use it is known as —————

A) Accommodation

B) Gratuitous Bailment

C) Non-Gratuitous Bailment

D) Deposition

ANS : B) Gratuitous Bailment

15. If the bailee mixes the goods of the bailor with his own goods, without the consent of the bailor

A) The bailee is liable to pay the expenses for separation of goods and damages

B) The bailee is not liable

C) Not liable for compensation

D) None of these

16. If the bailee mixes the goods of the bailor with his own goods, without the consent of the bailor

A) The bailee is liable to pay the expenses for separation of goods and damages

B) The bailee is not liable

C) Not liable for compensation

D) None of these

ANS : A)The bailee is liable to pay the expenses for separation of goods and damages

17. Lien means ————

A) A charge

B) A particular status

C) A guarantee

D) A legal claim to hold property as security

ANS: D) A legal claim to hold property as security

18. Bailor in Pledge is known as ————

A) Bailee

B) Pawnor

C) Pawnee

D) None of these

ANS . B) Pawnor

19. In a Pledge, the general property or ownership in goods

A) Transferred to the pawnee

B) Cannot be transferred to the pawnee

C) Continues in the pawnor

D) None of the above

ANS : C) Continues in the pawnor

20. According to Section 71 of the Contract Act, a person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a ————

A) Bailee

B) Bailor

C) Surety

D) Pawnor

ANS: A) Bailee

21. As per Section 182 of the Contract Act, an agent is one ————

A) Who is employed by another

B) To do any act for another

C) To represent another in dealing with third person

D) All of the above

ANS: D) All of the above

22. A sub-agent is a person ———

A) Who works under the main agent

B) Who carries out the order and direction of a person under whom he works directly

C) Who works on behalf of the main agent

D) Employed by and acting under the control of the original agent in the business of agency

ANS : D)Employed by and acting under the control of the original agent in the business of agency

23. Substituted agent is ————————

A) Agent's agent

B) Principal's agent

C) None of the above

D) Both (A) and (B)

ANS: B) Principal's agent

24. Ratification of authority means

A) Delegation of powers

B) Subrogation

C) Termination of agency

D) Confirmation to make valid or sanction an act which is already done.

ANS: D) Confirmation to make valid or sanction an act which is already done.

25. An agency is terminated ————————

A) By the principal revoking the authority

B) By the agent renouncing the business of agency

C) By either the principal or agent dying or becoming of unsound mind

D) All the above

ANS: D) All the above

26. The finder of goods is in the same position as that of _____:

a) Bailee

b) Bailor

c) Pledger

d) Creditor

(Ans: a Bailee)

27. A hires a carriage of B. The carriage is unsafe though B is not aware of it and A is injured:

a) B is responsible to A for the injury

b) B is not responsible to A for the injury

c) No one is responsible to each other

d) No contract

Ans: a) B is responsible to A for the injury

28. A person employed to do any act for another or to represent another in dealings with third person is called:

a) Servant

b) Labour

c) Agent

d) Soverign

Ans: c) Agent

29. An agent is bound to render proper account to ____ on demand:

a. His principal

b. Sub-agent

c. Creditor

d. Share holders

(Ans: a) his principal)

30. Factor is a _____ agent:

a) del-credere agent

b) mercantile agent.

c) commission agent

d) intending agent.

Ans: b) mercantile agent

*****

MULTIPLE CHOICE QUESTIONS-FOR PRACTICE
MODULE III

1. Guarantee is given for series of transactions_____.

a) implied guarantee

b) general and continuous guarantee

c) continuous guarantee

d) general guarantee

2. The person to whom the guarantee is given is called ……..

a) debtor

b) creditor

c) third party

d) surety

3. A contract of indemnity may be called as:

a. Quasi contracts

b. Contingent contracts

c. Good contracts

d. None of the above.

4. A contract to perform the promise, or discharge the liability of a third person in case of his default is called as:

a. Contract of guarantee

b. Contract of agency

c. Contract of bailment

d. Contract of indemnity

5. In a contract of indemnity there are:

a. Two parties

b. Three parties

c. Four parties

d. None of the above

6. The person in respect of whose default the guarantee is given is called:

a. The creditor

b. The surety

c. The principal debtor

d. None of the above

7. On whose request the surety should give the guarantee:

a. At the request of the principal

b. At the request of the banker

c. At the request of the debtor

d. At the request of the creditor

8. The person who given the guarantee is called:

a. Surety

b. Creditor

c. Principal Debtor

d. None of the above

9. The person whose loss is to be made good is called the:

a. Surety

b. Indemnifier

c. Creditor

d. Indemnified/Indemnity holder

10. What is duty of Principal:

a. Compensation to agent for injury caused by principal's neglect.

b. Agent to be indemnified against consequences of acts done in good faith.

c. Agent to be indemnified against consequences of lawful acts.

d. All of the above.

11. How the agency can be created:

a. By ratification

b. By express or implied agreement

c. Be operation of law

d. All of the above.

12. Ratification of unauthorized act of a person can be ratified by the Principal:

a. In part

b. In full

c. Substantial portion

d. Only some portion

13. An agent having an authority to do an act has authority to do:

a. Everything which is at the discretion of the agent.

b. Everything which is profitable in his opinion.

c. An agent having an authority to do an act has authority to do:

d. Everything in which has its own interest.

14. An agency may be terminated:

a. By the business of the agency being completed.

b. By the Agency renouncing the business of the agency

c. By the Principal revoking his authority.

d. All of the above.

15. An agent 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:

a. Del credere agent

b. Broker

c. Mercantile agent

d. Special agent

16. The person who during the contract of bailment deliver goods is called

a) Bailor

b) Bailee

c) Both (a) and (b)

d) None of above

17. The person to whom goods are delivered according Bailment is called

a. Bailor

b. Bailee

c. Both (a) and (b)

d. None

18. The bailment of goods as security for payment of debt or performance of a promise is called_____

a. Pledge

b. Special bailment

c. Both (a) and (b)

d. None of above

19. In pledge bailor is called_____

a. Pawnor

b. Pawnee

c. Both (a) and (b)

d. None of above

20. A person employed to do any act for another or to represent another in dealings with third person is called_____

a. Servant

b. Labour

c. Agent

d. None of above

*****

16

SALE OF GOODS ACT 1930

Unit Structure

16.1 OBJECTIVES

After studying the unit, the students will be able to:

- Define the fundamental concepts in the Sale of Goods ACT.
- Explain the essentials of Valid Sales.
- Distinguish between Sale and Agreement to Sale
- Distinguish between Sale and Hire purchase

16.2 INTRODUCTION

The sale of Goods Act 1930 deals with the law relating to sale of goods. The term Goods means every kind of movable property, other than Money and Actionable claims. The sale of Goods Act, 1930 is mainly based on the English Sale of goods Act, 1893.

Before the Sale of Goods Act,1930, the law relating to sale of goods was covered under the Chapter VII of Indian contract act, 1872, the provision of which were not suffice the purpose or not adequate. Therefore, new act called Sale of Goods Act, 1930 was passed. The presently act containing 66 sections came into force from 1stJuly, 1930 which extends to whole of India except the state of Jammu & Kashmir.

16.3 FUNDAMENTAL CONCEPTS

16.3.1 Definition of Contract of sale of goods:

Section 2(1) of the Act defines a contract of sale of goods as: a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. Subsections (3) and (4) give different names to two transactions:(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale.

(4) Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled the contract is called an agreement to sell.

16.3.2 IMPORTANT CONCEPTS:

1. Buyer [Section.2(1)]:
Buyer means a person who buys or agrees to buy the goods.

2. Seller:-[Section 2(13)]:
Seller means a person who sells or agrees to sell the goods.

Example: - Mr. Kashif sells the shop to Mr. Zahir. Mr. Kashif is a seller and Mr. Zahir is a buyer in this case.

3. Goods: - [Section 2(7)]:
Goods have been defined by Section 2, sub-section 7 of the Sale of Goods Act 1930 as "every kind of movable property, other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of land which are agreed to be served before sale or under a contract of sale.

4. Delivery [Section 2(2)]:
Delivery means voluntary transfer of the possession of goods from one person to another.

16.4 KINDS OF DELIVERY

a. Actual or Physical Delivery:
When a seller delivers the goods physically to the buyer or his agent, to take the possession. It is called an actual delivery. If the seller has received the price but does not deliver the goods to the buyer. The buyer can sue the seller for price with reasonable interest.

Example: An agreement between Mrs. Sapna and Vasu for sale of car. Car has delivered to Mr. Vasu. This is called actual delivery.

b. Symbolic Delivery:
If the key of any store is delivered to any person, it will be considered the goods in the store are also delivered to that person. It is a symbolic delivery.

Example: Mr. Ram sells the car to Mr. Bharat which are kept in the "Show Room". Mr. Ram gives the key of show room to Mr. Bharat . It is a symbolic delivery.

c. Constructive Delivery:
When there is a change in the legal character without any visible change in actual and visible custody it is called constructive delivery.

Example: Mr. Narad has bus, which he has rented out to Mr. Narayana. It is in the custody of Mr. Narayana. Mr. Narad sells and transfers complete title to Mr. Krishna. The bus remained in the custody of Mr. Narayana. There is no change in the custodian. Here only the title of the property has changed. Now Mr. Narayana agrees to hold on behalf of the buyer. It is called constructive delivery.

5. Price:
Price must be the consideration in the contract of sale. If goods are exchanged with goods, it is barter and not a contract of sale.

Example: "X" sells a book to "Y" for Rs. 300. It is a contract of sale.

6. Transfer of Ownership:
To constitute the sale, contract the seller must transfer or agree to transfer the property ownership to the buyers. So, possession and ownership both will be transferred to buyer.

Example: "X" sells the car to "Y" for 6 lac. The possession and ownership both will transfer to "Y".

7. Sale:
When ownership and possession of the goods is immediately transferred from seller to buyer it is called contract of sale.

Example: "X" buys a pen from the "Y" and pays the whole price on his hand. It is a sale.

8. Agreement to Sell:
The contract is called agreement to sell, when the transfer of ownership in the goods is to take place at a future date.

Example: Mr. X agrees to purchase Mr. Nitoo's bus for Rs. 30 lac. But the transfer of bus will take place after one year. It is agreement to sell.
Where under a contract of sale, the transfer of property in the goods is to take place at a future time or subject to some condition thereafter to be

fulfilled, the contract is called 'an agreement to sell' [Sec. 4(3)]. It is an executory contract and refers to a conditional sale.

Illustrations:

(a) On 1st January, **A** agrees with B that he will sell **B** his scooter on 15 January for a sum of Rs. 3,000. It is an agreement to sell, since A agrees to transfer the ownership of the scooter to **B** at a future time.

(b) A agrees to purchase **B'**s car for Rs. 50000, provided **B** stands surety for him with **C**. It is an agreement to sell for **B**. It becomes a sale when the condition is fulfilled by B.

16.5 ESSENTIALS OF VALID SALES/ FORMATION OF A CONTRACT OF SALE.

Section 4(1) of the Sale of Goods Act defines a contract of sale of goods as - "a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price."

This definition reveals the following essential characteristics of contract of sale of goods:

1. Two parties:
The first essential is that there must be two definite parties to a contract of sale, viz.., a buyer and a seller, as a person cannot buy his own goods.

2. Parties:
A minor or lunatic cannot be a transferor / vendor as he is not competent to contract under Section II of the Indian Contract Act, 1872. It has been held that a minor or a lunatic can be a transferee or purchaser in the case of transfer by way of sale or mortgage, represented by his Guardian.

3. Transfer of property:
'Property' here means ownership. Transfer of property in the goods is another essential of a contract of sale of goods. A mere transfer of possession of the goods cannot be termed as sale. To form a contract of sale the seller must either transfer or agree to transfer the property in the goods to the buyer.

4. Goods:
The subject-matter of the contract of sale must be 'goods', According to Section 2(7), "goods means every kind of movable property other than actionable claim and money; and

- Includes stock and shares,
- Growing crops, grass,
- And things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Goodwill, trademarks, copyrights, patents right, water, gas, electricity, decree of a court of law, are all regarded as goods. Shares and stock are also included in goods.

5. Consideration:
The consideration for a contract of sale must be money consideration called the price. If goods are sold or exchanged for other goods, the transaction is barter, governed by the Transfer of Property Act and not a sale of goods under this Act. If goods are sold partly for money and partly for goods, this is the contract of sale.

6. Sale:
Where under a contract of sale, the property in the goods is immediately transferred at the time of making the contract from the seller to the buyer, the contract is called a 'sale' [Sec. 4(3)]. It refers to an absolute sale. There is immediate transfer of the ownership and mostly of the subject-matter of the sale as well (delivery may also be given in future). It is an executed contract.

7. Subject Matter:
Subject matter is the transferable immovable property.

16.6 DISTINGUISH BETWEEN A SALE AND ANAGREEMENT TO SELL

Basis of distinction Sale Agreement to sell

Transfer of ownership Transfer of ownership of goods takes place immediately. Transfer of ownership of goods is to take place at a future time

Executed contract or Executory contract It is an executed contract because nothing remains to be done. Here something remains to be done. Hence It is an executory contract.

Conveyance of property Buyer gets a right to enjoy the goods against the whole world including seller. Therefore, a sale creates jus in rem (Right against property). Buyer does not get such right to enjoy the goods. It only creates jus in personam (Right against the person).

Rights of seller against the buyer's breach Seller can suethe buyer for the price Even though the goods are in the possession of the buyer seller can sue the buyer for damages. (Compensation)

16.7 DIFFERENCE BETWEEN SALE & HIRE PURCHASE

SALE	HIRE-PURCHASE
Property in the goods are Transferred to the buyer immediately at the time of contract.	The property in the goods passes to the hirer upon payment of the last installment.
The position of the buyer is that of the owner of the goods	The position of the hirer is that of a bailee till he pays the last installment.
Buyer is bound to pay the price of the goods hence cannot terminate the contract.	The hirer if he so likes, terminate the contract by returning the goods to its owner.
The buyer can pass a good title to a bonafide purchaser from him	The hirer cannot pass any title even to a bonafide purchaser.
Sales tax is levied at the time of the contract	Sales tax is not leviable until it eventually fit into a sale.

