

The Indian Contract Act and other Acts

7 marks-

- The Indian Contract Act, 1872 (of contracts, voidable contracts and void agreement; Contingent contracts; Performance of contract; Novation, rescission and alteration of contracts; Agency; Consequences of breach of contract; Indemnity and guarantee; Surety; Bailment and pledge; Set off);
- The Partnership Act, 1932
- The Sale Of Goods Act, 1930 (sale, condition and warranty, seller's lien and damages);
- The Transfer Of Property Act, 1882
- The Specific Relief Act, 1963; and
- The Negotiable Instruments Act, 1881

6 Acts and seven questions. Questions may come from one or more.

INDIAN CONTRACT ACT, 1872



PRILIMIN ARY Section 1

Short Title: This Act may be called the Indian Contract Act, 1872.

Extent, Commencement: It extends to the whole of India, and it shall come into force on the first day of September, 1872.

Saving: Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Section 2

In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:

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

2(b). When a person to whom proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a promise.

2(c). The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";



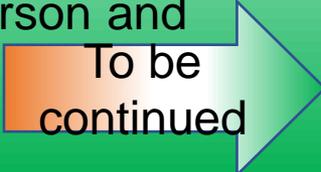
Section 2

2(d). When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

2(e). Agreement' as 'every promise or every set of promises forming consideration for each other.

i.e. Promise in return of Promise Reciprocal Promise

An Agreement is a promise or a commitment or set of reciprocal promises or commitments. An agreement involves an offer or proposal by one person and acceptance of such offer or proposal by another person.



To be
continued

Section 2

2(f). Promises which form the consideration or part of the consideration for each other are called reciprocal promises;

2(g). An agreement not enforceable by law is said to be void;

2(h). “Contract is an agreement enforceable by law”.

Contract = Agreement + Enforceable by law

Salmond defines, “An agreement creating and defining obligations between the parties is a Contract.”

Contract = Agreement + Obligations (legal duty to fulfill one’s promise)

2(i). An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

2(j). A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

Section 10

Essential Elements of Contract:

- Agreement: “Agreement which is legally enforceable alone is a contract”. An agreement which is not enforceable can be either Void Agreement or Voidable contract. In order to constitute a contract, there must be an agreement in first place. An agreement in turn is composed of two elements- offer and acceptance. The two important element of agreement are:
 - a. Plurality of person: There must be at-least two parties-one making the offer and another accepting it. A person cannot enter into agreement with himself or with an inanimate object.
 - b. Consensus ad-idem: The promisor and promisee of the agreement should have agreed in same sense & on same thing. There should be meeting of minds.

to be
continued

- Legal intention: The parties must intend to create a legal relationship. Agreements of social or domestic nature do not contemplate legal relationship, so they are not contracts.
- Lawful Consideration: The agreement must be supported by a lawful consideration. Consideration means 'something in return'. It is not important whether consideration is adequate or in-adequate. 'Something in return' may be an act or abstinence. But consideration must be real and lawful.
- Capacity: The parties to an agreement must be capable of entering into a contract i.e.
 - a. He shall not be minor (less than eighteen years of age);
 - b. shall be of sound mind
 - c. Shall not be disqualified from contracting by any law to which he is



To be
continued

- Lawful object: The object of agreement must be lawful.
- free Consent: The consent of the parties must be free and genuine i.e. not induced by coercion, undue influence, fraud or misrepresentation.
- Void Agreement: The agreement not expressly declared void or illegal by law.
- Certainty and Possibility of Performance: The terms of agreement must be certain and capable of performance.
- Legal formalities: Where nature of agreement is such that it requires compliance of certain formalities, such requirements should be fulfilled. A contract may require registration in addition of being in writing. However as regards to legal effects, an oral contract has same weight-age as a contract in writing.



Agreement Which Are Not Contract

1. Agreements relating to social matters: Intention to create legal obligation is absent.
2. domestic Arrangement between Husband and Wife: It is presumed that there is no intention to create legal relations. (Balfour v Balfour).
3. Agreement to do illegal/unlawful/immoral act e.g. Smuggling.
4. Agreement declared specifically void (unenforceable by law): Agreement to do impossible act (putting life in a dead person), wagering agreement (betting agreement).

1. Types of Contract on the basis of its enforcement

**(A) Valid Contract
Section 2(h)**

**(B) Voidable
Contract
Section 2(i)**

**(C) Void Contract
Section 2(g) & 2(j)**

**(D) Unenforceable
Contract**

**(E) Illegal/unlawful
agreement**

1. Types of Contract on the basis of its enforcement

(A) Valid Contract:

An agreement enforceable by the law is a contract (**Section 2(h)**). To be enforceable it has to satisfy the requirements under **Section 10** of the Indian Contract, 1872. They are:

- There is some consideration for it.
- The parties are competent to contract
- Their consent is free.
- Their object is lawful

1. Types of Contract on the basis of its enforcement

(B) Voidable Contract: Section 2(i):

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

As mentioned above, free consent which is defined in Section 14 of the Act is an essential element of a valid contract. Consent is free when it is not obtained by coercion, undue influence, fraud, misrepresentation or mistake .

Where consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A voidable contract remains valid until rescinded. A voidable contract can be made valid by the party who has a

1. Types of Contract on the basis of its enforcement

Void Contract:

Section 2(g): A void agreement is not enforceable at the option of either party. Section 2(g) of the Act explains the meaning of a void agreement.

Section 2(j) of the Act speaks about a valid contract which subsequently becomes void. “A contract which ceases to be enforceable by the law becomes void when it ceases to be enforceable”.

No obligation or right arises from a void contract. They are not covered by the law. Such contracts cannot be made valid by the parties to the contract by giving their consent.

If consent to a contract is caused by mistake, the agreement is void as provided in Section 20 of the Act. If the parties to a contract are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

1. Types of Contract on the basis of its enforcement

Sections 24-30 of the Act deals with void agreements. The following types of Agreements are declared to be void:

- Agreements unlawful in part(S. 24)
- Agreements without consideration(S. 25)
- Agreements in restraint of marriage(S. 26)
- Agreements in restraint of trade(S.27)
- Agreements in restraint of legal proceedings(S. 28)
- Unmeaning agreements(S. 29)
- Wagering agreements(S. 30)

1. Types of Contract on the basis of its enforcement

Section 24: Section 24 comes into play when a part of the consideration for an object or more than one objects of an agreement is unlawful. The whole of the agreement would be void unless the unlawful portion can be severed without damaging the lawful portion.

Every agreement in restraint of marriage of any person, other than minor is void. It is immaterial whether the restraint is general or partial.

Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. There is no distinction between total restraint and partial restraint of trade.

1. Types of Contract on the basis of its enforcement

Section 28: Section 28 of the Act renders two kinds of agreement void. They are:

- ❑ An agreement by which a party is restrained absolutely from enforcing his rights arising under a contract by the usual legal proceedings in the ordinary tribunals.
- ❑ An agreement which limits the time within which the contract rights may be enforced.

(D) Unenforceable Contract: It is one which is good in substance, but because of some technical defect, one or both parties cannot be sued on it. These

1. Types of Contract on the basis of its enforcement

(E) Illegal/unlawful Contract

Section 23 of the Act describes some condition's when an agreement may be unlawful or illegal. A distinction has to be made between void contracts and illegal contacts. Agreements whose object or consideration is forbidden by law are called illegal contracts. In the case of void agreements, the law may merely say that if it is made, the courts will not enforce it.

Thus all illegal agreements or contracts are void, but all void agreements are not illegal. In the case of both illegal and void contracts, the similarity is that in either case, the primary agreement is unenforceable. Nothing can

2. Types of Contract on the basis of Mode of Creation

(A) Express Contracts

(B) Implied Contracts

(C) Quasi-Contract

2. Types of Contract on the basis of Mode of Creation

(A) Express Contracts: The first part of Section 9 of the Indian Contract deals with promises which are expressly made. Contracts arising from expressly made promises are called express contracts.

According to Section 9 “insofar as the proposal or acceptance of any promise is made in words, the promise is said to be express”. Thus contracts entered into between the parties by words, spoken or written, are known as express contracts.