16.8 KINDS OF GOODS

1. Existing Goods:
They are those goods which have actual existence at the time when the contract of sale is made.

Existing goods are again of the following kinds: -

a. Ascertained Goods:
Unascertained goods become ascertained when the seller decides which particular goods he is going to sell. This word is used as synonymous with specific goods but the difference between the two is that the ascertained goods may become identified only after a contract of sale has been made.

b. Unascertained Goods:
They are those goods which are not actually identified by the seller but are described by description alone

c. Specific Goods:
They have been defined by Section 2, Sub-section 14 as those goods which are actually identified and agreed upon when the contract is come into existence.

For Example: A Car, a radio, a watch, etc.

2. Future Goods:
A person may enter into an agreement to seal something to the other which may have no actual existence but which he is to

acquire, produce or manufacture in future. For example, a cultivator may agree to sell the crop that he has sown.

3. Contingent Goods:
Are those the acquisition of which by the seller depends on a contingency which may or may not happen.

Example: An importer in Mumbai agrees to sell the consignment of goods which is on its way from Germany. This consignment is an instance of contingent goods because the acquisition of goods by the importer in Mumbai depends upon a contingency whether it arrives safe at its destination or not. Therefore, contingent goods are also a special class of future goods.

16.9 EFFECTS OF DESTRUCTION OF GOODS-ALREADY CONTRACTED

There are various kinds of goods and the parties have various options to agree about the delivery of the goods. What shall be the fate of a contract if the goods are perished or destroyed?

1. Destruction before making of contract:
Where in a contract for sale of specific goods, at the time of making the contract, the goods, without knowledge of the seller, have perished as no longer to answer to their description in the contract, the contract shall become null and void. This is based on the rule of impossibility of performance. Since the subject matter of the contract is destroyed which is one of its essential ingredients.

2. Destruction After the Agreement to Sell but before Sale:
Where in an agreement to sell a specific goods, if subsequently the goods, without any fault on the part of buyer, perish the agreement shall become void, provided the goods are perished before the ownership and risk passes to the buyer. This rule is based on the ground of impossibility of performance.

Example: A horse was delivered upon trial for 5 days. However, the horse died within 5 days without the fault of the buyer or seller. The seller must bear the loss as the contract was void.

16.10 MODES OF ASCERTAINMENT OF PRICE

1. The price in a contract of sale may be fixed by and under the contract, or it be fixed in manner thereby agreed upon or it can be ascertained by the course of dealing between the parties to the contract.

2. Where the price is not fixed or ascertained in accordance with the above provisions, the buyer shall pay the seller a reasonable price.

Reasonable price will depend on the individual or circumstance of the case.

16.11 SUMMARY

Meaning: The sale of Goods Act 1930 deals with the law relating to sale of goods. The term Goods means every kind of movable property, other than Money and Actionable claims.

KINDS OF DELIVERY: Actual or Physical Delivery: Symbolic Delivery: Constructive Delivery:

ESSENTIALS OF VALID SALES/ FORMATION OF A CONTRACT OF SALE. Two parties: Parties: Transfer of property: Goods: Consideration: Sale: Subject Matter**:**

KINDS OF GOODS: Existing Goods: Ascertained Goods: Unascertained Goods:
Specific Goods: Future Goods: Contingent Goods:

EFFECTS OF DESTRUCTION OF GOODS- ALREADY CONTRACTED: Destruction before making of contract, Destruction After the Agreement to Sell but before Sale:

16.12 QUESTIONS

1. Distinguish between Sale and Agreement to Sale?
2. Enumerate the essentials of Contract of Sale?
3. Short Notes:-
   a. Types of Goods.
   b. Effects of Destructions of Goods.
4. Define the following terms:
   a. Goods
   b. Delivery
   c. Symbolic delivery
   d. Future goods
   e. Agreement to Sale
   f. Hire purchase
   g. Constructive delivery.

*****

17

CONDITION AND WARRANTY
(Section 11-17)

Unit Structure

17.1 OBJECTIVES

After studying the unit, the students will be able to:

- Define the terms Condition and Warranty
- Discuss about the Implied Conditions
- Explain Implied Warranties.
- Understand the circumstances when the conditions can be treated as warranty.
- Distinguish between Condition and Warranty.

17.2 INTRODUCTION

A condition is a stipulation essential to main purpose of the contract and hence it is the plinth or foundation of the contract. The effect of a breach of condition is that it gives the right to the distressed (an aggrieved) party to treat the contract as void and also to claim damages (compensation), if any.

A warranty is a term which is collateral to the main purpose of the contract and hence is only a subsidiary. The breach of warranty does not give right to the aggrieved party to treat the contract as void but entitles him to claim damages (Compensation) only.

In the following cases, the breach of a condition will be treated as breach of warranty only.

When the buyer waives the condition or

When the buyer treats the breach of condition as a breach warranty and does not treat the contract as void or

Where the contract of sale is inseparable and the buyer has accepted the goods or part thereof or

Where the contract is for specific goods, the property in which has passed to the buyer.

Condition and warranties may be express or implied, when they are definitely written in the contract, they are called express conditions and warranties. When they are not written, they are called implied conditions and warranties, in the contract and applied to the contract either by operation of law or by trade custom.

17.3 CONDITIONS- IMPLIED CONDITIONS

A condition U/s 12 (2) Condition:

"A stipulation essential to the main purpose of the contract, the breach of which gives rise to a right threat the contract as repudiated".

The actual meaning of a condition is an obligation which requires being fulfilled before another proposition takes place. A warranty is a surety given by the seller regarding the state of the product.

Example: Sumit buys from General stores ' Ghee' claimed to a pure cow ghee. It was found that the Ghee was mixed with 'Dalda'.Sumit can return the ghee to the shop keeper ,repudiate the contract and claim refund of price.

Implied Conditions in a contract that is not expressly stated or written. It maybe implied by fact and deed, viz. the parties' acting; or it may be implied by law, either case law or statute. Following are the implied conditions.

1. Conditions as to Title to Goods*:* [Section 14(a)]:
There is an implied condition that the seller has a right to sell in case of sale and that in the case of agreement to sell, he will have the right to sell the goods at the time when the property is to pass.

Rowland Vs Divall:
A purchased a car from **B** for a certain price and used it for some period. Subsequently, it was found that the car was stolen by **B** and therefore, **A**

had returned back the car to the true owner. It was held that **A** could recover the full price paid to **B.**

2. Sale by Description :(Section 15)
The implied condition is that the goods delivered must correspond with the description.

Example: Where a machine was described as almost new and used very little but when delivered, was found to be an old and repaired one, it was held that the buyer was entitled to reject the machine.

3. Sale by Sample: (Section 17)

The implied condition is:

- That the goods delivered shall correspond with the sample
- That the buyer shall have a reasonable opportunity of comparing the bulk with the sample and
- That the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.

4. Sale by sample as well as description:
In the case of sale of goods by sample as well as description, the goods delivered must correspond with both sample as well as description.

5. Conditions as to Quality or Fitness:
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 nor need the guarantee that the goods are fit for the purposes of the buyer. So, the buyer takes them as they come. But in the following cases, there is an implied condition as to quality or fitness of goods for any particular purpose.

- Where the buyer makes known the purpose to the seller, who is ordinarily dealing with sale of goods of that description and the buyer, relies on the judgments of the seller.
- Where the seller does not disclose the faults in his goods and such faults cannot be detected on reasonable examination.
- Where the seller makes a statement and the buyer relies upon it.

Case Law: A purchased a motor car from B for using it as a tourist car. **B,** the seller knew the purpose. The car turned out to be unfit for the purpose. Held, A the buyer could repudiate the contract. But there is not implied condition as to fitness or quality of goods when they are sold under the patent or trade name.

6. Conditions as to Merchant ability:(Section 16)
In case of sale of good by description, there is an implied condition that the goods shall correspond with the description and also that they shall be of merchantable quality.

Brant V/S Australian Knitting Mills Ltd.:

The buyer was supplied woolen underpants by the manufacturers. The buyer wore them for some time and contracted a skin disease. Held, that the buyer was entitled to damages.

Exception: If the buyer has examined the goods, there is not implied condition as to quality of goods as regards defects which such examination must have revealed.

7. Conditions as to wholesomeness:
In the case of the implied condition is that the goods must be suitable for human consumption and are fit for immediate use.

For Example: **A,** purchased a bun from **B** and injured his teeth by biting a stone in the bun. **B** was held liable.

17.4 IMPLIED WARRANTIES

A condition becomes a warranty when—

1. The buyer waives the conditions or opts to deal the breach of the condition as a breach of warranty; or
2. The buyer accepts the goods or a part thereof, or is not in a position to dismissed the goods for being faulty.

1. Implied Warranty of Quiet Possession:(Section 14):
In every contract of sale, unless there is a contrary intention, there are implied warranties that the buyers shall have and enjoy quiet possession of the goods. If the buyer's right to possession and enjoyment of the goods is in any way disrupted as a result of the seller's defective title, the buyer may sue the seller for damages for breach of this warranty.

2. Implied Warranty of Freedom from Encumbrances: [Section. 14 (c)]:
The buyer is entitled to a further warranty that the goods shall be free from any charges or nuisance, in favour of any third party or known to buyer before or inference at the time when the contract is made.

Example: A, the owner of the watch, pledges it with **B**. After a week, **A** obtains possession of the watch from **B** for some limited purpose and sells it to **C**. **B** approaches **C** and tells him about the pledge affair. **C** has to make payment of the pledge amount to **B**.

There is breach of this warranty and **C** is entitled to claim compensation from **A**.

3. Warranty of disclosing the dangerous nature of goods to the ignorant buyer:
The third implied warranty on the part of the seller is that in case the goods sold are of dangerous nature he will warn the ignorant buyer of the probable danger.

Example: C purchases a tin of disinfectant powder from **A**. **A** knows that the lid of the tin is defective and if it is opened without special care, it may be dangerous, but tells nothing to **C. C** opens the tin in the normal way whereupon the disinfectant powder flies into her eyes and causes injury. **A** is liable in damages to **C** as he should have warned **C** of the probable danger.

17.5 CIRCUMSTANCES WHEN A CONDITION CAN BE TREATED AS WARRANTY

Section 13 of this act provides for the situations in which the condition can be treated as a warranty. They are as follows.

1. Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may relinquish the condition or may elect to treat the breach of such condition as a breach of warranty and not as a ground for treating the contract as terminated.
2. Whether a stipulation in a contract of sale is a condition the breach of which may give rise to a right to treat the contract as cancelled, or a warranty the breach of which may give rise to a claim for damages or compensation but not to a right to reject the goods and treat the contract as terminated, depends in each case on the construction of the contract. A stipulation may be a condition though called a warranty in the contract.

17.6 DIFFERENCE BETWEEN CONDITION AND WARRANTY

Matter	CONDITION	WARRANTY
Stipulation	A condition is a stipulation essential to the main purpose of a contract.	The warranty is collateral to the main purpose of contract.
Rights	Breach of condition gives right to the party to reject the contract.	Breach of warranty gives right to the party to claim the damages only.
Superiority of Condition	A breach of condition may be treated as a breach of warranty.	Breach of warranty may not be treated as a breach of condition.

Link with Contract	A condition has a direct link with the essential part of the contract.	A warranty has no direct link with the essential part of the contract.

17.7 DOCTRINE OF CAVEAT EMPTOR

17.7.1 Meaning:

In business laws, the phrase 'Caveat Emptor' stands for 'let the buyer beware.' It is a traditional attitude that the buyer takes the risk in respect of defects in the goods which he has brought. This implies that the responsibility of identifying goods and finding defects with them lies with buyer. It is the responsibility of the buyer that he should find the defects in the goods which he is going to buy. Seller will never specify the defects in his own goods. Buyer should keep his eyes and mind open while carry out purchasing. He should be finalizing the goods that he needs; it implies that the seller is not responsible to enquire what the buyer's requirements are and not required to reveal faults in his products or services. If the buyer relies on his own skill and judgement while making purchasing and found that the goods are faulty, he cannot blame the seller for the same. Therefore, buyer should take at most care while selecting the goods and should see that the goods which he brought must suffice the purpose.

Example: Ram bought 10 cows from a cattle broker. Out of those 10, 2 cows had defects. However, Ram did not know this because he didn't check all 10 cows though he paid for them. The 2 infected cows died within three days of the purchase. Now, as there was no implied condition that the cows would be in great health at the time of the sale, Ram cannot hold the cattle broker as responsible for having sold him those infected cows. It was Ram's basic duty to check the health of those cows and not expect the cattle broker to state all the defects.

In one interesting case, the buyer bought cloth for making uniforms. Unfortunately, the seller was not aware of the purpose of buying the cloth. Later, the buyer found that the cloth is not fit making uniforms. It was, however, fit for other normal purposes. The seller was not found guilty as the principle of 'Caveat Emptor' applied in this case.

17.7.2 Exceptions:

The doctrine of caveat emptor is subject to the following exceptions:
Where the seller makes a mis-representation and the buyer relies on it, the doctrine of caveat emptor does not apply. Such a contract being voidable at the option of the innocent or faultless party, the buyer has a right to cancelled the contract.

Where the seller makes a false representation amounting to **fraud and the buyer relies on it**, or where the seller actively conceals a defect in the goods so that the same could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply. Such a contract is also voidable at the option of the buyer and the buyer is entitled to avoid the contract and also claim damages or compensation for fraud.