(B) Implied Contracts: The second part of Section 9 of the Act deals with implied contracts. It says “insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.” Thus contracts

2. Types of Contract on the basis of Mode of Creation

(C) Quasi-Contract: A contract which does not arise by virtue of any agreement between the parties, but due to certain special circumstances, the law recognizes it as a contract. Such contracts come into existence because of interference from courts in the interest of justice.

There are many several situations in which law, as well as justice, require that a certain person is required to conform to an obligation, although he has neither broken any contract nor committed any tort. The principle is that there should not be “unjust enrichment” i.e., enrichment of one at the cost of another.

The Indian Contract Act does not define the term Quasi-Contract. It does not mean that the principle behind the same hasn't been recognized. Chapter V of the Act deals

3. Types of Contract on the basis of Extent of Execution

(A) Executed Contract

(B) Executory Contract

(C) Partly Executed or Partly Executory Contract

(D) Unilateral Contract

(E) Bilateral Contract

3. Types of Contract on the basis of Extent of Execution

(A) Executed Contract: When both the parties have completely performed their respective obligations under the contract, it is said to be executed contract. It means that whatever was the object of the contract has been carried out. In most executed contracts the promises are made and then immediately completed.

The buying of goods and/or services usually falls under this category. There is no confusion about the date of execution of the contract since in most cases it is instantaneous.

(B) Executory Contract: An executory contract is one in which one or both parties are still to perform their obligations. Such contracts are future contracts. In such contracts, the consideration is the promise of performance or obligation. In executory contracts, the consideration for the promise made is carried out sometime in the future.

3. Types of Contract on the basis of Extent of Execution

(C) Unilateral Contract: They are one-sided contracts. A unilateral promise is a promise from one side only and intended to induce some action by the other party. The promisee is not bound to act, for he gives no promise from his side. But if he carries out the act desired by the promisor, he can hold the promisor to his promise. His act is simultaneously acceptance of and consideration for the promise. “An act done at the request of the offeror in response to his promise is a consideration, and consideration in its essence is nothing else but the response to such a request.”

(D) Bilateral Contract: A bilateral contract is a legally binding contract formed by the exchange of reciprocal promises. Here both parties are outstanding at the time of formation of the contract. In such a case, each party is a promisor and promisee. They are also known as reciprocal contracts because mutuality of obligation is essential for their enforceability.

Offer & Acceptance

Proposal [Sec 2(a)]: When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

Examples:

1. D said to E, "Will you buy my car for Rs. 1 lakh?" This is an offer "to do something".
2. A owns a motor boat for taking people from Bombay to Goa. The boat is in the waters at the Gateway of India. This is an offer by conduct to take passengers from Bombay to Goa. 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. An offers not to file a suit against B, if the latter pays A the amount of Rs. 200

Offer & Acceptance

How to make an offer (Section: 9):

Express offer It means an offer made by words spoken or written.

Implied offer It means an offer inferred by –

- The conduct of a person; or
- The circumstances of the case.

Offer & Acceptance

Legal Rules as to Valid Offer:

1. An offer must be certain or capable of being made certain. The terms of the offer must be –
 - a) Definite;
 - b) Unambiguous; and
 - c) Certain.

Examples:

1. A offers to sell to B “a hundred quintals of oil”. There is nothing whatever to show what kind of oil was intended. The offer is not capable of being accepted for want of certainty.
2. A who is a dealer in coconut oil only, offers to sell to B “one hundred quintals of oil”. The nature of A’s trade affords an indication of the meaning of the words, and there is a valid offer.

Offer & Acceptance

Intention of Offer or

1. Must be made with a view to obtain acceptance.
2. Must be made with the intention of creating legal relations.

Communication:

Offer must be
communicated to
offeree.

Communication of
complete offer is must.

The Special terms, forming part of the offer, must be duly

Case Laws

Lalman Shukla vs. Gauri Dutt:

- a. G's nephew was missing.
- b. L, who was munim of G, went in search of the missing boy.
- c. Meanwhile G issued handbills offering reward of Rs. 501 to anyone who would trace the boy
- d. L found the boy and brought him home.
- e. Since L had no knowledge of the offer made by G, he could not accept such offer.
- f. Since there was no acceptance, there could be no contract, and therefore, it was held that L was not eligible to receive the reward.

Case Laws

Parker vs. South-Eastern Railway Co.:

- a. P deposited his bags in the cloakroom at a railway station.
- b. On the face of the receipt, the words 'see back' were printed.
- c. One of the conditions printed on the back was —the liability of the railway company shall be limited to \$ 10 for any package.
- d. P's bag was lost.
- e. He claimed the actual value of bag amounting to \$ 24.
- f. It was held that the disclaimer clause was binding on P since the railway company had taken all reasonable steps to ensure that the conditions printed on the back were brought to the knowledge of P.
- g. The offer must not contain a term the non-compliance of which may be

Case Laws

Felthouse v Bindley:

- a. A wrote to B – will sell you my horse for Rs. 500. If I do not receive a reply by Sunday next, I shall assume that you have accepted the offer.
- b. B did not reply.
- c. It was held that an offeror cannot impose the burden on the offeree to reply. Acceptance is valid only if it is communicated to the offeror.
- d. Since B had not communicated his acceptance to A, there was no contract between A and B, and therefore A could not sue B.

Offer must be distinguished from Invitation to Offer

An Invitation to Offer is an act before an offer, in which one person induces another person to make an offer to him, it is known as invitation to offer.

The invitation to offer is made to inform the public, the terms and conditions on which a person is interested in entering into a contract with the other party. Although the former party is not an offeror as he is not making an offer instead, he is stimulating people to offer him. Therefore, the acceptance does not amount to a contract, but an offer.

Example:

A prospectus issued by a college for admission to various courses is not an offer. It is only an invitation to offer. A prospective student by filling up an application form attached to the prospectus is making the

Offer must be distinguished from a Declaration of Intention

A declaration or a statement merely indicates that an offer will be made or invited in future.

Example

- (i) Advertisement in a newspaper for sale of an article.
- (ii) Goods are sold in a shop under 'self service' system. Customer selects the goods in the shop and takes them to the cashier for payment of price. Cashier refuses to accept the payment. Held that customer cannot bind the shopkeeper for delivery of goods.

Offer must be distinguished from mere information in the course of negotiation

In **Harvey v. facie**

Facts:

- a. The plaintiffs (Harvey) telegraphed to the defendants (Facie), writing: —Will you sell us Bumper Hall Pen? Telegraph lowest cash price.
- b. The defendants replied also by a telegram, —Lowest price for Bumper Hall Pen £900.
- c. The plaintiffs immediately sent their last telegram stating: —We agree to buy Bumper Hall Pen for £900 asked by you.
- d. The defendants refused to sell the plot of land (Bumper Hall Pen) at that price. The plaintiff's contention that by quoting their minimum price in response to the inquiry, the defendants had made an offer to sell at that price was turned down by the Judicial Committee.

Offer must be distinguished from mere information in the course of negotiation..contd

Their Lordship pointed out that in their first telegram, the plaintiffs had asked two questions, first as to the willingness to sell and second, as to the lowest price. They reserved their answer as to the willingness to sell.

Thus, they had made no offer. The last telegram of the plaintiffs was an offer to buy, but that was never accepted by defendant.

Lapse of an Offer

1. Notice by offeror, i.e. Revocation: Revocation of offer means withdrawal or cancellation of the offer.

An offer can be revoked by the offeror anytime. However, revocation is effective only if it is made before the offer is accepted.

2. Lapse of time: An offer lapses if it is not accepted –

- i. Within the time specified in the offer;
- ii. Within reasonable time, if no time is specified in the offer.

3. Non-fulfillment of condition precedent: If an offer requires fulfillment of some condition before the offer can be accepted, the offer shall lapse if such condition is not fulfilled (deposit of earnest money).

- i. Counter offer: A counter offer results in rejection of the original offer.

Lapse of an Offer

4. Acceptance is not made in prescribed mode: If the offeree accepts the offer in a manner which is different from the manner specified by the offeror, the offeror may refuse to treat such acceptance as valid, and consequently the offer shall lapse.
5. Death or insanity of the offeror or offeree: An offer shall lapse in the following cases:
 - a. Where the offeror dies or becomes insolvent and such fact comes to the knowledge of the offeree before acceptance of the offer.
 - b. Where the offeree dies or becomes insolvent before acceptance of the offer.
6. Rejection by the offeree.: An offer comes to an end if the offeree rejects the offer and communicates his refusal to the offeror.
7. Subsequent illegality etc.: If, after making of an offer, the subject matter of the

Contingent Contract

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Essentials features of a contingent contract

- a. It is a contract to do or not to do something.
- b. This contract is dependent on happening or non-happening of an event.
- c. Such an event is a collateral event, i.e., it is collateral to the contract, i.e., the event must not depend upon the mere will of a party.
- d. The event is uncertain.

Rules regarding Contingent Contracts (Sec 32-36)

Contract contingent upon	When can it be enforced?	When does it become void?
Happening of	When such event has	When the happening of
A makes a contract to buy B's house if A survives C.		
	This contract cannot be enforced by law unless and until C dies in A's	A dies before
A contracts to pay B a sum of money when B marries		
	When B and C marries.	C dies without being married to B. The contract becomes void.
Non- happening	When the happening of	When such event has
	A contracts to pay B a certain sum of money if a certain ship does not return	

A contracts to pay B a sum of money when B marries C

	The ship is sunk. The contract can be enforced when the ship sinks.	When the ship returns.
Happening of an event within a specified time	When such event has happened within the specified	When the happening of such event becomes impossible before the expiry of specified

A promises to pay B a sum of money if a certain ship returns within a year

	The contract may be enforced if the ship returns within the year.	The contract becomes void if the ship is burnt within the year.
Non-happening of an event with- in a fixed time.	When the happening of such event becomes impossible before the expiry of specified time. When such event has not happened within the specified time.	When such event has happened within the specified time.

A promises to pay B a sum of money if a certain ship does not return

	The contract may be enforced if the ship does not return within the year or is burnt within the year.	If ship returns within a year
Future conduct of a living person.	When such person acts in the manner as desired in the contract.	When such person does anything which makes the desired future conduct of such person – a. Impossible; or

A agrees to pay B ` 1,000 if B marries C.

	B and C married.	C marries D. The marriage of B to C must now be considered impossible although it is possible that D may die and C may afterwards marry B
impossible events	Such an agreement cannot be enforced since it is void. Whether the impossibility of the event was known to the parties or not is immaterial.	
	A agrees to pay Rs. 1,000 to B if two straight lines should enclose a space. The agreement is void.	

Performance of Contract

Section 37 to 67 of the Indian Contract Act, 1872 deals with the provisions relating to Performance of Contracts. These provisions are covered below:

Obligations of parties to contract:

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 provision of this Act, or of any other law.

This obligation continues even after death of the promisors and before the performance, unless a contrary intention appears from the contract or where it involves the personal skill of the Promisor.

Note: Merger of Rights-Discharge due to merger of rights-Tenant buying a house.

Types of Contract on the basis of Extent of Execution

(A) Executed Contract

(B) Executory Contract

(C) Partly Executed or Partly Executory Contract

(D) Unilateral Contract

(E) Bilateral Contract

Effect of refusal to accept offer of performance

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:

1. it must be unconditional;
2. it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is been made is able and willing there and then to do the whole of what he is bound by his promise to do;

Effect of refusal to accept offer of performance..contd

3. if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

Here it should be noted that an offer to one of several joint promises has the same legal consequences as an offer to all of them.

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 consent to the continuance of the contract.

Person by whom promises is to be performed

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor.

In other cases, the promisor or his representative may employ a competent person to perform it.

Effect of accepting performance from this person:

Only the Promisor or his representative or his duly authorized agent can perform the promise.

However, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities

When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, the following persons shall fulfil the promise;

- a. all such persons, during their joint lives, and,
- b. after the death of any of them, his representative jointly with the survivor or survivors, and,
- c. after the death of the last survivor the representatives of all jointly

Any one of joint promisors may be compelled to perform.

When two or more persons make a joint promise, the promisee may, in the absence of express agreements to the contrary, compel any one or more of such joint promisors to perform the whole promise.

Devolution of joint liabilities.. contd

Each promisor may compel contribution: Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution: If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation: Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Effect of release of one joint promisor

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

Devolution of joint rights: When a person has made a promise to two or more persons jointly, then unless contrary intention appears from the contract, the right to claim performance rests;

- a. as between him and them, with them during their joint lives, and,
- b. after the death of any one of them, with the representative of such deceased person jointly with the survivor or survivors, and,
- c. after the death of the last survivor, with the representatives of all jointly.

Time for performance of promise, where no application is to be made and no time is specified

Where, by the contract, a promisor is to perform his promise without application by the promisee, and where no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation: The question “what is a reasonable time” is, in each particular case, a question of fact. Time and place for performance of promise, where time is specified and no application to be made

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

Application for performance on certain day to be at proper time and place

When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for the performance at a proper place within the usual hours of business.

Explanation: The question “what is proper time and place” is, in each particular case, a question of fact.

Place for the performance of promise, where no application to be made and no place fixed for performance

When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance

Performance in manner or at time prescribed or sanctioned by promise

The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform

When a contract consists of reciprocal promises to be simultaneously performed, the promisor need not perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Order of performance of reciprocal promises

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order, and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of transaction requires.

Liability of party preventing event on which contract is to take effect

When a contract contains reciprocal promises and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Effect of default as to the promise which should be performed, in contract consisting of reciprocal Promises:

When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the

Effect of failure to perform at fixed time, in contract in which time is essential

When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before a specified time and fails to do such thing at or before a specified time, and fails to do such thing at or before a specified time, the contract or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract.

- 1. Effect of such failure when time is not essential :** If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by

Effect of failure to perform at fixed time, in contract in which time is essential

- 2. Effect of acceptance of performance at time other than agreed upon:** If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agree, the promisee cannot claim compensation of any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he give notice to the promisor of his intention to do so.

Agreement to do an impossible Act

An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful. Where one person has promised to do something which he knew or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Reciprocal promise to do things legal, and also other things illegal

Where persons reciprocally promise, firstly to do certain things which are legal, and, secondly under specified circumstances, to do certain other things which are illegal, the first set of promise is a contract, but the second is a void agreement.

Alternative promise, one branch being illegal

In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Application of payment where debt to be discharged is indicated

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

Application of payment where debt to be discharged is not indicated

Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits.

Application of payment where neither party appropriates

Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionally.

Effect of novation, rescission, and alteration of contract

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.

Exception: Surrender

Promise may dispense with or remit performance of promise

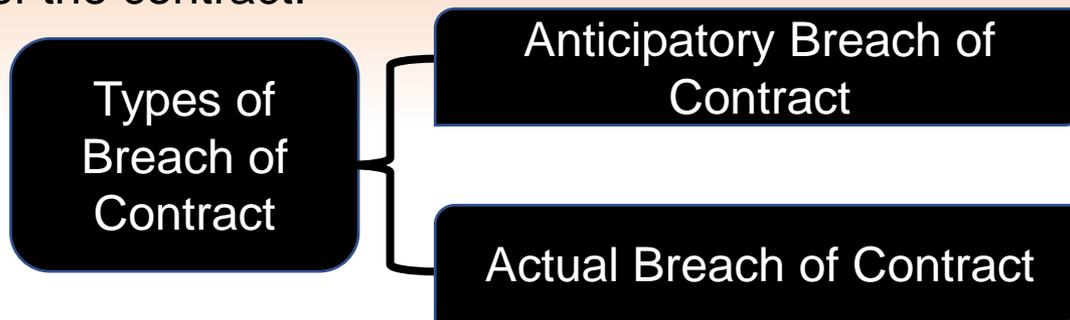
Every promise may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Consequence of rescission of voidable contract

When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract restore such benefit, so far as may be, to the person from whom it was received.

Breach of Contract

Section 64: If one of the parties to a contract refuses or fails to carry out agreed obligation, the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.