Where the goods are purchased by description from a seller who deals in such class of goods and they are not of 'merchantable quality', the doctrine of caveat emptor does not apply. But the doctrine applies, if the buyer has examined the goods, as regards defects which such examination ought to have revealed **[Sec. 16(2)].**

Where the goods are bought by sample, the doctrine of caveat emptor does not apply if the bulk does not correspond with the sample, or if the buyer is not provided an opportunity to compare the build with the sample, or if there is any hidden or latent defect in the goods **(Sec. 17).**

Where the goods are bought by sample as well as by description and the bulk of the goods do not correspond both with the sample and with the description, the buyer is entitled to dismissed the goods **(Sec. 15).**

17.8 SUMMARY

Meaning: A condition is a stipulation essential to main purpose of the contract and hence it is the plinth or foundation of the contract.

A **warranty** is a term which is collateral to the main purpose of the contract and hence is only a subsidiary

Implied Conditions:

1. Conditions as to Title to Goods*:* [Section 14(a)]:
2. Sale by Description :(Section 15)
3. Sale by Sample: (Section 17)
4. Sale by sample as well as description:
5. Conditions as to Quality or Fitness:
6. Conditions As to Merchant ability :(Section 16)7. Conditions As to wholesomeness:

Implied Warranties:

1. Implied Warranty of Quiet Possession :(Section 14)
2. Implied Warrantyof Freedom from Encumbrances: [Section. 14 (c)]
3. Warranty of disclosing the dangerous nature of goods to the ignorant buyer:

17.9 QUESTIONS

1. What are the circumstances when conditions can be treated as warranty?
2. Distinguish between Condition & Warranty
3. Short Notes: -

a. Implied Warranties.

b. Doctrine of Caveat Emptor and its Exceptions.

4. Define the terms:

a. Condition

b. Warranty

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18

PASSING OF PROPERTY AND TITLE. (Section 18-26)

Unit Structure

18.1 OBJECTIVES

After studying the unit, the students will be able to:

- Know the meaning of Transfer of Property.
- Understand the division of Transfer of Property.

18.2 INTRODUCTION

The important aspects the transfer of ownership is that it can take place only in case of ascertained and specific goods. According to Sec. 18 "No transfer of property in the goods can take place from the seller to the buyer unless and until they are ascertained".

18.3 TYPES TRANSFER OF PROPERTY

Transfer of property can be divided in two broad categories:

18.3.1 Transfer of Property in Specific and Ascertained Goods:
According to Sec. 19 when there is a contract of sale of specific or ascertained goods, the property in them shall pass from the seller to the buyer where the parties have intended it to pass.

To find out the intention of parties in respect of transfer, consideration is to be given to the terms of the contract, conduct of the parties and the circumstances of case.

But if the parties fail to yield their intentions regarding the transfer of property in the goods, certain rules have been laid down to find out the intention of the parties as to the time at which the property in the goods is

to pass to the buyer, which are specified under Sections. 20 to 24 . The provisions are as under.

1. When goods are in a deliverable state:
According to Section 20 where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the good passes to the buyer when the contract of sale is made and it is immaterial whether the time of payment of the price or the time of delivery of the goods or both is delayed or postponed.

Example:
Where there is a contract between A & B for the purchase of a specific quantity of hemp stored on the premises of the seller A; price to be paid on 4th February and the delivery to be given on 1st of May while the contract is being made on 20th January the property in the specific lot of hemp shall be transferred from A to B on 20th January itself.

As goods under this rule are in such a state they can be immediately delivered to the buyer, there remains nothing which can prohibit to transfer of ownership. But if the parties in such cases themselves decide that no transfer of property shall take place till the entire price is paid, or till the delivery of goods has been given to the buyer, there would be no transfer of property in the goods even though the goods are specific and in a deliverable state.

2. When goods are not in a deliverable state:
According to Section 21 when there is a contract for the sale of specific goods the seller is bound put the goods in a deliverable state, property in them shall not be transferred until such thing is done by the seller and buyer has notice thereof.

Illustration:
There was a contract for the wood of Oak trees in a certain forest. The buyer purchased the wood from the seller selecting certain portion of trees and rejecting others. According to the custom of trade the seller was to separate the selected portions from the rejected portions. But the buyer threw upon himself the duty of separating the two portions. The court decided that no transfer of ownership has taken places so far as wood is concerned.

3. When goods are to be measured etc.:
According to Section 22, where there is a contract for the sale of specific goods in a deliverable state the seller in order to determine the price, the seller is bound to measure, weight or count the goods till such act is done and the buyer has notice thereof.

18.3.2 Transfer of property in unascertained goods:

According to section 18 no transfer of property can take place from the seller to the buyer in unascertained goods. Therefore, some acts have got to be done in order to convert unascertained goods into ascertained or specific goods. Such acts are collectively and technically called 'appropriation'. According to Section 23 "Where there is a contract for the sale of unascertained or future goods by description and goods of that description as well as in deliverable state are unconditionally appropriated to the contract, either by the seller with the consent of the buyer or by the buyer with the consent of the seller, the property in the goods shall be transferred from the seller to the buyer, as soon as such appropriation is made, the consent of the buyer or the seller as the case may be obtained either before or after appropriation.

1. Goods which are appropriated must be of the same description under which they are sold:

For example, where an order was placed for tea sets, jars and glasses made of China clay and where the seller while supplying the goods also placed some other things in the parcel it was held that there was no appropriation because the goods did not exactly answer the description given in the contract.

2. The goods appropriated to the contract must be in a deliverable state:

Because unless they are in such a state no transfer of property can take place.

3. The goods must be unconditionally appropriated to the contract:

According to section 23 sub-section 2. "Goods are said to be unconditionally appropriated to the contract when the seller gives them to the buyer or a carrier or some other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer. The most common form of appropriation is the delivery of goods to person for the purpose of transporting them to the buyer and as soon as this is done, generally speaking, the property shall be transferred to the buyer if the seller has not reserved the right of disposal as defined by section 25.

4. Basis of appropriation:

Appropriation of goods is done on the basis of consent of either the buyer or the seller. Such a consent may be obtained either before or after appropriation.

A. By the buyer with the consent of the seller:

Where the buyer is holding the goods on behalf of the seller as an agent, the buyer can appropriate the goods for the purpose of the contract, inform the seller regarding the same, obtain his consent only them the property shall be transferred to the buyer.

B. By the seller with the consent of the buyer Illustration:
A agrees to purchase 10 tons of petrol from B and already sends the steel tins to B for packing the petrol. As soon as B will fill the petrol in the steel tins sent to him by the buyer, the property shall be transferred from B to A because the consent of the buyer to the appropriation made by the seller shall be taken to have been given by the buyer himself supplying the steel tins (consent of buyer before appropriation).

5. Method of Appropriation:
Appropriation of goods for the purpose of the contract may be made:

(a) By packing the goods in suitable containers.

(b) By separating the goods from a larger quantity.

(c) By the delivery of the goods to a common carrier or bailee for the purpose of transmission to the buyer without reserving the right of disposal which has been defined by Section 25 of the Sale of Goods Act as follows:

1. Where there is a contract for the sale of specific goods or unascertained goods which are unconditionally appropriated to the contract, the seller may under the terms of the contract or appropriation lay down certain conditions to be fulfilled by the buyer. In such a case although goods may be delivered to the common carrier or other bailee for the purpose of transmission to the buyer the property shall not be transferred to the buyer.

2. Where the seller sends the goods and takes a bill of lading or railway receipt, deliverable to himself or his order it is presumed that the seller has reserved the right of disposal over the goods.

18.3.3 Transfer of property in transaction of sale or return:
According to section 24 where the goods are sent to the buyer "on approval or on sale or return" or similar other terms the property in them shall pass to the buyer:

(a) When the buyer expresses his approval or acceptance to the buyer or does any other act adopting the transaction:

Example:
A gives a diamond to B on sale or return. B gives the same to C on similar terms and C delivers the same to D on sale or return. The diamond was lost from the custody of D. As B cannot return the diamond to A, his act in giving the diamond to C shall tantamount to adopting the transaction. Similarly, if the buyer on sale or return pledges the goods to a third party the act of pledge shall be taken to be an act adopting the transaction.

18.4 RESERVATION OF RIGHT OF DISPOSAL

Under Section 25, reservation of the right of disposal is defined as any action made by the seller, where it is expressed that an intention on his part not to part with control over the goods until certain condition are fulfilled. Then, the property will be passed subject to fulfilment of these conditions.

Example: 'A' supplies 100 bags of Rice to 'B' by a trunk, where no reservation of the right of disposal was there. In this case, the rice will pass to B immediately after goods are handed over to the carrier.

Transfer of Title:
In the performance of a contract of sale of goods by a seller there are three stages, namely, the transfer of property in the goods, the transfer of possession of the goods, i.e., delivery of the goods and the passing of the risk. The main object of a contract of sale of goods is the transfer of property in goods from the seller to the buyer. The term 'property in goods' is different from the term 'possession of goods': 'property in goods' means the ownership of the goods whereas 'possession of goods' means custody or control of goods.

18.5 SUMMARY

Meaning: Transfer of Property: When there is a contract of sale of specific or ascertained goods, the property in them shall pass from the seller to the buyer where the parties have intended it to pass.

Rules of Transfer of Property in Specific and Ascertained Goods:

- When goods are in a deliverable state:
- When goods are not in a deliverable state.

Rules of Transfer of property in unascertained goods:

- Goods which are appropriated must be of the same description under which they are sold,
- The goods appropriated to the contract must be in a deliverable state:
- The goods must be unconditionally appropriated to the contract:

18.6 QUESTIONS

1. What are the consequences of Transfer of Property?
2. How Property can be transferred in various situations?
3. Short Notes: a. Transfer of Property in the transaction of sale or return.

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19

UNPAID SELLER

Unit Structure

19.1 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the meaning of Unpaid Seller.
- Explain the Rights of Unpaid Seller.

19.2 MEANING AND DEFINITION

Definition:

(1) The seller of goods is deemed to be an ***unpaid seller*** within the meaning of this Part-

(a) When the whole of the price has not been paid or tendered;

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

19.2.1 Meaning:

According to (section 45) the term seller includes 'any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading (BOL is a document issued by a carrier which details a shipment of merchandise and gives title of that shipment to a specified party.) had been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

- The seller of goods is deemed to be an 'unpaid seller'
- When the whole of the price has not been paid or tendered; or

- Where a bill of exchange or other negotiable instrument has been received as a conditional payment, i.e., subject to the realization thereof, and the same has been dishonoured.

19.2.2 Characteristics of an 'Unpaid Seller'.

According to above the following are the characteristics of an 'unpaid seller'.

1. He must sell goods on cash terms and not on credit, and he must be unpaid.
2. He must be unpaid either fully or partly. Even if only a portion of the price, however small, remains unpaid, he is deemed to be an unpaid seller.
3. Where the price is paid through a bill of exchange or other negotiable instrument, the same must be dishonoured.
4. He must not refuse to accept payment when tendered. If the buyer has tendered the price but the seller wrongfully refuses to take the same, he ceases to be an unpaid seller.

19.3 RIGHTS OF UNPAID SELLER

An unpaid seller has two-fold rights, viz.,;

I. Rights of unpaid seller against the goods, and

II. Rights of unpaid seller against the buyer personally. We shall now examine these rights in detail.

A. Rights of Unpaid Seller against the Goods:

An unpaid seller has the following rights against the goods notwithstanding the fact that the property in the goods has passed to the buyer:

1. Right of lien;
2. Right of stoppage of goods in transit;
3. Right of resale [Sec. 46 (1)].

1. Right of lien (Sec. 47)

'Lien' is the right to retain possession of goods and refuse to deliver them to the buyer until the price due in respect of them is paid or tendered. An unpaid seller in possession of goods sold is entitled to exercise his lien on the goods in the following cases:

- Where the goods have been sold without any stipulation as to credit;
- Where the goods have been sold on credit, but the term of credit has expired:
- Where the buyer becomes insolvent, even though the period of credit may not have yet expired.

In other words, the seller can exercise his rights of lien on the following two conditions:

- He must be in possession of the goods.
- He is an unpaid seller.

2. Right of Stoppage of Goods in Transit: Sections 50-52

The right of stoppage in transit means the right of stopping the goods while they are in transit, to regain possession and to retain them till the full price is paid.

The essential feature of stoppage in transit is that the goods should be in the possession of a middleman or some other person intervening between the vendor who has parted with and the purchaser who has not received them.

Conditions under which Right of Stoppage in Transit can be Exercised [Section 50]:

The unpaid seller can exercise the right of stoppage in transit only if the following conditions are satisfied:

a. The seller must have parted with the possession of goods, i.e., the goods must not be in the possession of seller

b. The goods must be in the course of transit.

c. The buyer must have become insolvent.

3. Right of Resale:

The right of resale is an important right given to an unpaid seller. In the absenteeism of this right, the unpaid seller's other rights against the goods, namely, 'lien' and 'stoppage in transit,' would not have been of much benefited because these rights only entitle the unpaid seller to retain the goods until paid by the buyer. If the buyer continues to remain in default, then should the seller be expected to retain the goods I for an indefinite period, especially when the goods are perishable. Certain limited rights have given to the unpaid seller under section 54, in the following cases:

- Where the goods are of a perishable nature; or
- Where such a right is expressly reserved in the contract in case the buyer makes a default in making payment.

19.4 DIFFERENCE BETWEEN RIGHTS OF LIEN & RIGHT TO STOPPAGE IN TRANSIT

Rights of Lien	Right to stoppage in Transit.
The basis of right of lien is to retain possession.	The basis of right of stoppage in transit is right to regain possession.
Seller should be in possession of goods under lien	Seller should have parted with the possession

It can be exercised even when the buyer is not insolvent.	It cannot be exercised even when the buyer is not insolvent.
Right of stoppage in transit begins when the right of lien ends.	The end of the right of lien is the starting point of stoppage in transit.

19.5 REMEDIES FOR THE BREACH OF CONTRACT OF SALE

General Principles of Indian Contract Act 1872 are applying to the contract of sale also

19.5.1 Remedies available to Sellers against Buyers:

The following are the remedies are available under Sale of Goods Act, 1930 to the sellers in case of breach made by the buyer:

Suit for the price:
According to the section 55 Seller has right to sue the buyer price of goods. when under a contract the good has passed to him after which he refuses to pay for the goods.