Anticipatory Breach of contract:

1. When a party refuses to perform the contract before the time fixed for its performance
2. When a party by his own act disables himself from performing the contract in its entirety e.g. A contracts to sell car to B. Before the agreed date, A sells car to C.

Anticipatory Breach of Contract

There may exist two situations for promise:

1. Promisee may put an end to the contract and treat anticipatory breach as actual breach of contract.
2. Promisee may wait till due date.

Consequences:

1. Promisee is excused from his performance.
2. He need not wait till due date of performance before suing the promisor for breach of contract.
3. Amount of damages= Price on date of refusal to perform (–) Contract price
4. Promisee may elect to keep the contract alive till the date of performance.



To be
continued

Anticipatory Breach of Contract

Consequences:

1. If promisor elects to perform on due date, promisee is bound to accept the performance.
2. If during the time the contract remains open and some event happens which discharges the contract by supervening impossibility or illegality, the contract will become void. Promisor will be discharged from his liability. Promisee will have no right of action against the promisor.
3. Amount of damage = Price prevailing on the date of performance
(-) Contract Price

Actual Breach of Contract

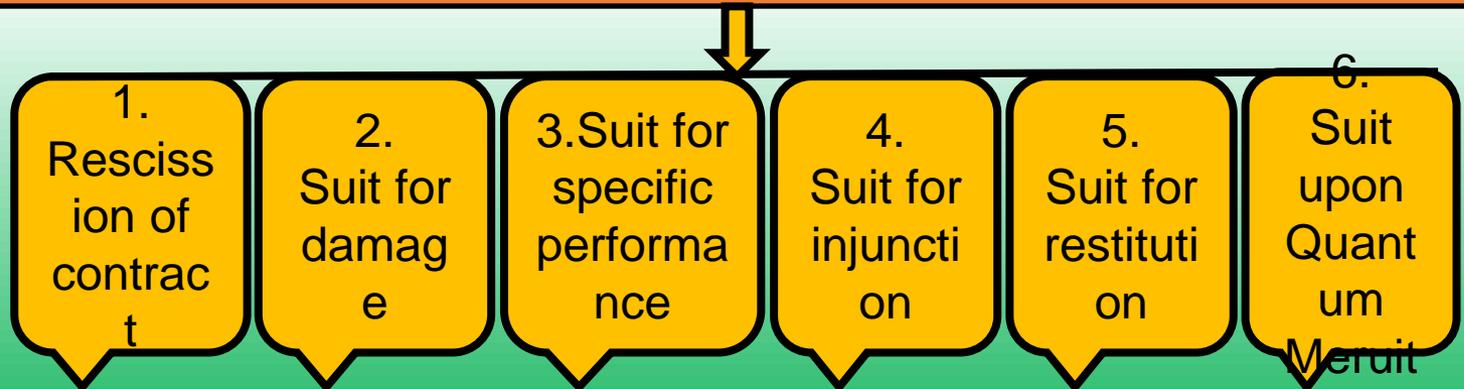
1. It is a case of refusal to perform the promise on the scheduled date or during the performance.
2. The parties to a lawful contract are bound to perform their respective promises.
3. But when one of the parties breaks the contract by refusing to perform his promise, he is said to have committed a breach.
4. In that case, the other party to the contract obtains a right of action against the one who has refused to perform his promise.

E.g.: On May 1, a seller S contracts to deliver chairs to railway company in instalment. After few instalments, the delivery was stopped. This is actual breach of contract during performance by S and B can claim damages for breach.

Effect of Actual Breach

- I. When one party commits breach of contract, the aggrieved party can rescind the contract and can sue for damages.
- II. When time is the essence of contract, the aggrieved party can rescind the contract and can claim damages.
- III. When time is not the essence of contract, the aggrieved party cannot rescind the contract, but he can claim damages caused by delayed performance.

The remedies available for a breach of contract



To be continued

Rescission of contract

- i. It means a right not to perform the contract.
- ii. When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance.
- iii. In such a case, he is absolved or discharged from all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.

E.g.: A promises B to deliver 50 bags of cement on a certain day. B agrees to pay the amount on receipt of the goods. A failed to deliver the cement on the appointed day. B is discharged from his liability to pay

Damages may be awarded in case of Breach of Contract under the Law of Contract

- i. Damages may be defined as monetary compensation in respect of loss suffered as a result of breach.
- ii. Breach of contract entitles the injured party to file a suit for damages, which are the monetary compensation awarded to a person by the court.

Section 73: Purpose of the law to award damages is:

- i. To put the aggrieved party in the same financial position he would have, had the contract been performed.
- ii. not to punish a defaulting party but by his wrongful act, as the other party has suffered loss, the Court will compel the party in breach to compensate the loss by paying damages to the other party.

Types of Damages

1. **Compensatory damages:** These damages are compensatory in nature. These damages are not allotted to punish the party who has breached the contract.

2. **General damages / Liability for ordinary damages:**
 - i. These damages arise in the ordinary course of events from the breach of contract.
 - ii. These damages constitute the direct loss suffered by the injured party.
 - iii. These damages are the natural outcome of breach of contract.
 - iv. The measure of ordinary damages is the difference between the contract price and the market price on the date of the breach.

To be
continued

Types of Damages

General damages / Liability for ordinary damages:

E.g.: If the subject matter of the contract is the sale of a car and the contract is breached by the buyer, the seller has incurred damages by not collecting the purchase price. If seller breaches, buyer has sustained damages by not getting the car.

Thus general damages are related to the direct consequences and not to the indirect losses or consequences of the breach of contract.

3. Special damages / Liability for special damages:

- i. Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach, but also for special damages.



Types of Damages

- ii. Such damages are awarded by the court only when, at the time of making the contract, these special circumstances were communicated to the defaulted party.
- iii. A compensation can also be claimed for any loss or damage which the party knew when they entered into the contract, as likely to result from the breach. That is to say, special damage can be claimed only on a previous notice

Example: A contracted with B to buy 1000 tons of Iron @ Rs.80 per ton, and told him that he needs it by June 5 to deliver it to Z to make a profit out of it. B fails to deliver the same by June 5 and A claims loss of profits from B amounting to Rs.20,000 (which he would have earned by selling 1000 tons of Iron @ Rs.100 per ton to Z).

To be
continued

Types of Damages

4. Nominal damages

- i. Sometimes, a person brings a legal action for breach of contract and proves that breach has actually occurred but he has not in fact suffered any real damage and fails to prove that any actual damages have been suffered. In such a situation, injured party is awarded nominal damages.
- ii. Such damages are awarded simply to recognize the right of the injured party to claim damages, and are of very small amount. It is awarded just to establish the right to decree for the breach of contract. The amount may be a rupee or even 10 paise.

Example: A contracted to purchase 'LML Scooter' from B, a dealer, for Rs.25,000. But A failed to purchase the Scooter. However, B could sell the Scooter to Z for Rs.25,000 i.e. without any loss or profit. Here if B ... continued

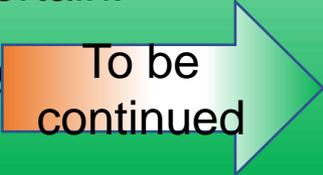
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Types of Damages

5. Liquidated damages and penalty:

- i. Sometimes the contracting parties may agree to pay certain sum of money in case of breach of contract by either party.
- ii. The sum so specified is the maximum amount aggrieved party can claim as compensation subject to discretion of Court.
- iii. It is not necessary to prove that actual damages have been caused or not.
- iv. It may be termed as either 'liquidated damages' or 'penalty' depending upon the purpose to fix the sum.
- v. At the time contract is entered into, it appears that if contract is breached, damage will occur. But amount of damage is uncertain. Parties agree upon the amount that will be paid by defaulting to other.



To be
continued

Types of Damages

5. Liquidated damages and penalty:

- vi. If sum so specified is reasonable and fair pre-estimate of damage likely to result due to breach, it is called “**Liquidated** damages.”
- vii. If sum so specified is extravagant and unconscionable as compared to the greatest possible loss conceivable then it is “penalty.
- viii. The purpose of fixing a sum as ‘liquidated damages’ is to compensate the injured party for the loss to be incurred by the breach of the other party. Thus it is an estimate of the loss to be caused by non-performance of the contract.
- ix. The purpose of providing a ‘penalty’ in a contract is to discourage a party from breaching it and to provide a special punishment contract is breached any way. Thus it is a sum which has no relation



Types of Damages

5. Liquidated damages and penalty:

- x. But the sum named in the contract is not awarded as damages. It is left to the court to ascertain the actual loss. However it does not exceed the sum named in the contract.

The courts in India allow only reasonable compensation not exceeding the specified sum (Sec. 74). Penalty is also allowed in appropriate circumstances.

Under English law, liquidated damages are enforceable but not penalty.

Example: A agreed to sell his house to B for Rs.1,05,000. It is further provided that on the breach of contract, the defaulting party will pay Rs.10,000 as damages to the other. B has broken the contract and A resold the house for Rs.1,04,000. A sued B and claimed Rs.10,000. It was held that A cannot recover Rs.10,000 as liquidated damages or penalty. He could only get the



To be
continued

Types of Damages

5. Liquidated damages and penalty:

Exception: The whole amount mentioned in bond is payable if bond is executed for bail bonds.

Stipulation for interest: (Sec74)		
Interest rate	Period for which it is to be paid	Liquidated damages/ penalty
Reasonable	Default period	Liquidated Damages
Abnormally high	Rate increased from the date of default	Penalty
High	From the date of bond and not from date of default	Penalty
Reasonable	Reduced if paid interest regularly	Penalty
High	From the date of default	Penalty
Compound Interest (Interest on interest)		

To be continued

Types of Damages

5. Liquidated damages and penalty:

Stipulation for interest: (Sec74)		
At the same rate as simple interest	<ul style="list-style-type: none"> A stipulation in a bond for payment of compound interest on failure to pay simple interest at the same rate as payable upon the principal is not a penalty. 	
At the rate higher than simple interest	<ul style="list-style-type: none"> A stipulation in a bond for payment of compound interest at a rate higher than that of simple interest is a penalty and relief will be granted against it. 	
Payment of interest at a lower rate if interest is paid on due date:	<ul style="list-style-type: none"> Where a bond provides for payment of interest say, at 24% p.a., with a provision that if the debtor pays interest punctually at the end of every year, the creditor would accept 	<div data-bbox="1599 1253 1922 1428"> <p>To be continued</p> </div>

Types of Damages

6. Vindictive or exemplary damages:

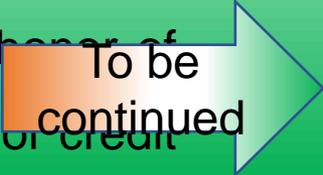
- i. Sometimes breach of contract by one party not only results in monetary loss to the injured party but also cause him to suffer mental agony/emotional trauma or hurt his respect.
- ii. In such cases monetary compensation alone cannot provide an appropriate remedy to the sufferings of the injured party.
- iii. Thus the need for vindictive damages arises.
- iv. Vindictive damages are awarded as a punishment to the wrong doer. Such damages are unusual and quite heavy in amount. The concept is borrowed from the English Law. Generally speaking, these damages are not awarded in the ordinary course of breach of contract.

To be
continued

Types of Damages

However, in the following two kinds of contracts Indian courts award vindictive damages / These damages may be awarded only in two cases, viz

- i. for breach of promise to marry; and
- ii. wrongful dishonor by a banker of his customer's cheque:
 - a. Breach of promise to marry: In this case the amount of damages will depend upon the extent of injury to the party's feelings
 - b. Wrongful dishonor by a banker of his customer's cheque: Where a banker refuses to honor the cheque of a customer while having sufficient funds in the account and the customer thereby suffers loss of reputation. The amount of damages recoverable by the drawer of cheque from his banker in case of wrongful dishonor of his cheque may be quite heavy, depending upon the loss of credit



To be
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Types of Damages

7. Damages for deterioration caused by delay:

- i. In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice.
- ii. The word 'deterioration' not only implies physical damages to the goods but it may also mean loss of special opportunity for sale.

Wilson's case: "A" bought velvet to make caps to be sold in spring season. But delivery was delayed in transit. It arrived after season.

Damage for deterioration = fall in value of velvet + loss of opportunity to sale.



Types of Damages

8. Remote or indirect damages:

- i. The remote or indirect damages are not due to natural and probable consequences of the breach of the contract, i.e., these are the damages which arise indirectly from the breach.
- ii. These damages are not in contemplation of the parties at the time of making the contract, and are not recoverable. No compensation is payable for any remote or indirect loss.
- iii. Sometimes, damages are awarded for inconvenience and discomfort e.g. in flights—for delay or inconvenience to

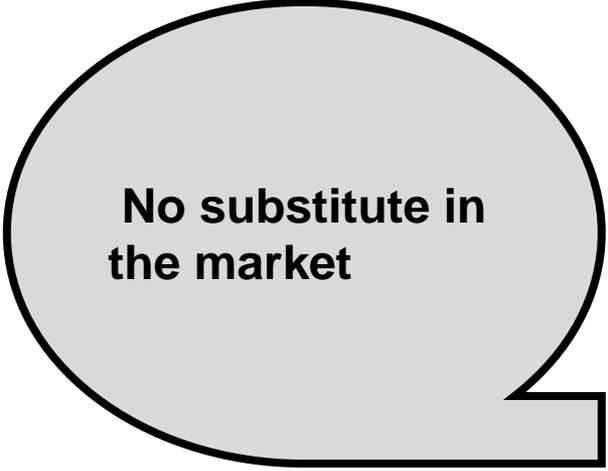
How to Calculate the Damages

- i. Under a contract for the sale of goods, the measure of damages, when the buyer breaks the contract, is the difference between the contract price and the market price at the date of breach.
- ii. If the contract is broken by the seller, the buyer is entitled to recover from the seller the difference between the market price and the contract price at the date of breach.
- iii. duty to mitigate the loss: The party who suffers in consequence of the breach of contract must take all reasonable steps to mitigate the loss/minimize the loss from such a breach. He cannot claim as

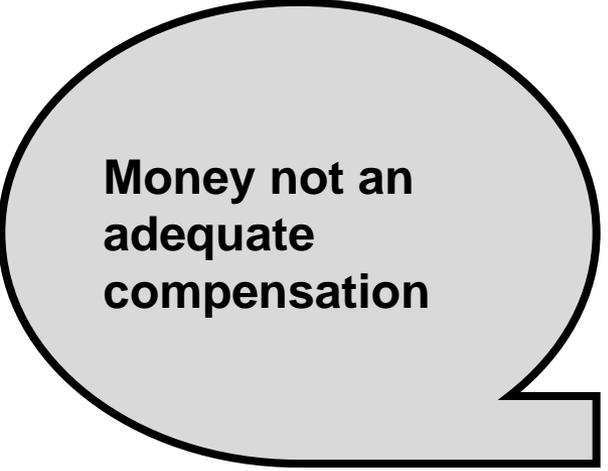
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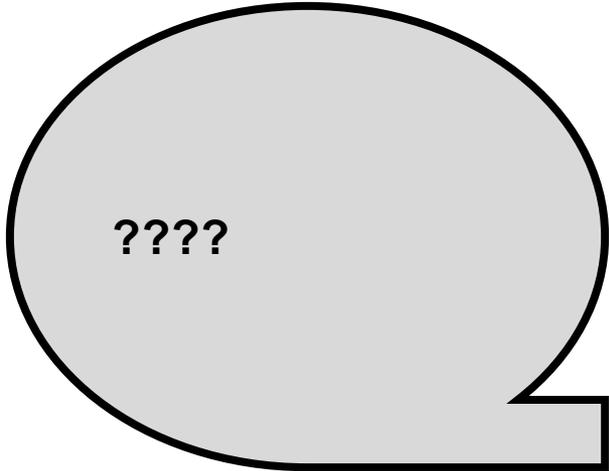
Suit for Specific Performance



**No substitute in
the market**



**Money not an
adequate
compensation**



????