Recovery of losses in case of re-sale of good while exercising the right of lien/stoppage of good in transit:
According to section 54 if the goods are of perishable nature or the unpaid seller has exercised his right of lien or stoppage in transit after giving notice to the buyer of his intention to sell the good if the buyer doesn't pay him within a reasonable time and after selling it to a third party in a lower price can sue the original buyer for the losses, he sustained due to original buyer's breach.

Damages for non-acceptance:
According to section 56 when under a contract of sale buyer has sold a good to a seller and afterwards the buyer is wrongfully refusing to accept and pay for the goods; seller can sue the buyer for non-acceptance.

19.5.2 Remedies available to Buyers against Sellers.

The following are the remedies under Sale of Goods Act, 1930 which are available to the buyers against the seller in case of breach.

Damages (Compensation) for non-delivery:
According to section 57 when a seller has sold a good and later wrongfully refuses to deliver the goods to the buyer; buyer can sue the seller for damages for non-delivery of goods.

It should be noted that a reasonable time must be given to the seller for making the of the good. Furthermore, if the buyer has not informed the time period in which it is to be delivered by giving notice under section 55 of the Indian Contracts Act, seller cannot sue for damages.

Damages for breach of warranty:
According to section 59; in case where there is breach of warranty by the seller or the buyer has treated as breach of condition as breach of warranty under section 13, the buyer does not have the right to rescind the contract.

In these cases, buyer has two options. First is to set up against the seller the breach of warranty in weakening of the price and the second option available is to sue the seller for damages for breach of warranty.

Specific Performances:
The section 58 states that subject to the provision of Specific Relief Act 1877, if the contract is breached, the Court may, on the request of the buyer, giver the directions to the seller to perform the contract in a particular and specified manner. This order is passed by the court may or may not carry terms and conditions with respect of price, mode of delivery, etc.

19.5.3 Remedies available to both Buyers & Sellers:

Suite for Repudiation of contract before due date/anticipatory breach:
Provisions under section 60, in case where either buyer or seller rescinds the contract before the due date or in other words refuses before the due date to perform the terms of the contract on the due date, the other party has two options. First, wait for the due date and after the non-performance by the other party sue him for damages. Second, sue immediately without waiting for the actual non-Performance of the terms of the contract.

Interest by way of damages and Special Damages:
Section 61 relates with the right to recover interest or special damages where interest or special damages may be recoverable or in the case where recovery of the money paid where the consideration for the payment of it has failed has to be made.

The court may award or directs the interest at the rate which it deems fit to the seller for the amount of price from the date of the delivery of the goods or from the date on which the price was payable or to the buyer for the refund of price in case of breach of contract from the date the payment was made.

19.6 SALE BY AUCTION

Sale of Goods Act 1930 covers the process which the bidding is done. The process of sale by auction involves the selling of any goods or property of value, in a public gathering where buyers make a bid for the purchase and the sale is made to the highest bidder. In this process an intending buyers come together at a particular place and they offer the price at which they wish to buy the goods kept in auction, such price is known as bid.

Rules of an Auction Sale:
Section 64 of the Sale of Goods Act states the rules applicable in case of an auction sale.

Sale of Goods in Lots:
When the auction includes the sale of goods in different lots, each lot of goods are covered under a separate contract of sale.

Sale Completion:
An auction sale is deemed to be complete when the auctioneer says accordingly. The same can be done by the fall of hammer. The bidder can withdraw the bid any time before the completion of the sale is declared.

The Right to Bid Reserved for the Seller:
The seller can reserve his right to bid at the auction but he must expressively reserve this right. He can appoint an agent to bid on his behalf.

Notification of the Right to Bid by the Seller:
If the seller has not expressively reserved his right to bid and has not informed about the same, he or his agent is not authorized to bid at the auction. The auctioneer is not entitled to accept any bids made by the seller or his agent if the buyer has not expressed his intent to do so. Any sale that is in contradiction to this rule will be deemed unlawful and fraudulent by the buyer.

Reserve Price:
The goods for sale at the auction may be subject to a reserve price or an upset price. The auctioneer cannot sell the goods below this price.

No Credit Sale:
The property in an auction cannot be sold on credit. A bill of exchange can be accepted but only if it has been allowed by the seller.

19.7 SUMMARY

Meaning:

- When the whole of the price has not been paid or tendered;
- When a bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

RIGHTS OF UNPAID SELLER:

Rights of Unpaid Seller against the Goods:

- Right of lien;
- Right of stoppage of goods in transit;

- Right of resale [Sec. 46 (1)].

Remedies For The Breach Of Contract of Sale:
Remedies available to Sellers against Buyers:

- Suit for the price
- Recovery of losses in case of re-sale of good while exercising the right of lien/stoppage of good in transit
- Damages for non-acceptance

Remedies available to Buyers against Sellers:

- Damages (Compensation) for non-delivery:
- Damages for breach of warranty:
- Specific Performances:

Remedies available to both Buyers & Sellers:

- Suite for Repudiation of contract before due date/anticipatory breach:
- Interest by way of damages and Special Damages:

SALE BY AUCTION: Sale of Goods in Lots, Sale Completion, The Right to Bid Reserved for the Seller, Notification of the Right to Bid by the Seller, Reserve Price, No Credit Sale

19.8 QUESTIONS

1. What are the remedies available for breach of contract of sale?

2. Who is unpaid seller? What are his rights?

Short Notes:

a. Auction Sale **b.** Right to stoppage in transit **c.** Rights of resale.

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(MODULE IV)

MULTIPLE CHOICE QUESTIONS WITH ANSWERS

1. Goods to be manufactured or produced or acquired by the seller after making of the contract of sale are ——

A) Contingent goods

B) Future goods

C) Unascertained goods

D) None of the above

ANS: B) Future goods

2. The definition of goods in the sale of goods act include —

A) Stock and shares

B) Money

C) Actionable claims

D) All the above

ANS: A) Stock and shares

3. Seller means a person ——

A) Who advertise the goods.

B) Who agrees to purchase

C) Both of the above

D) None of the above

ANS D) None of the above

4. The money consideration for a sale of goods is called ————

A) Purchase money

B) Price

C) Value

D) None of the above

ANS : B) Price

5. The Sale of Goods Act, 1930 deals with ————

A) Immovable property only

B) Movable property only

C) Both (A) and (B)

D) None of the above

ANS B) Movable property only

6. A contract of sale may be _____.

A. absolute only.

B. condition only.

C. absolute and conditional.

D. indemnity.

ANSWER: C) absolute and conditional

7. In the Contract of Sale, there is an implied warranty that:

A. Seller has a right to sell the goods

B. The buyer has the right to have and enjoy the quiet possession of goods only.

C. The goods shall be free from any charge or encumbrance

D. The buyer has the right to have and enjoy the quiet possession of goods and that the goods shall be free from any charge or encumbrance

ANS: D) The buyer has the right to have and enjoy the quiet possession of goods and that the goods shall be free from any charge or encumbrance

8. An agreement to sell is an executory contract. The statement is_____.

A) False

B) True

C) Void Contract.

D) None of the above

ANS: B) True

9. Which of the following is a bailment plus agreement to sell?

A) Pledge

B) Hire purchase

C) Mortgage

D) None of the above

ANS : B) Hire purchase

10. Which of the following sections of the Sale of Goods Act, 1930 deals with implied conditions and warranties?

A) Sections 14 to 17

B) Sections 12 to 13

C) Sections 19 to 20

D) Sections 16 to 18

ANS :A) Sections 14 to 17

11. A stipulation essential to the main purpose of the contract is ——— ——.

A) Warranty

B) Simplification

C) Condition

D) Expectation

ANS : C) Condition

12. Risk follows ownership _____.

A. only when goods have been delivered.

B. only when price has been paid.

C. whether delivery has been made or not.

D. even when the price has not been paid.

ANSWER: C) whether delivery has been made or not.

13. A stipulation collateral to the main purpose of the contract is ——

A) An expectation

B) Warranty

C) Condition

D) Quasi Contract

ANS : B) Warranty

14. Conditions and Warranties in a contract may be ———

A) Express

B) Implied

C) Express or Implied

D) None of the above

ANS: C) Express or Implied

15. Choose the most appropriate answer. Unless otherwise agreed, the goods remain at seller's risk until:

A. The goods have been delivered to the buyer

B. The goods have been utilised by the buyer

C. The price to the goods has been received by seller

D. The property therein has been transferred to the buyer

ANS: D)The property therein has been transferred to the buyer.

16. A contract of sale may be made:

A. A in writing or by word of mouth

B. partly in writing of partly by word of mouth

C. by the implied conduct of parties

D. All of the above

ANS: All of the above

17. Out of the following persons which of the following does not come under the definition of the ''unpaid seller'' as per Chapter V of Sale of Goods Act:

A. A seller who has received a bill of exchange as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

B. A seller to whom more than half of the price has been paid or tendered

C. A seller to whom the whole of the price has not been paid or tendered

D. seller who has received a negotiable instrument as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise

ANS: A) A seller who has received a bill of exchange as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

18. A seller delivers goods in excess of the quantity ordered for. The buyer may_____

A. Accept the whole

B. Rejects the whole.

C. Accept the goods ordered for and return the excess.

D. Accept the part of goods.

ANSWER: A) Accept the whole

19. Which right is available to the unpaid seller?

A. Right of lien

B. Stoppage in transit

C. Resale

D. All the above

ANS : D) All the above

20. Which of the following is not an implied condition in a contract of sale _____.

A. Condition as to title.

B. Condition as to description

C. Condition as to freedom from the encumbrance.

D. Condition as to a sample

ANSWER: C) Condition as to freedom from the encumbrance.

21. What can be the subject matter of the contract of sale as per section 6 of Sale of Goods Act:

A. Only existing goods owned or possessed by the owner

B. Only Future goods

C. Existing goods which are neither owned nor possessed by the owner

D. Existing goods, owned or possessed by the owner or future goods

ANS: Existing goods, owned or possessed by the owner or future goods

22. In a contract for sale of specific goods, the goods, without the knowledge of seller perished at the time when the contract was made, the contract is:

A. A voidable contract at the instance of seller

B. A voidable contract at the instance of buyer

C. A voidable contract subject to approval of the civil court

D. A void contract

ANS: A void contract

23. Implied conditions as to title means _____

A. the seller has title to sell

B. the seller will get the title soon

C. title of the seller is not applicable to him

D. title to the sell has not conferred yet.

ANS : A) the seller has title to sell

24. Doctrine of caveat emptor places the burden on the _____

A. Buyer

B. Seller

C. Manufacturer

D. Government

ANS: A) Buyer

25. Risk prima facie passes with property means:

A. Risk is with public

B. Risk is with creditors

C. Risk is with owner

D. Ownership and risk generally go together.

ANS: D) Ownership and risk generally go together.

26. The right of lien excised by an unpaid seller is to _____.

A. retain possession.

B. regain possession.

C. recovery price and other charges.

D. Damages.

ANSWER: A) retain possession.

27. n unpaid seller can excises his rights of lien _____.

A. where the goods have been sold on credit and terms of credit has not expired

B. where the buyer has not become insolvent.

C. for the price of the goods.

D. for the price of the goods and expenses.

ANSWER: C) for the price of the goods.

28. The lien of an unpaid seller depends on _____.

A. possession.

B. title.

C. ownership.

D. possession and ownership.

ANSWER: A) possession.

29. An unpaid seller has not given notice of resale to the buyer. On the resale there is a loss_____.

A. the unpaid seller can recover it from the buyer.

B. the unpaid seller cannot recover it from the buyer

C. the buyer can recover it from an unpaid seller.

D. the buyer must compensate the unpaid seller.

ANSWER: B) the unpaid seller cannot recover it from the buyer

30. In a hire purchase agreement, the hirer _____.

A. has an option to buy the goods.

B. must but the goods.

C. must return the goods.

D. is not given the possession of the goods

ANSWER: A) has an option to buy the goods.

*****

MODULE IV
MULTIPLE CHOICE QUESTIONS- FOR PRACTICE

1. Condition is a stipulation which is

A. Essential to the main purpose of contract

B. Collateral to the main purpose of contract

C. Not essential to the main purpose of contract

D. Collateral to the main purpose of contract

2. The sale of goods Act deals only with goods which are _____ in nature

A. Immovable

B. Movable

C. Specific

D. All of the above

3. Goods that are identified at the time of contract of sale is called _____ goods

A. Specific Goods

B. ascertained goods

C. clear Goods

D. both a & b

4. _____ is a Stipulation which is Collateral to purpose of contract

A. Condition

B. Warranty

C. Guaranty

D. Collateral Contract

5. _____ is the concept of "LET THE BUYER BEWARE".