Quantum meruit and Restitution

Quantum Meruit:

- i. The phrase 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done".
- ii. When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract.
- iii. He may also recover the value of the work done where the further performance of the contract becomes impossible.
- iv. The claim on quantum meruit must be brought by a party who is not at default. However, in certain cases, the party in default may also sue for the work done if the contract is divisible.



Quantum meruit and Restitution

Following are the cases in which a claim or quantum meruit may arise:

- a. Where an agreement is discovered to be void: Where the work has been done and accepted under a contract which is subsequently discovered to be void, in such a case, the person who has performed the part of the contract is entitled to recover the amount for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party.

- b. Where something is done or delivered without intention to do gratuitously: Where a person does some act or delivers something to another person with the intention of receiving payments for the same (i.e. non-gratuitous act), in such a case, the other person is bound to make payment if he accepts such services or goods, or enjoys their benefit.

Quantum meruit and Restitution

C. Where the contract is divisible: The compensation for the work done may be recovered on the basis of quantum meruit, where the contract is divisible and a party performs part of the contract and refuses to perform the remaining part. In such a case, the party in default may sue the other party who has enjoyed the benefits of the part performance.

Examples:

1. X wrongfully revoked Y's (his agent) authority before Y could complete his duties. Held, Y could recover, as a quantum meruit, for the work he had done and the expenses he had incurred in the course of his duties as an agent.
2. A agrees to deliver 100 bales of cottons to B at a price of Rs. 100 per bale. The cotton bales were to be delivered in two installments of 50 each. A delivered the first instalment but failed to supply the second. B must pay

Restitution

The term 'restitution' may be defined as an act of restoring back to the rightful owner, that which has been taken away or lost.

Generalizations based upon the doctrine of 'Quantum meruit' & 'Restitution':

Considering the doctrine of 'Quantum Meruit' and 'Restitution' under different circumstances, following generalizations can be made:

Breach of contract: When there is a breach of contract, not only the injured party, but the defaulting party is also entitled to

To be continued

Restitution

Suit by a party who has not breached: When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract.

Example: P was engaged by C to write a book to be published by installments in a weekly magazine owned by C. After a few installments were published, the magazine was abandoned. The court held that P could recover for the installments already published on the basis of Quantum Meruit.

Void contract: 'When an agreement is discovered to be void or when a



Restitution

No contract: Sec. 70 of the Contract Act says that when services are rendered or goods are supplied to a person without any intention to do so gratuitously, and benefit of the same is enjoyed by the other person, the latter must compensate the former. This compensation may be by way of 'Quantum Meruit' or 'Restitution' or both.

Example : A doctor provides emergency medical attention to someone who is unconscious. There is no express contract at all. But doctor would be able to recover in quasi-contract, a reasonable value of his services.

The essence of a legal action based on quasi contract and the remedy of

'Quantum Meruit' and 'Restitution' is to prevent the enrichment of one

Stipulation for interest: (Sec74)

Basis of distinction	ordinary damages	Liquidated damages
meaning	Ordinary damages means the damages which are fairly and reasonably considered as arising naturally from breach of a contract.	Liquidated damages are the amount of fair and genuine pre-estimate of probable damages which are likely to result from breach of a contract
nature of loss	Ordinary damages arise only on actual breach of contract.	Liquidated damages are the amount of probable loss in the opinion of the parties that may result from the breach of contract.
Time of calculation	These are calculated only when actual damages are suffered	It is calculated before actual damages are suffered
Amount	These are actual amount of damages which injured party is entitled to claim.	These are estimated maximum amount of damages with in which

Obligation of person who has received advantage under void agreement, or contract that becomes void:

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

Mode of communicating or revoking rescission of voidable contract:

The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to some rules, as apply to the communication or revocation of the proposal.

Effect of neglect or promise to afford promisor reasonable facilities for performance:

If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or

Contract of Agency (Section 182)

Agent: An **agent** is a person employed

- i. to do any act for other or
- ii. to represent another in the dealings with the third persons.

The person for whom such act is done, or who is so represented, is called “**principal**”.

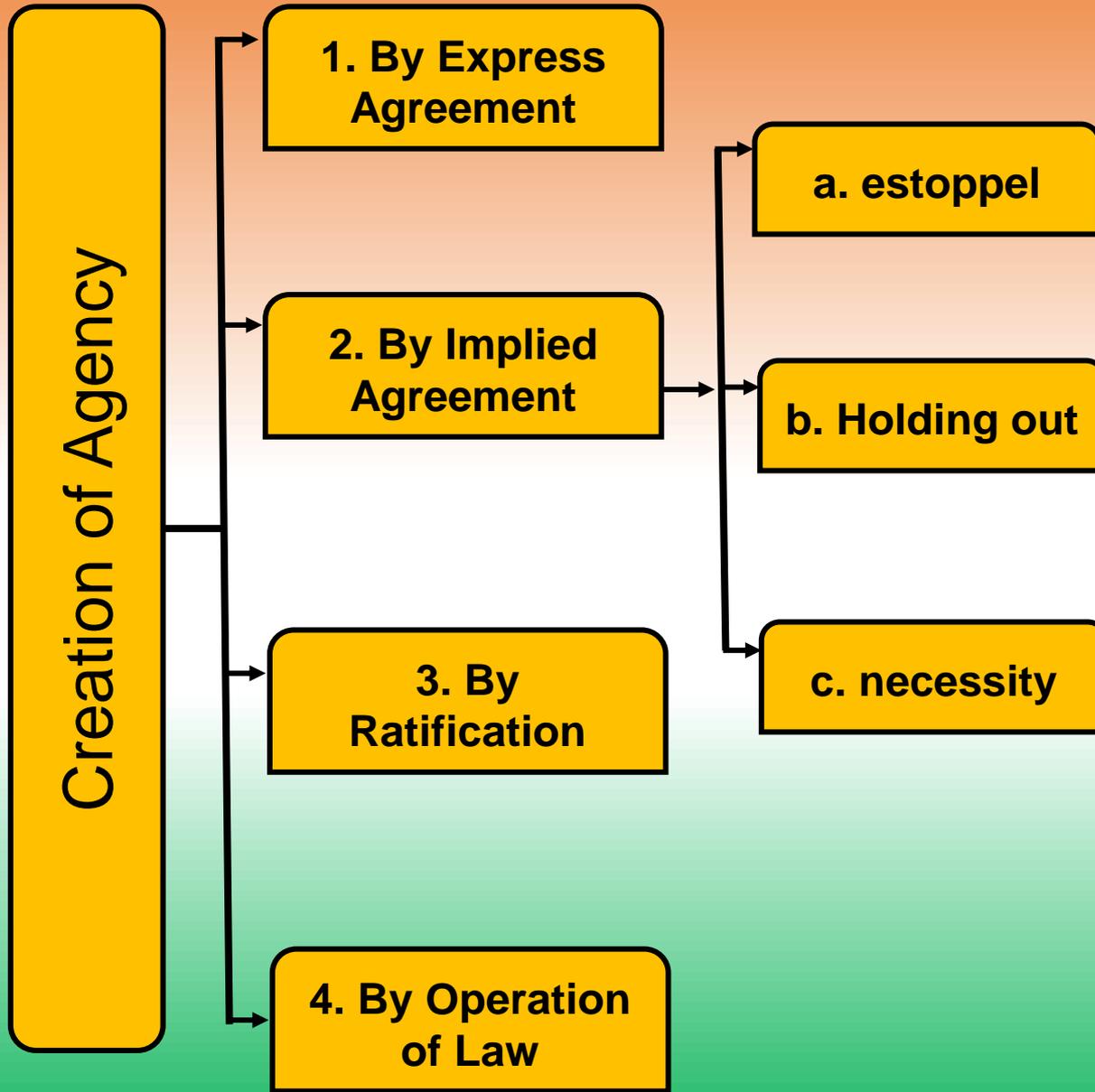
The function of an agent is essentially to bring about contractual relationship between the principal and third parties.