A. Information Center

B. Unfair Trade Practices

C. Caveat Emptor

D. Buyer Kingdom

6. _____ are the two parties involved in Contract of sale

A. Seller & Buyer

B. Agent & Principle

C. Customer & Sales man

D. Customer and supplier

7. It is a standard rule that risk follows _____

A. Seller

B. buyer

C. property

D. Possession

8. The sale of Goods Act enforces in the year

A. 1935

B. 1930

C. 1945

D. 1955

9. The subject matter of the contract under Sale of goods Act must be_____

A. Money

B. Goods

C. Immovable Goods

D. All of the above

10. Sale under Sale of goods Act is a/an _____ contract

A. Executory

B. Executable

C. Executed

D. None of the above

11. In sale the transfer of property in goods from the seller to the buyer takes place

A. At the end of contract

B. Immediately

C. In a future Date

D. Both a&b

12. In Agreement to sell the transfer of property in goods from the seller to the buyer takes place

A. At the end of contract

B. Immediately

C. In a future Date

D. Both b&c

13. Which of the following is not a subject matter in a Sale of goods Act

A. Trade mark

B. Good will

C. Money

D. Water

14. As per Sale of goods Act Movable goods does not include

A. Gas

B. Growing crop

C. Electricity

D. Money

15. The goods must be _____ goods for transferring the property in the goods

A. Ascertained

B. Unascertained

C. Future

D. All of the above

16. The subject matter of the contract must necessarily be _____

A. Sale

B. Product

C. Service

D. Goods

17. A consideration in contract of sale must be _____ only

A. Goods

B. movable only

C. price

D. Purchase

18. Transfer or agree to transfer the _____ of the goods is the purpose of sale of goods Act

A. Property

B. Possession

C. Value

D. Usage

19. A sale is a _____ contract

A. Implied

B. Executed

C. Agreed

D. Executory

20. An agreement to sell is a _____ contract

A. Implied

B. Executed

C. Agreed

D. Executory

21. A sale is said to be completed when _____ is transferred from one party to the other party

A. Money

B. Goods

C. Interest

D. Ownership

22. In contract of sale the payment of price is _____ to the transfer of property in goods

A. concurrent

B. important

C. mandatory

D. immaterial

23. An agreement to sell will become a sale in _____

A. Future date

B. immediate effect

C. 30 days

D. None of the above

24. An agreement to sell the transfer of ownership is _____

A. Definite

B. Mandatory

C. Conditional

D. immaterial

25. A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for _____

A. price

B. interest

C. credit

D. value

26. Right to stoppage in Transit _____ be exercised even when the buyer is not insolvent.

A. Cannot be

B. Can be

C. May be

D. Will be

*****

MODULE V

20

THE NEGOTIABLE INSTRUMENTS (AMENDMENT ACT, 2015)

Unit Structure

20.1 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the meaning of Negotiable Instruments.
- Understand the various types of Negotiable Instruments and their functions.

20.2 MEANING

The term "negotiable instrument" means a document transferable from one person to another. However, the Act has not defined the term. It merely says that "A. negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer. [Section 13(1)]

The objectives of the Negotiable Instruments Act, is to legalise the system by which the instrument pass from one hand to other through negotiation.

As the commercial activities and trading increases at alarming rate the growing demand for money was not possible to meet with the current supply of coins in the time of British rule in India. To cope up with the scarcity of the coins the instruments of credit took the function of money.

Negotiable instruments are those documents which are generally use in commercial transaction and dealing of money.

20.2.1 Essential Features of Negotiable Instruments:

Essential Features of Negotiable Instruments are given below:

1. Writing and Signature:

Negotiable Instruments must be written and signed by the parties according to the rules relating to Promissory Notes, Bills of Exchange and Cheques. Demand Drafts are also construed as Negotiable Instruments in the limiting case as they have the same property as Negotiable Instrument.

2. Money:

Negotiable instruments are payable by legal tender money of India. The liabilities of the parties of Negotiable Instruments are fixed and determined in terms of legal tender money.

3. Negotiability:

Negotiable Instruments can be transferred from one person to another by a simple process. In the case of bearer instruments, delivery to the transferee is sufficient. In the case of order instruments two things are required for a valid transfer: endorsement (i.e., signature of the holder) and delivery. Any instrument may be made non-transferable by using suitable words, e.g., "pay to X only."

4. Title:

The transferee of a negotiable instrument, when he fulfils certain conditions, is called the holder in due course. The holder in due course gets a good title to the instrument even in cases where the title of the transferor is defective.

5. Notice:

It is not necessary to give notice of transfer of a negotiable instrument to the party liable to pay. The transferee can sue in his own name.

6. Presumptions:

Certain presumptions apply to all negotiable instruments. Example: It is presumed that there is consideration. It is not necessary to write in a promissory note the words "for value received" or similar expressions because the payment of consideration is presumed. The words are usually included to create additional evidence of consideration.

7. Popularity:

Negotiable instruments are popular in commercial transactions because of their easy negotiability and quick remedies.

8. Evidence:

A document which fails to qualify as a negotiable instrument may nevertheless be used as evidence of the fact of indebtedness.

20.2.2 Presumptions as to Negotiable Instruments: (Sec-118 And 119):

There are number of presumptions which are applied to a negotiable instrument unless the contrary is proved. As such these presumptions would not arise if the contrary is proved. Sections 118 and 119 deal with the following presumptions:

1. Consideration:
It is presumed that every negotiable instrument was made or drawn, accepted, endorsed, negotiated or transferred for consideration. As such the holder need not prove consideration.

However, this presumption would not arise if it is proved that the instrument was obtained from its owner by any offence

2. Date:
Every negotiable instrument is presumed to have been made on the date which it bears.

3. Time of acceptance:
It is presumed that every accepted bill was accepted within a reasonable time and before its maturity.

4. Time of transfer:
It is presumed that every transfer was made before maturity.

5. Order of endorsements:
The endorsements are presumed to have been made in the same order in which they appear.

6. Stamp:
In case an instrument is lost, it is presumed that it was duly stamped and the stamp was duly cancelled.

7. Every holder is a holder in due course:
Every holder is presumed to be a holder in due course.

8. Dishonour of instrument:
In case a suit is filed for dishonour of an instruments the Court, on the proof of protest presumes that the instrument was dishonoured.

20.3 CLASSIFICATION OF NEGOTIABLE INSTRUMENTS

The negotiable instruments may be broadly classified under the following six heads:

1. Inland Instrument: Section 12
The term 'inland instrument' is defined in Section 11 of the Negotiable Instrument Act, which reads as under:

"A promissory note, bill of exchange or cheque drawn or made in Pakistan, and made payable in, or drawn upon any person resident in Pakistan, shall be deemed to be inland instrument".

The brief of this section provides that, in any of the following cases an instrument is an inland instrument:

An instrument which is drawn in Pakistan and also payable in Pakistan.

An instrument which is drawn in Pakistan on any person resident in Pakistan whether payable in Pakistan or outside Pakistan.

It will be interesting to know that the nature of an inland instrument is not changed by the fact of its being circulation in a foreign country. Thus, an inland instrument remains inland even if it has been endorsed in Japan, they will remain inland bills.

2. Foreign Instruments: Section 12
The term 'foreign instrument' is defined in Section 12 of the Negotiable Instruments Act, which provides that a foreign instrument is one which is not an Inland instrument.

3. Bearer Instruments: Section 13
The term 'bearer' instrument may be defined as negotiable instrument the payment of which can be taken by a person who has the Instrument in possession.

Where the instrument is payable to bearer.

Where the only endorsement or the last endorsement on the instrument is an endorsement in blank.

4. Order Instruments: Section 13
The term 'order instrument' may be defined as the Instrument the payment of which can be taken by a specific person to whom it is made payable or if it is made payable or if it is made payable to the order of that specific person

"A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable".

The structure of this section provides that a negotiable instrument is payable to order in any of the following circumstances.

a) Where the instrument is to be payable to order.

b) Where the instrument is to be payable to a particular person and which does not contain any words restricting its further transfer.

5. Instruments Payable on Demand: Sections19-21

The 'instrument payable on demand' is defined in Section 19 of the Negotiable Instrument Act. In this connection first part of section 21 of the Act is also relevant. Both these sections respectively read as under:

"In a promissory note or bill of exchange the expression 'at sight' and 'on presentment' means on demand."

The analysis of these sections reveals that, the following instruments are payable on demand:

a. A promissory note or a bill of exchange in which no time for payment is specified.

b. A promissory or a bill of exchange which is expressed to be payable 'on demand', or 'at sight', or 'on presentment'.

c. A cheque. As a matter of fact, the cheques are always payable 'on demand'.

6. Time Instrument:

The term 'time instrument' may be defined as the instrument payable in future.

Following are the examples of time instruments:

a. A promissory note or a bill of exchange which is payable after a fixed period e.g. 60 days after sight.

b. A promissory note or a bill of exchange which is payable on a specified day e.g. on 28th August, 2015.

c. A promissory note or a bill of exchange which is payable on the happening of an event which is certain e.g. on the death of a person.

20.4 SUMMARY

Meaning:

The term "negotiable instrument" means a document transferable from one person to another. However, the Act has not defined the term. It merely says that "A. negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Features of Negotiable Instruments: 1.Writing and Signature: 2. Money: 3. Negotiability: 4. Title 5. Notice: 6. Presumptions: 7. Popularity: 8. Evidence:

Types of Negotiable Instruments:
Inland Instrument, Foreign Instruments, Bearer Instruments, Order Instruments, Instruments Payable on Demand, Time Instrument.

20.5 QUESTIONS

1. Explain the features of Negotiable Instruments.

2. What are the various types of Negotiable Instruments.

*****

21

PROMISSORY NOTES AND BILLS OF EXCHANGE

Unit Structure

21.1 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the meanings of Promissory Notes and Bills of Exchange.
- Understand the functions Promissory Notes and Bills of Exchange.
- Understand the difference between Promissory Note and Bills of Exchange.

21.2 MEANING

- A promissory note has been defined by Sec. 4 of the Act as follows: A "promissory note" is an instrument.
- in writing
- containing an unconditional undertaking
- signed by the maker
- to pay a certain sum of money only to, or
- to the order of, a certain person or
- to the bearer of the instrument.

- The person making the promise to pay is called the "maker"
- The person to whom the payment is to be made is called the "payee".

In other words, it is an unconditional written promise by one person to another in which the maker (Payer) promises to pay on demand on any future date, a stated sum of money to the specified person or to the bearer of the instrument.

A 'promissory note' is an instrument in writing containing an ***unconditional undertaking***, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations:

Y signs instruments in the following terms:

1. "I promise to pay Z or order Rs. 1800."
2. "I acknowledge myself to be indebted to Z in Rs. 1800 to be paid on demand, for value received,"
3. "I promise to pay Z Rs, 1800, and all other sums which shall be due to him."
4. "I promise to pay Y Rs. 1800 seven days after my marriage with C."
5. "I promise to pay Y Rs. 1800 on D's death, provided D leaves me enough to pay that sum."
6. "I promise to pay Y Rs. 1800 and to deliver to him my black horse on 1 st January next."
7. "Mr. B. I.O.U, Rs.1,800".
8. "I promise to pay Y Rs. 1800, first deducting there out any money which he may owe me,"

SPECIMENS OR PROMISSORY NOTE

I, Shri——————— S/o promise to pay
Shri ———————S/o or order,
the sum of Rs.———————(Rupees only)
Place:
Date: Signature

The instruments respectively marked (1) and (2) are promissory notes. The instruments respectively marked (3), (4), (5), (6). (7) and (8) are not promissory notes."

PROMISSORY NOTE UNDER SEC.4, NEGOTIABLE INSTRUMENTS ACT. I881
MADE BY JOINT PROMISORS

We, Shri———————————————————- S/o and
Shri ———————————————————S/o———————
———————————————

acknowledge ourselves to be indebted to Sri,———————————
———

S/o.——————————————— in Rs. ————(Rupees————
————- only) to be paid on demand for value received.

Place: (Signed)
Date: (Signed)

21.3 ESSENTIALS CHARACTERISTICS OF A PROMISSORY NOTE

1. Writing:
Promissory note must be in writing. Writing includes print and typewriting. Oral promise a valid promissory note. Generally, consideration, Place and date of making is not essential requirement of the promissory note.

2. Promise to pay:

- A Promissory note must contain an undertaking/Promise to pay.
- Mere acknowledgment of debt is not sufficient.
- Use of word "promise'' is not mandatory, but the maker should bind himself to pay.

Example: "I have received a sum of Rs. 5,000 from Sohan. This amount will be repaid on demand''.

3. Unconditional Promise:
The undertaking/ promise to pay should be unconditional and definite. Unconditional event means an event which is certain to happen but the time of its occurrence is uncertain.

Examples:- "I promise to pay B Rs. 500, seven days after my marriage with C'' cannot constitute a promissory note because a condition as to marriage is attached.

A write – "I promise to pay C Rs. 25,000, 7days after the death of B''. This is a valid promissory note and is not conditional, since only the time of death of B is uncertain, but is sure to happen.

4. Signed by the maker:
Promissory note should be signed by the maker himself. Where it is written and the name of the maker appears in the instrument, but is not signed, it shall not treat a valid promissory note.

5. Payee to be a certain person:
Promissory note should specify the payee in clear terms i.e. by name, son of, and resident of, etc. The payment can also be identified by description.

6. Payment of Money only:
There must be a promise to pay only money and not other consideration, e.g. "I promise to pay B a sum of Rs. 50,000 and deliver him my Scorpio Car'' is not valid.

7. Certain some of money:
The amount to be paid must be certain; otherwise, the instrument will be invalid.

Example: A promises to pay **B** Rs. 800 and all other sums which become due. This is not a valid promissory note because the sum is not certain as no one knows what other sums will become due. However, a promise to pay money with interest is valid. If the rate of interest is not given, it will not be valid.

For example, A's promise to pay B Rs.5500 with interest accrued, is not valid.

8. Other formalities:
Promissory note must be stamped according to the Indian Stamp Act, otherwise it will be inadmissible in evidence. However, other formalities like place of making the instrument, date or the words, "value received" are not necessary.

9. Form of Promissory Note:
The law has not given any specific from of a promissory note. As such it may be in any form but it must satisfy all the essential conditions mentioned above. Sum payable must be certain.

Examples: - "I promise to pay Ketan , Rs. 12,000, and all other sums which shall be due'' is not valid since the sum is not certain.

10. Duly stamped and dated:
Stamps of requisite amount and description must be affixed on the instrument and duly cancelled either before or at the time of its execution. If the promissory note is not dated, it is presumed to have been made on the date of its delivery.

21.4 KINDS OF PROMISSORY NOTE

a) Promissory Note Payable on Demand:
No Particular time or stipulated time period for payment is made.

b) After Sight (Payable after Date):
Promissory Note is payable at a particular stipulated future date.

c) Joint Promissory Note:
This type of promissory note is prepared by two or more parties jointly. Here the liability of the persons who makes the promissory note is joint. In default of payment payee can take an action against all or any one of them or selective persons.

d) Joint and Several Demand Promissory Note:
This type of Promissory Note is obtained when the loan is granted to the borrowers jointly or where it is considered expedient to make the officials severally liable. For Example, In the case of Limited Companies, it is essentials that the directors or managing agents of the company should be made personally liable to bring home to them their personal liability in order to introduce a further element of security to the bank's advance.

21.5 BILL OF EXCHANGE – SECTION 5: - MEANING

MEANING:

Section 5 defines a bill of exchange as…

- an instrument in writing
- containing an unconditional order,
- signed by the maker,
- directing a certain person to pay
- a certain sum of money only to or
- to order of, a certain person or
- to the bearer of the instrument.

There are three parties to a bill of exchange,

Drawer : The maker of the bill

Drawee : The person who is ordered to pay

Payee : The person to whom or to whose order the money is directed to be paid.

21.6 ESSENTIALS OF A BILL OF EXCHANGE

1. It must be in writing. The bill of exchange shall be in writing. Simply words of order are invalid instrument and that doesn't fulfil the conditions to be a bill of exchange.

2. It must contain an express order to pay. The bill of exchange is an **unconditional order.** Hence, the instrument shall have the instruction i.e., an order to pay to certain person or to the order of.

3. It must be signed by the drawer. The drawer of the bill of exchange shall sign the instrument otherwise it would be invalid and not enforceable. He is the one who gives the order to pay. 4 **It must contain an unconditional order to pay**. The bill of exchange must not include an

4. There must be three parties to the instrument. Bill of exchange always has three parties to it. The **drawer** who makes the bill of exchange. The **drawee** who shall accepts the bill of exchange and eventually who becomes an **acceptor**. And finally, the **payee** who receives the sum of money as specifies in the instrument.

5. The parties must be certain. The names mentioned in there in the bill of exchange shall be certain. The parties shall be identifiable and when that is not the case the bill of exchange is not valid.

6. The order must be to pay a certain sum of money: The sum of money must be certain. In addition to the same of subtractions shall not be accepted unless there is an interest clause and the same shall be mentioned in percent. Other conditions to the sum of money shall be treat as void.

7. The instrument must contain an order to pay money and money only: The instrument must not contain any thing apart from money. It must contain money and money only.

8. It must be stamped: The stamp is affixed on every bill of exchange, except bill payable on demand. The value of stamp depends on the amount of the bill.

Specimen of Bills of Exchange

Shrikant Mumbai
Rs, 1,00,000/- April 01, 2015

Three months after date pay to me or my order, the sum of Rupee? One Lakhs, for value received.

Accepted (signed) Shrikant
(Signed)
Gayatri 1.04.2015
Powai Vihar65/569
Mumbai- 400 068.
Swaroop.56/286
Bhulabhai Lane
Mumbai *72*
To
Gayatri Devi.
Mumbai 400068

21.7 KINDS OF BILLS OF EXCHANGE

Demand Bill:
Demand bill is payable on demand or when it is presented at the site. There Is no specific time for payment is made. So, the debtor can make the bill's payment when it is presented.

Inland Bills:
The bill drawn between two parties residing in the same country and payable also in that same country is known as inland bills.

Foreign Bills:
The bill drawn between two parties residing in two different countries is known as foreign bills. For instance, a bill is drawn in the USA where the seller is situated, and the buyer lives in the UK. So, the bill will be payable in the UK, the drawee or buyer's location.

21.8 SECTION 7 ACCEPTOR AND ACCEPTANCE

"*Acceptor": After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".*

1. A drawee has no liability regarding any bill addressed to him for acceptance or payment until he accepts the bill.
2. He needs to write the word 'accepted' on the bill and sign his name below in order to complete the acceptance.

3. By accepting the bill, the drawee gives is assent to the order of the drawer.

21.8.1 S.108. ACCEPTANCE FOR HONOUR:

Acceptor for honour": When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it supra protest for honour of the drawer or of any one of the endorsers, such person is called an "acceptor for honour".

1. An acceptor for honour **binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee does not;**

2. When acceptor for honour may be charged. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

21.9 DIFFERENCE BETWEEN BILLS OF EXCHANGE AND PROMISSORY NOTE

BASIS OF COMPARISION	BILL OF EXCHANGE	PROMISSORY NOTE
Meaning	BOE is an instrument in writing showing the indebtedness of a buyer towards the seller of goods.	A promissory note is a written promise made by the debtor to pay a certain sum of money to the creditor at a future specified date.
Defined in	Section 5 of Negotiable Instrument Act, 1881.	Section 4 of Negotiable Instrument Act, 1881.
Parties	There are Three parties, i.e. drawer, drawee and payee	There are Two parties, i.e. drawer and payee
Drawn by	It is drawn by Creditor	It is drawn by Debtor
Liability of Maker	Maker's liability is Secondary and conditional	Makers' liability is Secondary and conditional
Dishonour	Notice of Dishonour is necessary to be given to all the parties involved.	Notice of Dishonour Notice is not necessary to be given to the maker.

21.10 SUMMARY

Meaning: It is an unconditional written promise by one person to another in which the maker (Payer) promises to pay on demand on any future date, a stated sum of money to the specified person or to the bearer of the instrument.

Essential Features and Characteristics of Promissory Notes: Writing**:** Promise to pay**:** Unconditional Promise: Signed by the maker: Payee to be a certain person: Payment of Money only: Certain some of money: Other formalities:

Types of Promissory Notes: Promissory Note Payable on Demand: After Sight Payable after Date, Joint Promissory Note: Joint and Several Demand Promissory Note:

BILL OF EXCHANGE:

- **Meaning:** an instrument in writing containing an unconditional order signed by the maker, directing a certain person to pay a certain sum of money only to or to order of, a certain person or to the bearer of the instrument.

Essential Elements of Bills of Exchange: It must be in writing; it must contain an express order to pay. It must be signed by the drawer. It must contain an unconditional order to pay. The parties must be certain, the order must be to pay a certain sum of money,

The instrument must contain an order to pay money and it must be stamped.

21.11 QUESTIONS

1. What are the essential elements of promissory note?
2. What is bills of exchange? What are its essential features?
3. Distinguish between Promissory Note and Bills of Exchange.
4. Write a Note on:
   a. Kinds of Bills of Exchange b. Kinds of Promissory Notes
   c. Rules of Acceptor and Acceptor for honour.

21.12 REFERENCE

- 1https://www.aaptaxlaw.com/negotiable-instruments-act/section-7-negotiable-instruments-ac
- t-drawer-drawee-section-7-of-ni-act-1881.html

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22

CHEQUES

Unit Structure

22.0 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the meaning Of Cheque.
- Understand the various types of Cheques.
- Understand difference between the Cheque and Bills of Exchange
- Understand the term "Dishonour of cheque" and its Criminal Penalties'

CHEQUE- SECTION -6

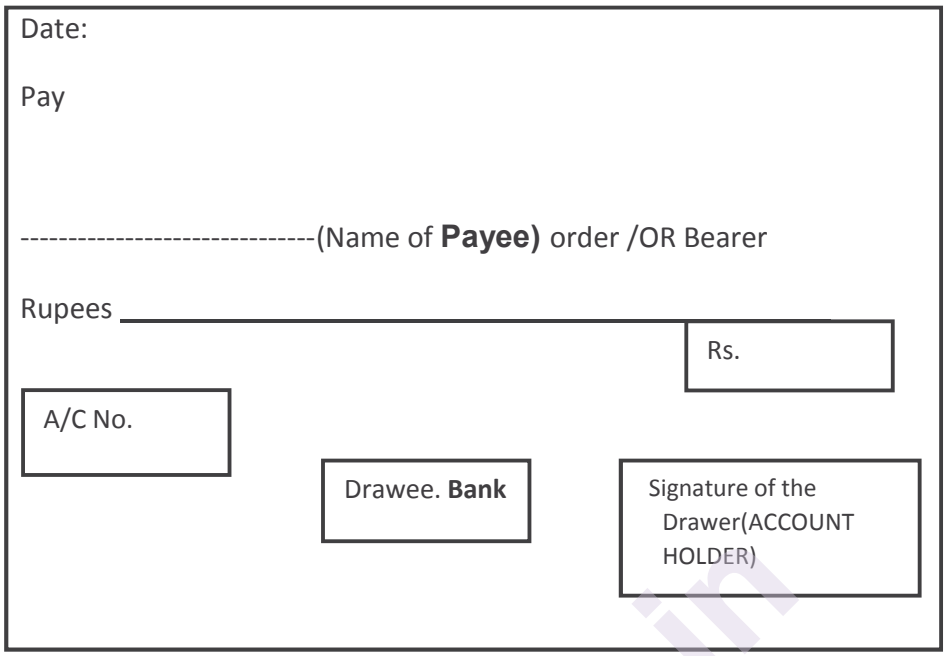
Section 6 of Negotiable Instrument Act defines Cheque as "a *bill of exchange drawn on a specified banker and not expressed to payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form"*

Payable on Demand: It should be payable whenever the holder chooses to present it to the drawee that is banker.

Cheque in Electronic Form: Cheque drawn by using any computer resource and signed in a secure system with a digital signature and asymmetric crypto system; or electronic signature.

Truncated Cheque: Means a cheque which is truncated during the course of clearing cycle, either by clearing house or by bank whether paying or receiving payment immediately on generation of the electronic image for transmission, substituting the further physical movement of the cheque in writing.

SEPCIMEN OF A CHEQUE



22.2 CHARACTERISTICS OF CHEQUE

1. It must be in writing: A cheque must be in writing. An oral order to pay does not constitute a cheque.

2. An unconditional order: It is an unconditional order: A cheque cannot be drawn so as to be payable on condition. The drawer's order to the drawee bank must be unconditional. A conditional cheque shall be invalid.

3. Drawn upon a Specified Banker: The drawer issues cheque directing to a particular bank having deposit in it to pay the amount of cheque.

4. Signed by the maker: The cheque should be signed by the account holder. A cheque does not carry any validity unless signed by the original drawer. It should be dated as well.

5. Amount in words and figures: The amount of cheque should be mentioned in words and figures.

6. Payable on demand: The amount of cheque must be paid by the bank as soon as it is presented at its counter.

7. It must contain an express order to pay: Cheque should contain an express order to pay money and money only, request made in the cheque invalidate the instrument.

8. The sum contained in the order must be certain: The sum contain in the cheque must be certain. Uncertainty leads to instrument invalid.

9. It does not require acceptance and stamp: Like a bill of exchange, a cheque does not required acceptance from the drawee. There is, a custom among banks to mark cheques as 'good' for the purpose of clearance. But this marking is not an acceptance, further no revenue stamp is required to be affixed on cheques.

10. Validity: A cheque is generally valid for six months from the date it bears. Thereafter it is termed as stale cheque. A post-dated or antedated cheque will not be invalid. In both cases, the validity of the cheque is presumed to commence from the date mentioned on it.

22.3 CROSSING OF CHEQUE: SECTION. 123

CROSSING OF CHEQUES:

Meaning:
Crossing of cheques means an instruction to the drawee that is the paying bank that the payment is not to be made at the counter but through a bank.

When a cheque bears across its face two parallel transverse lines, or of two parallel transverse lines simply (either with or without the word, not negotiable) that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

Thus, a cheque can either be an open cheque, and the same can been cashed at the counter of the bank, or a crossed cheque that is a cheque with a special direction to at the paying banker to make payment only through a particular banker and not to pay it at the counter. Crossing of a cheque in general does not stop its negotiability but if words like '**Not Negotiable' 'or A/c. Payee only'** are used then it cannot be negotiated freely.
Parties to a cheque

1. **Drawer:** The person who draws the cheque.
2. **Drawee:** The banker on whom the cheque has been drawn, the payee, holder, Endorser, and Endorsee are the same as in a bill.

Types of Cheque

1. Open Cheques / Bearer Cheques:
An open or bearer is a cheque which is payable at the counter of the drawee bank on presentation of the cheque. When the cheque is lost or stolen, it is not possible easily to trace the person who has received the payment.

2. Crossed Cheque:
A crossed cheque is a cheque which is payable only through a specified banker and not directly at the counter of the bank. Crossing ensures security to the holder of the cheque as only the particular banker credits

the funds to the account of the payee of the cheque. When two parallel transverse lines, with or without any words, are drawn generally, on the left hand top corner of the cheque.

- A crossed cheque does not affect the negotiability of the instrument.
- It can be negotiated the same way as any other negotiable instrument.

Hence Crossed cheque is a cheque which is not paid on the counter of a bank. The amount is credited by the bank to the account of payee. The significance of different types of crossed cheques is different in style.

22.3.1 Types of Crossing of the Cheque:

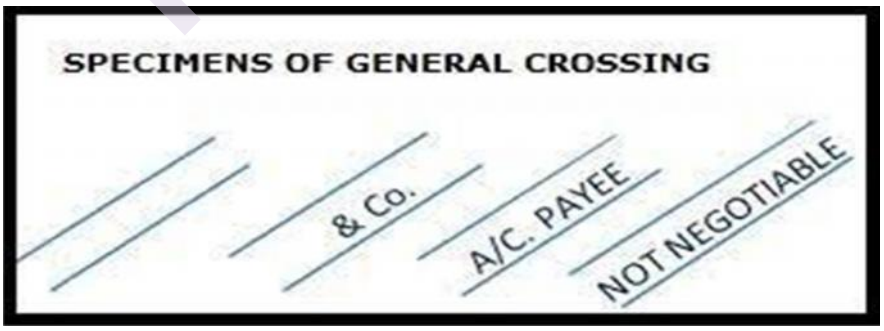
Following are the types of crossing of the cheque:

1. General Crossing: Section 123

A cheque is said to be crossed generally when it bears across its face any of the following:

a. Two transverse parallel lines.
b. Two transverse parallel lines with the word "And Company" or "And Co".
c. Two transverse parallel lines with any abbreviation of the word "& Company".
d. Two transverse parallel lines with the words "Not Negotiable".
e. Two transverse parallel lines with the words "Account Payee Only".