Test of Agency:

Where a person has the capacity to –

- i. Create contractual relations between the principal and a third party;
- ii. Bind the principal by his own acts,

There exists a relationship of agency.



Essentials of relationship of Agency

Agreement

- i. Agency depends on agreement but not necessarily on contract.
- ii. It may arise out of an agreement which does not amount to a contract because one of the parties may lack contractual capacity, or there may be no consideration.

1. Principal is liable for the acts of agent

- i. The principal is liable for all the acts of an agent which are lawful and within the scope of agent's authority.
- ii. The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself.

Who may be an Agent?

Any person may employ an agent if:

i. He is of the age of majority and is not



Essentials of relationship of Agency

Who can be an agent?

- i. As between the principal and the third persons, any person may become an agent. (Sec. 184)
- ii. This leads to conclude that an agent may be a person who is not competent to the contract.
- iii. The principal is liable for the acts of such an agent;
- iv. Capacity to contract is not essential to enable a person to act as an agent.

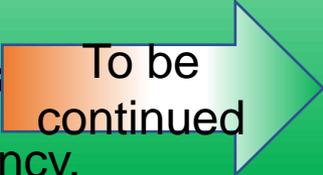
Liability of Agent:

- i. Generally an agent is liable to the principal
- ii. An agent is not liable to the principal if he is a minor or is of unsound mind.

Requirement of consideration

- i. No consideration is necessary to create an agency (Sec. 185).
- ii. The fact that the principal has agreed to be represented by the agent is sufficient 'detriment' to the principal to support the contract of agency.

To be
continued



Essentials of relationship of Agency

Kinds of Agents

1. Mercantile Agents

- i. One who is authorized to sell goods or consign goods for the purpose of sale or to buy goods or to raise money on the security of goods.
- ii. Includes Banker, Factor, Auctioneer, Broker, Commission Agent, & Del Credere Agent

2. non – mercantile Agents

Not engaged in business of selling or buying goods, but act in their respective professional capacities. i.e. render professional services for their Principal and Includes Solicitors, Attorneys, C & F Agents, Insurance

Rights and Liabilities of the agent, the Principal and third parties

1. Position of Principal

The principal is bound by all the acts of the agent done within the scope of his actual authority (Sec. 238).

2. Position of an agent

- i. When an act is done by the agent, in the course of his employment as an agent and within the scope of his authority, the agent is liable neither to the principal nor to the third parties.
- ii. He has a right to claim remuneration from the principal in respects of such acts.
 - a. Where the agent acts for unnamed principal:
 - i. Where the agent discloses that he is acting for an unnamed principal, In such a case, the agent is not personally liable on

Rights and Liabilities of the agent, the Principal and third parties

- ii. It is however essential that the unnamed principal exists when the agent enters into a contract with third party.
- b. When the agent acts for an undisclosed principal:
 - i. Sometimes, an agent enters into a contract with third person without disclosing at all the fact of agency.
 - ii. He not only conceals the name of the principal but also the fact that he is an agent.
 - iii. This gives rise to the doctrine of undisclosed principal.
 - iv. The agent in such a case gives impression to the third party as if he is contracting in an independent capacity.

Rights and Liabilities of the agent, the Principal and third parties

3. Position of third parties :As regards third parties, they can enforce the rights arising out of the contract entered into by the agent on the behalf of the principal only against the principal provided the agent:
 - i. Acted within the scope of his authority
 - ii. Did not incur any personal liability
 - iii. Disclosed the facts of agency to the third parties.

Sub-Agent: “A sub-agent is a person employed by, and acting under the control of the original agent in the business of the agency” (Sec. 191)

Section 190: General Rule: “An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally unless by the ordinary custom of trade a sub agent may, or from the nature of the agency a sub-agent must be employed ”

Rights and Liabilities of the agent, the Principal and third parties

Exceptions: There are exceptions to the general rule as laid down in Sec.

190:

- i. The custom of the trade may permit the appointment of a sub-agent.
- ii. The nature of the agency may be such that a sub agent may be necessary.
- iii. Where the principal is aware of the intention of the agent to delegate his authority but does not object to it.
- iv. Where the unforeseen emergencies arise rendering the appointment of the sub-agent necessary.
- v. Where the act to be done is purely ministerial not involving the confidence or discretion.
- vi. Where the power of the agent to delegate can be inferred from the conduct of both the principal and the agent.

Relationship between the Principal and Sub-Agent

The legal relation between the principal and the sub-agent depends upon this critical question, i.e. whether the appointment of the sub-agent is proper or improper.

1. Where the appointment of sub-agent is proper

- i. Where a sub-agent is properly appointed, the principal is bound by the acts of the sub-agent as if he was an agent originally appointed by the principal.
- ii. The agent is responsible to the principal for the acts of the sub-agent.
- iii. The sub-agent is responsible for his acts to the agent, but not to the principal except in the case of fraud or willful neglect. (Sec. 192.)

2. Where the appointment is improper.

- i. Where an agent, without having authority to do so, has appointed a sub agent. the agent is responsible for the acts of the sub-agent to

2. Where the appointment is improper.

- i. Where an agent, without having authority to do so, has appointed a sub agent, the agent is responsible for the acts of the sub-agent to the principal and the third parties.
- ii. The principal in such case, is not represented by or responsible for the acts of the sub-agent, nor is the sub-agent responsible to the principal. (Sec. 193)

Substituted Agent: A substituted agent is a person who is named by the agent holding an express or implied authority from the principal, to act for the principal. in other words, he is the agent of the principal though he is named, at the request of the principal, by the agent. (Sec. 194)

example: A directs B, his solicitor, to sell his estate by auction and employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub agent, but is A's agent for the conduct of sale.

Personal Liability of an Agent

The general rule is that only the principal can enforce and can be held liable on a contract entered into by the agent except where there is a contract to the contrary. (Sec. 230)

An agent is personally liable in the following cases:

1. When the contract expressly provides. A person while entering into a contract with the agent may expressly stipulate that he would hold the agent personally liable in the case of the breach of the contract.
2. When the agent acts for foreign principal. When the contract is made by an agent for the sale or the purchase the goods for a merchant residing abroad, the agent will be personally liable. (Sec. 230)
3. When the agent acts for a concealed principal. Where an agent acts for a concealed principal, he would be personally liable, though the principal, on being discovered by the third person, will also be liable.



Personal Liability of an Agent

4. Where the agent acts for the principal who cannot be sued. Where the principal is incompetent to enter into a valid contract, e.g. where a principal is minor, the agent will be personally liable as the credit shall be presumed to have been given to the agent and not to the principal.
5. Where an agent acts for a principal not in existence. The promoters of a company (yet to be incorporated) sometimes enter contracts on the behalf of the company, though in such a case the alleged principal (the company) has no legal existence till the time of incorporation. In such case the agent is held to have contracted on his own account.
6. Where an agent is liable for the breach of the warranty. Where an agent professes to act as an agent but has no authority from the alleged principal or exceeds his authority, he is personally liable for the breach of the warranty.



Personal Liability of an Agent

8. Where the agent receives or pays money by mistake or fraud. Where an agent receives from, or pays money to, a third party by mistake or fraud, he will be personally liable to the third party.
9. Where the authority of the agent coupled with interest. Where an agent has an interest in the subject matter of the contract entered into by him with a third party, his authority is coupled with the interest. He has, in such case, the right to sue or be sued, but only to the extent of his interest.
10. Where the trade usage or custom makes agent personally liable. Where there is a trade usage or custom making the agent personally liable, he will be so liable unless there is a contract to the contrary.
11. Where an agent signs the negotiable instrument in his own name without mentioning that he is signing as an agent.
12. Where the agent acts for the pretended principal and that principal refuses to ratify the agents' act

Agency Coupled with interest

- i. When an agency is created for securing certain benefits to the agent over and above his remuneration as an agent, it is called as agency coupled with interest.
- ii. The interest should exist at the time of creation of the agency.
- iii. The agency coupled with the interest can't be terminated even on the death or the insanity of the principal. Thus such agency is irrevocable up to the extent of such interest.