The cheque crossed generally does not ceases to be negotiable further. The collecting banker can collect the proceeds of the cheque in the account of that person mentioned on the cheque. A crossed cheque can be made **bearer cheque** by cancelling the crossing and writing that the crossing is cancelled and affixing the full signature of drawer.



Significance of General Crossing:

a. The effect of general crossing is that it gives a direction to the paying banker.

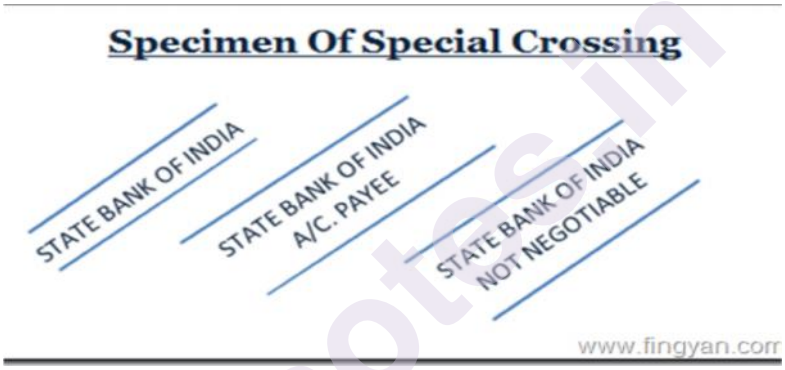
b. The direction is that, the paying banker should not pay the cheque at the counter.

C. It must be presented to the paying banker through any other bank and not the payee himself at the counter.

2. Special Crossing: Section 124:

It is a cheque in which the name of the bank is appears between the two parallel lines and hence it can be paid to that specific banker only.

Insertion of the name of a banker is an essential in special crossing. Special Crossing cannot be converted to General Crossing.



Essentials of special crossing:

a. Two parallel transverse lines are not at all essential for a special crossing.

b. The name of banker must be necessary specified across the face of the cheque may suffice the purpose.

c. It must appear on the left-hand side preferably on the corner. It should not be destroying the printed number of the cheque.

d. The **two parallel transverse lines** and the words **Not negotiable** may be added to a special crossing.

1. Restrictive crossing:

Besides the above two types of statutory crossing in recent years the practice of crossing cheques with the words Account payee only has sprung up. Such a crossing is termed as restrictive crossing.

Essentials of restrictive crossing:

a. The two transverse parallel lines across the face of the cheque.

b. It must be presented in order to treat any cheque as a crossed cheque.

c. The cheque will not be taken as a crossed cheque if this has not been done.

Significance of restrictive crossing:

a. It is only a direction to the collecting banker that the proceeds are to be only to the account of payee named in the cheque.

b. If the collecting banker allows the proceeds to be credited to some other account, it may be held liable for wrongful conversion of funds.

c. It is under no duty to ascertain that the cheque is in fact collected for the account of the person named as payee.

2. Double crossing:
When a cheque bears two separate special crossing, it is said to have been doubly crossed. Thus, a paying bank shall pay a cheque doubly crossed only when the second banker is acting only the agent of the first collecting banker and this has been made clear on the instrument.

3. Non-Negotiable Crossing:
It is when the words 'Not Negotiable' are written between the two parallel transverse lines.

22.3.2 Section 125: Crossing of cheques after Issue

Following are the guidelines under the said section.

The holder may cross the cheque generally or specially. If a cheque has not been crossed,

If it's crossed generally, holder may cross it specially.

- Holder may add the words "not negotiable". If it's crossed generally or specially,
- If a cheque is crossed specially, banker to whom it's crossed, may again cross it especially to another banker, his agent, for collection.

Payment of cheque crossed generally or specially: Sections. 126 & 127:

- If cheque is crossed generally, the banker on whom it's drawn shall not pay otherwise than to a banker.
- If a cheque is crossed specially, it should be paid to the banker on whom it's crossed.
- When a cheque is crossed especially to more than one banker except when it's crossed to an agent for purpose of collection, the banker on whom its drawn shall refuse payment thereof.

22.3.3 Payment in due course of crossed cheque: Section 128

When a banker on whom a crossed cheque is drawn, pays it in due course, it's to be presumed that he has made payment to the owner of the cheque, though in fact, amount may not reach the owner.

In this way, banker making payment in due course is protected.

22.3.4 Payment out of due course Sec. 129:

Any banker paying the crossed cheque otherwise than in accordance with the provisions of sec. 126 shall be liable to the true owner of the cheque for any loss he may have sustained.

22.4 DISTINGUISH BETWEEN CHEQUE AND BILLS OF EXCHANGE.

POINTS OF DIFFERENCES	CHEQUE	BILLS OF EXCHANGE
Meaning	An Instrument used to make easy payments on demand and can be transferred through hand delivery is known as cheque.	An Instrument a written document that shows the indebtedness of the debtor towards the creditor.
Drawee	A cheque is always drawn on a bank or a banker.	A bill of exchange can be drawn on any person including a banker.
Crossing	A cheque may be crossed.	There is no such provision in the case of a bill of exchange
Acceptance	A cheque does not require acceptance.	Bill of exchange needs to be accepted.
Stamping	No such requirement.	Must be stamped.
Noting or protesting	If the cheque is dishonoured it cannot be noted or protested	If a bill of exchange is dishonoured it can be noted or protested.
Protection	A banker is given statutory protection with regard to payment of cheques in certain circumstances.	No such protection is available to the drawee or acceptor of a bill of exchange.

22.5 DISHONOUR OF CHEQUE: SECTIONS 138 -142

22.5.1 CONCEPT AND MEANING:

Prior to the introduction of this chapter, the drawer of a dishonoured cheque could be criminally prosecuted under S.420 of the Indian Penal

Code. However, even today prosecution under the general for the offence of 'cheating' is maintainable. The offence under S.138 of the Act and S.420 of the Indian Penal Code are different in nature, therefore conviction of offence under one provision does not bar prosecution under the other.

There was no effective legal provision before the year 1888 to restrict people from issuing cheques without having sufficient amount in their account or any harsh provision to punish them in the event of such cheque not being honoured by their bankers and returned unpaid. Dishonour of cheques is a civil liability accrued.

The processes to seek civil justice becomes a time consuming or a process of unusual length, and recovery by way of a civil matters takes a long time. To ensure immediate remedy against defaulters and to ensure credibility of the holders of the negotiable instrument a criminal remedy of penalty was introduced in Negotiable Instruments Act, 1881 in form of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 which were further modified by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002.

Many issues arise under this section such as: -

- what happens in case of default?
- who will be liable to the holder of the cheque?
- what are the procedures involved to make the case adept in the eyes of the magistrate? etc.

The Negotiable Instruments Act, 1881 was amended in the year 1988 to add – Chapter XVII which pertains to penal provisions in case of dishonour of cheques for insufficiency of funds in the accounts.

Section 138 – reads: 'Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for ["a term which may extend to two year"], or with fine which may extend to twice the amount of the cheque, or with both:'
Provided that nothing contained in this section shall apply unless-

(a) Within a period of six months from the date on which it is drawn the cheque has been presented to the bank or within the period of its validity, whichever is earlier.

(b) The payee of the cheque, or a person in whose custody the instrument is as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer, of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheques as unpaid, and

(c) The payment of the said amount of money to the payee by the drawer has not been made

(d) Negotiable Instrument Amendment Act 2015 provides as under

"The Act specifies circumstances under which complaints for cheque bouncing can be filed. However, the Act does not specify the territorial jurisdiction of the courts where such a complaint is to be filed. The Bill amends the Act to state that cases of bouncing of cheques can be filed only in a court in whose jurisdiction the bank branch of the payee (person who receives the cheque) lies."

22.6 BASIC ESSENTIALS OF SECTION 138

1. Cheque Drawn by the person who has a account in the Bank i.e existence of Bank-Customer Relationship.
2. Cheque Drawn in discharge – debt or liability.
3. Discharge may be of full – part liability.
4. Cheque returned unpaid. (Returned to Payee/Holder/Person entitled to receive money)
5. Reasons for Return-
   - Insufficiency of Funds
   - Either the balance was insufficient – or it exceeded the amount arranged to be paid for overdraft.
6. Cheque presented in bank within 6 months from date of cheque.
7. Payee gave notice to drawer within 30 days of the refund of the cheque.
8. Drawer must make payment within 15 days from receipt of notice.
9. Cause of Action arises on 16th Day. (S.12(1) Limitation Act – excludes 16th Day)

If the above conditions are fulfilled the offence u/s 138 is made out – the Cognizance of which would then be taken by Metropolitan Magistrate/ Judicial Magistrate 1st Class as per S.142.

PUNISHMENT/S:
Maximum 2 years (earlier it was 1 year – to make the act more stringent vide 2002 Amendments – to was extended to the present 2 years.
Up to twice the amount of cheque as FINE.

22.7 DRAFT AND LETTER OF CREDIT

DRAFT: Draft is an order to pay money and involves three parties, It is and an unconditional written order to pay by which the party creating the draft (the drawer) orders another party (the drawee), typically a bank, to pay money to a third party (the payee). A draft payable on presentment. It may also be payable on acceptance- where you have the drawees written promise to pay the draft when it comes due.

Letter of Credit.
Letter of Credit is issued by the bank to the buyer in order to secure the timely payment by the buyer to the seller. It works in import of goods/ equipment from abroad that is another country. It acts like a guarantee on behalf of the buyer that he/she pays the full amount to the seller, as per defined timeline or on time as it is sent along with bills of exchange. If in case the buyer is unable to repay the amount to the seller on time, then the bank will pay on buyer's behalf to the seller.

22.8 SUMMARY

Meaning:
A bill of exchange drawn on a specified banker and not expressed to payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Essential Features and Characteristics of Cheque:
It must be in writing: An unconditional order: Drawn upon a Specified Banker: Signed by the maker: Amount in words and figures: Payable on demand: It must contain an express order to pay, the sum contained in the order must be certain. It does not require acceptance and stamp: Validity

Crossing of Cheque: Meaning:
Crossing of cheques means an instruction to the drawee that is the paying bank that the payment is not to be made at the counter but through a bank.

Types of Crossing of the Cheque:
General Crossing: Section 123, Special Crossing: Section 124, Restrictive crossing, Non-Negotiable Crossing**,**

22.9 QUESTIONS

1. What is cheque? What are its characteristics?
2. Distinguish between Bills of Exchange and Cheque
3. What are the different types of crossing of cheques?
4. Explain the criminal penalties in respect of 'Dishonour of Cheque'.

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23

MISCELLANEOUS PROVISION

Unit Structure

23.1 HOLDER OF NEGOTIABLE INSTRUMENT MEANING

The holder of a negotiable instrument means any person entitled to the possession of the instrument in his/her own name and to receive or recover the amount due there on from the parties liable.

CONDITIONS TO BE FULFILLED:

Thus, in order to be called a 'holder' a person must satisfy the following two conditions: (Sec. 8).

1. He must be entitled to the possession of the instrument in his own Name. Actual possession of the instrument is not requisites. What is required is a **right to possession** under valid title. He should be a 'de jure holder' and not necessarily 'de facto holder'. It means that the person must be named in the instrument as the payee or the endorsee, or he must be the bearer of the same, if the instrument is bearer.

2. If a person is in possession of a negotiable instrument without having a right to possess the same, he cannot be called the holder. Thus, a thief, or a finder on the road, or an endorsee under a forged endorsement, although may be having the possession of the instrument, cannot be called its holder because he does not obtain legal title of the same and hence is not entitled in his own to the possess the same.

23.2 HOLDER IN DUE COURSE

MEANING:

The basic principle relating to negotiable instruments is that a person obtaining a negotiable instrument in good faith and for value obtains a valid title though he takes from one who had nothing. The property in a negotiable instrument is acquired by anyone who takes it bona-fide and for value, notwithstanding any defect of title in the person from whom he took it. Now such a person who takes an instrument "in good faith and for value" becomes the true owner of the instrument and is known as a "holder in due course".

According to Section 9 "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or he become an owner of or the payee or endorsee thereof, if payable to order, before the amount mentioned in it became payable and without having sufficient reason to believe that any defect appears in the title of the person from whom he obtained this title.

23.2.1 Essential Qualifications of a "Holder in Due Course":

The essential qualifications of a "holder in due course" as follows:

- He must be a holder for valuable consideration. All the essentials of consideration should be fulfilled so as to result in a valuable consideration.
- The person who takes a negotiable instrument after maturity does not become a holder in due course. Thus, the person became the holder of the instrument before its maturity.
- That the instrument should be complete and regular on the fact of it.
- The last requisites are that the holder should have obtained the instrument in "good faith".

23.3 SECTION 10. PAYMENT IN DUE COURSE

"Payment in due course S. 10 provides that, "payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned".

A paying banker does not get statutory protection under Negotiable Instrument Acts if he does not make the payment of negotiable instrument in due course.

Payment must be in accordance with the apparent tenor of the instrument.
For example, a banker makes the payment through a postdated cheque. In this case, payment made by the banker is not in accordance with the apparent tenor of the instrument because this payment has made before the date apparent on the instrument. Hence the payment made by the banker is against the motive of the drawer of the cheque, therefore such payment shall not be treated as payment in due course.

Payment made must be to a legally entitled person in good faith and without negligence
The banker must have made the payment on the belief that the person who received the payment is eligible to receive payment of the amount therein mentioned. Apart, the drawee (payer) should not be guilty of negligence in making such payment.

Payment must be made only against presentation of the instrument for payment.
If the payment made in the absence of presentation of the instrument for payment, such payment will not be treated as payment in due course. The drawee shall receive and see the instrument (physical or electronic image in clearing) presented to him for payment before making payment, lest it cannot be treated as payment in due course.

23.4 NOTING AND PROTESTING–SECTION [99- 104(A)]

When a negotiable instrument is dishonoured, the holder may sue his drawer and the endorsers after he has given a notice of dishonour to them. The holder may need evidence of the fact that a negotiable instrument has been dishonoured. When a cheque is dishonoured generally the bank who denies payment returns back the cheque giving reasons inwriting for the dishonour of the cheque. Sections 99 and 100 provide an appropriate method of genuineness the fact of dishonour of a bill of exchange and a promissory note byway of 'noting' and 'protest".

23.4.1 Noting:

As soon as a bill of exchange or a promissory note is dishonoured, the holder can after giving the parties due notice of dishonour, sue the parties liable thereon. Section 99 provides a mode of genuineness of the fact of the bill having been dishonoured. Such mode is by noting the instrument. Noting is a recorded of minute by a notary public on the dishonoured instrument. When a bill is to be noted, the bill is taken to a notary public who represents it for acceptance.

Noting should specify in the instrument,

- The fact of dishonour,
- The date of dishonour,

- The reasons for such dishonour,
- The notary's charges,
- A reference to the notary's register.

Noting should be made by the notary within a reasonable time after dishonour. Noting and protesting is not mandatory but foreign bills must be protested for dishonour.

23.4.2 Protest:

Protest is a certificate by the notary public attesting the dishonour of the bill by non-acceptance or by non-payment. After noting, the next step for notary is to draw a certificate of protest, which is bonafide declaration on the bill. An important advantage of protest is that the court on proof of the protest shall presume the facts of dishonour.

Besides the protest for non-acceptance and for non-payment the holder may protest the bill for better security. When the acceptor of a bill becomes insolvent, may protest the same in order to obtain better security for the amount due. For this purpose, the holder may employ a notary public to make the demand on the acceptor and if refused, protest may be made. Notice of protest may be given to prior parties. When promissory notes and bills of exchange are required to be protested, notice of protest must be served instead of notice of dishonour. (Sec. 102)

Inland bills may or may not be protested. But foreign bills must be protested for dishonour when such protest is required by the law of the place where they are drawn (Sec. 104).

23.5 MATURITY OF AN INSTRUMENT

The maturity of a promissory note or bill of exchange means the date at which it falls due.

Days of grace: Every promissory note and bill of exchange which is not expressed to be payable on demand or at sight or on presentment is at maturity on the third day, for example it is entitled to three days grace after the day on which it is expressed to be payable. A cheque is always payable on demand. It is not entitled to any days of grace. Similarly instruments payable on demand or at sight or on presentment are also entitled to three days of grace. Thus, only following instruments are entitled to days of grace:

1) Bills and notes payable on a specified day;
2) Bills and notes payable at a certain period after date or after sight;
3) Bills and notes payable at a certain period after the happening of a certain event.

23.6 SUMMARY

HOLDER OF NEGOTIABLE INSTRUMENT MEANING: Meaning: The holder of a negotiable instrument means any person entitled to the possession of the instrument in his/her own name and to receive or recover the amount due there on from the parties liable.

NOTING: Noting is a recorded of minute by a notary public on the dishonoured instrument. When a bill is to be noted, the bill is taken to a notary public who represents it for acceptance.

PROTEST: Protest is a certificate by the notary public attesting the dishonour of the bill by non-acceptance or by non-payment.

23.7 QUESTIONS

1. Explain the various features of Negotiable Instruments?
2. What are the presumptions applicable to all the negotiable instruments under Negotiable Instrument Act 1881?
3. Define Promissory Note and explain is salient features.
4. Define Bill of Exchange and explain its salient features.
5. What is cheque? Explain its features and enumerate the different types of Crossing of Cheques.
6. What are the penal provisions under Negotiable Instrument Act 1881(Amendment Act 2012) in respect of dishonour of cheques?
7. Distinguish between Holder and Holder in due course.
8. What is the essential qualification of holder in due course?
9. Write a short note on following: -
   a. Bill of Exchange
   b. Time instrument
   c. Bearer instrument
   d. Inland instrument
   e. Negotiable Instruments
   f. Promissory Note
   g. Crossed Cheque
   h. Bearer Cheque
   i. Double Crossing of the Cheque
   j. Noting
   k. Protesting

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(MODULE V)
MULTIPLE CHOICE QUESTIONS WITH ANSWERS

1. When did the Negotiable Instruments Act come into force?

A) 1 April 1882

B) 1 March 1936

C) 01 May 1989

D) 01 March 1882

Answer –D) 01 March 1882

2. Which of the following section in the Negotiable Instruments Act deals with the Bill of Exchange?

A. Section 5

B. Section 6

C. Section 4

D. Section 8

Answer –D) Section 8

3. Which of the following is/are true about Bill of Exchange?

(I) A bill of exchange requires in its inception two parties.

(II) A bill of exchange or "draft" is a written order by the drawer to the drawee to pay money to the payee.

(III) Bills of exchange are used primarily in international trade, and are written orders by one person to his bank to pay the bearer a specific sum on a specific date.

(IV) Definition of ' Bill of Exchange' is mentioned in Section 6 of the Negotiable Instrument Act.

A. (I) and (IV)

B. (I), (II) and (IV)

C. (II) and (III)

D. (III) and (IV)

ANS: C. (II) and (III)

4. Which of the following is/are false about Dishonour of Cheque ?

(I) Section 138 defines Dishonour of cheque for insufficiency, etc., of funds in the account.

(II) Such cheque has been presented to the bank within a period of twelve months from the date on which it is drawn or within the period of its validity, whichever is earlier

(III) Imprisonment for such offence may be extended for period of five year

(IV) Section 138 apply unless – the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case

may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

A. (I) and (IV)

B. (II) and (III)

C. (II),(III) and (IV)

D. Only (IV)

ANS: (II) and (III)

5. _____ an instrument in writing containing an unconditional undertaking signed by the maker to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A. Promissory Note

B. bill of exchange

C. Cheque

D. none of the above

ANS: A Promissory Note

6. _____ is an instrument in writing, containing an unconditional order, signed by the maker, directing a certain person, to a pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument

A. Promissory Note

B. bill of exchange

C. Cheque

D. none of the above

ANS: B) Bill of exchange

7. The parties of a bill of exchange are

A. drawee acceptor and payee

B. banker drawee and payee

C. banker acceptor and payee

D. banker drawer and payee

ANS: A) drawee acceptor and payee

8. A Promissory Note or Bill of Exchange can be made payable

A. On demand

B. On a specific date

C. After a specified period – months or days.

D. all of the above

Ans. D) All of the above

9. When the is crossed with Two parallel lines or with word '& Co.' etc. this crossing is known as_____

A. general crossing

B. special crossing

C. restrictive crossing

D. none of the above

Ans. A) general crossing

10. When the is crossed with Two parallel lines or with 'A/c payee only.' etc. this crossing is known as_____

A. general crossing

B. special crossing

C. restrictive crossing

D. none of the above

Ans. C.) restrictive crossing

11. In the case of Bill of Exchange drawee is the _____.

A. maker

B. acceptor

C. payee

D. none of the above

Ans. B) acceptor

12. A holder in due course will get protected from earlier defect of

A. no consideration

B. conditional delivery

C. unlawful means

D. all of the above

Ans. D) all of the above

13. _____of an instrument means a person legally entitled to possess and receive in his own name

A. owner

B. maker

C. holder

D. receiver

Ans. C) holder

14. Holder of an instrument is a person who holds the instrument

A. for a longer period

B. before maturity

C. after maturity

D. on behalf of the owner

Ans. B) before maturity

15. Countermanding of a cheque is also known as

A. cancellation

B. Dishonour

C. stop payment

D. payment through counter

Ans. C) stop payment

16. 'Something legally transferable from one person to another for a consideration' is known as

A. Endorsement

B. bill of exchange

C. promissory note

D. negotiation

Ans. D) negotiation.

17. In case of Dishonour of a bill of exchange _____ is compulsory

A. noting

B. protesting

C. both noting & protesting

D. neither noting nor protesting

Ans. C) both noting & protesting

18. Maker of a bill of exchange is called as _____

A. Drawer

B. Drawee

C. Acceptor

D. Payee

Ans A) Drawer

19. Days of grace provided to the Instruments at maturity is _____

A. 1 day

B. 2 days

C. 3 days

D. 5 days

Ans C) 3 days

20. Validity period for the presentment of cheque in bank is _____

A. 3 months

B. 6 months

C. 1 year

D. 2 years

Ans A) 3 Months

21. Which of the following is not applicable to negotiable instruments?

A. It must be in writing

B. It must be transferable

C. It must be registered

D. It must be signed

Ans C. It must be registered.

22. 'A' signs the instrument in the following manner. State the instrument which cannot be considered as promissory note.

a) I promise to pay B or order INR 500.

b) I acknowledge myself to be indebted to B for INR 1,000 to be paid on demand for value received.

c) I promise to pay B INR 10,000 after three months.

d) I promise to pay B INR 500 seven days after my marriage with C.

Ans D) I promise to pay B INR 500 seven days after my marriage with C.

23. P obtains a cheque drawn by M by way of gift. Here P is a:

A. Holder in due course

B. Holder for value

C. Holder

D. None of the above

Ans C) Holder

24. An instrument containing a promise to _____ is valid promissory note.

A. Pay Rs. 10 lakhs

B. Deliver certain goods

C. Pay Rs. 10 lakh and deliver certain goods

D. Both (a) and (c)

Ans A) Pay Rs. 10 Lakhs

25. In legal terms, person who takes the instruments bonafide for value before it is overdue, in good faith, is known as:

A. Holder in due course

B. Holder

C. Holder for value

D. None of the above

Ans A) Holder in due course.

26. Maker of a bill of exchange is called as _____

a) Drawer

b) Drawee

c) Acceptor

d) Payee

Ans A) Drawer

27. A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value. Decide as per provisions of Negotiable Instruments Act, 1881-

A. D can sue only A

B. D can sue A or B only

C. D can sue any of the parties A, B or C

D. D cannot sue any of the parties A, B or C

Ans C) D can sue any of the parties A, B, or C

29. The essential characteristics of a negotiable instrument include:

A. Payable to order or bearer

B. Easy transferability

C. Transferee can sue in his own name

D. All the above.

Ans D) All the above.

30.Where the amount mentioned on the cheque differs in words and figures, which amount should be considered:

a. The amount stated in figures.

b. The amount stated in words

c. Both A and B the options are not correct and cheque is required to be returned.

d. It depends upon the discretion of the banker.

Answer. B) The Amount stated in words

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MODULE V
MULTIPLE CHOICE QUESTIONS- FOR PRACTICE

1. In a bill of exchange, drawee is the person

a. who draws the bill
b. on whom the bill is drawn
c. to whom the payment of the bill is to be made
d. to whom the payment of the bill is not to be made

2. How many parties are mainly involved in Promissory Note?

a. One
b. Five
c. Two
d. Three

3. In a bill of exchange, drawee is the person

a. who draws the bill
b. on whom the bill is drawn
c. to whom the payment of the bill is to be made
d. to whom the payment of the bill is not to be made

4. A negotiable instrument drawn or make in India is called_____ instrument.

a. Inland
b. Foreign
c. Time
d. Clean

5. Cheque is payable on

a. Demand
b. Usage
c. Fixed future date
d. After sight

6. Which of the following is/are false about Dishonour of Cheque?

A) Section 138 defines Dishonour of cheque for insufficiency, etc., of funds in the account.
B) Such cheque has been presented to the bank within a period of twelve months from the date on which it is drawn or within the period of its validity, whichever is earlier
C) Imprisonment for such offence may be extended for period of five year
D) Section 138 apply unless – the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case

may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

a. (A) and (D)
b. (B) and (C)
c. (B),(C) and (D)
d. Only (D)

7. Negotiable instrument means a promissory note, bill of exchange or cheque, payable to _____

a. Bearer
b. order
c. either to bearer or order
d. neither bearer nor order

8. Which of the below given sentence is proper as to considered to be written in negotiable instruments

a. I promise to pay B rs.500
b. Mr. B said, I. owe you Rs.1000.
c. I am liable to pay you Rs.1000.
d. none of the above.

9. _____ an instrument in writing containing an unconditional undertaking signed by the maker to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

a. Promissory Note
b. bill of exchange
c. Cheque
d. none of the above

10. The parties of a bill of exchange are

a) drawee acceptor and payee
b) banker drawee and payee
c) banker acceptor and payee
d) banker drawer and payee

11. Acceptance is _____ in case of bill of exchange

a) compulsory
b) optional
c) not compulsory
d) adequate

12. If the instrument is not 'on demand' _____ days of grace is granted.

a) 7
b) 5
c) 3
d) 4

13. when the is crossed with Two parallel lines or with word '& Co.' etc. this crossing is known as

a. general crossing
b. special crossing
c. restrictive crossing
d. none of the above

14. In case of Dishonour of a bill of exchange _____ is compulsory.

a. noting
b. protesting
c. both noting & protesting
d. neither noting nor protesting

15. A cheque drawn in favour of x is crossed "not negotiable".
X endorses the cheque in favour of Y for valuable consideration.
Y becomes

a. A holder in due course
b. only a holder
c. an assignee for the amount of cheque
d. the cheque can not be endorsed.

16. The dishonour of Cheque is punishable for a maximum term up to_____ years.

a. 1 year
b. 5 years
c. 2 years
d. 4 years

17. The Negotiation of instrument to any person receiving it by paying consideration, before maturity & in good faith is termed as_____.

a. Holder
b. Holder In due course
c. (a) & (b)
d. None of them

18. If a minor draws, indorses, deliver or negotiates an instrument, such instrument binds

a. All parties to the instrument including the minor
b. Only the minor and no other parties to the instrument
c. All parties to the instrument except the minor
d. None of the above.

19. In a promissory note, the amount of money payable

a. Must be certain
b. May be certain or uncertain
c. Is usually uncertain
d. none of the above

20. Offences committed under the Negotiable Instruments Act can be

a. Compoundable
b. Non- compoundable
c. Non- compoundable and non-bailable
d. Bailable

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