Example. A owes Rs.500 to B and appoints him as his agent to sell his goods and pay him (B) the debt out of the sale proceeds. The authority of

Irrevocable Agency

When an agency cannot be terminated or put an end to, it is said to be an irrevocable agency in following cases:

1. Where the agency is coupled with interest.

Where an agent has an interest in the subject matter of the contract entered into by him with a third party, his authority is coupled with the interest. He has, in such case, the right to sue or be sued, but only to the extent of his interest. (sec 202)

2. Where the agent has incurred a personal liability.

When an agent incurs personal liability, the agency becomes irrevocable. The principal cannot, in such case, withdraw leaving the agent exposed to the risk or liability he has already incurred.

3. Where the agent has partly exercised the authority

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 arise

Termination

1. Termination by act of the parties Agreement:

- i. The relation of the principal and the agent is generally founded on the mutual consent. It may be brought to an end by the same process with the originated it. i.e. by agreement.
- ii. The agency can be terminated at any time and at any stage by the mutual agreement between the principal and the agent.

Revocation by the principal:

- i. An agency may be terminated by the principal at any time by giving a notice to the agent. (Sec. 203).
- ii. If the agent is appointed to do a single act, the authority may be terminated at any time before the act actually begun, the agency can only be terminated subject to any claim which the agent may have for the breach of the contract. (Sec. 204).

Termination

- iii. The revocation may be expressed or implied.
- iv. However when the agency is coupled with the interest the principal can't revoke the agency to the extent of such interest.
- v. Moreover if the agent has already partly exercised his authority then also the agency can't be terminated.

Revocation by agent:

- i. An agency may be terminated by an express renunciation on the part of the agent after giving a reasonable notice to the principal. (Sec. 203).
- ii. Where the agency is for a fixed period, and the agent renounce it without a sufficient cause, he shall have to compensate the principal for any loss.
- iii. Renunciation may be expressed or implied.

Termination

2. Termination by operation of law

Performance of the contract: The most obvious mode of putting an end to the agency is to do what agent has undertaken to do (Sec. 201). Where, therefore, the agency is for particular object, it is terminated when the object is accomplished or when the accomplishment of the object becomes impossible.

expiry of time: Where the agent is appointed for a fixed period of time, it comes to an end after the expiry of that time even if the work is not completed.

death: When the death of the agent or principal takes place, the agency is terminated. When such termination takes place by the death of the principal, the agent must take all responsible steps for the protection of the interests of the principal entrusted to him.



Termination

Insanity: An agency comes to an end when the principal or agent becomes of unsound mind. (Sec. 209)]

Insolvency: The insolvency of the principal puts an end to the agency though nothing is mentioned in Sec. 201 as regards insolvency of the agent. The insolvency of the agent, if accepted, also terminates the agency.

Destruction of the subject matter: An agency which is created to deal with a certain subject matter will come to an end by the destruction of the subject matter.

Principal becoming alien enemy: Where the agent and the principal are aliens the contract of agency is valid so long as the two countries are at peace. If war breaks out between the two countries, the contract of agency is terminated.

Termination by sub-agent's authority: The termination of an agent's authority puts an end to the sub-agent's authority also. (Sec. 210)

Irrevocable Agency

When an agency cannot be terminated or put an end to, it is said to be an irrevocable agency in following cases:

Where the agency is coupled with interest:

Where an agent has an interest in the subject matter of the contract entered into by him with a third party, his authority is coupled with the interest. He has, in such case, the right to sue or be sued, but only to the extent of his interest. (sec 202)

Where the agent has incurred a personal liability:

When an agent incurs personal liability, the agency becomes irrevocable. The principal cannot, in such case, withdraw leaving the agent exposed to the risk or liability he has already incurred.

Where the agent has partly exercised the authority:

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 arise

SUMMARY

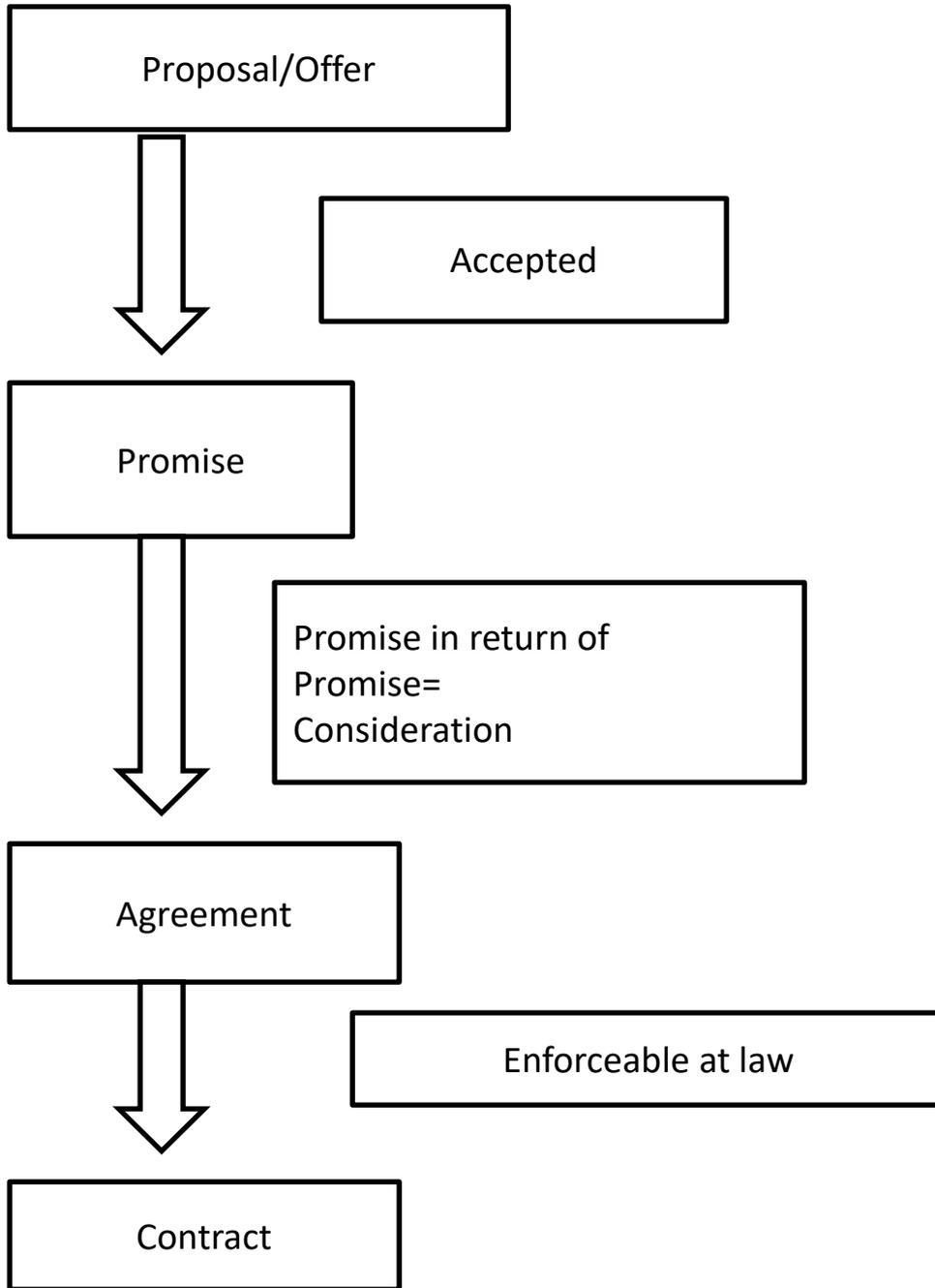
- ❑ Agreement such as relating to Social matters, domestic arrangements between husband and wife, to do illegal/unlawful/immoral act i.e. smuggling and declared specifically void one not contracts.
- ❑ Pricing of securities offered on preferential basis need not be determined by Registered Valuer in case of listed company.
- ❑ Pricing of securities offered on preferential basis is finally determined by the company on the basis of report of Registered Valuer
- ❑ An Agreement is a promise or a commitment or set of reciprocal promises or commitments. An agreement involves an offer or proposal by one person and acceptance of such offer or proposal by another person.

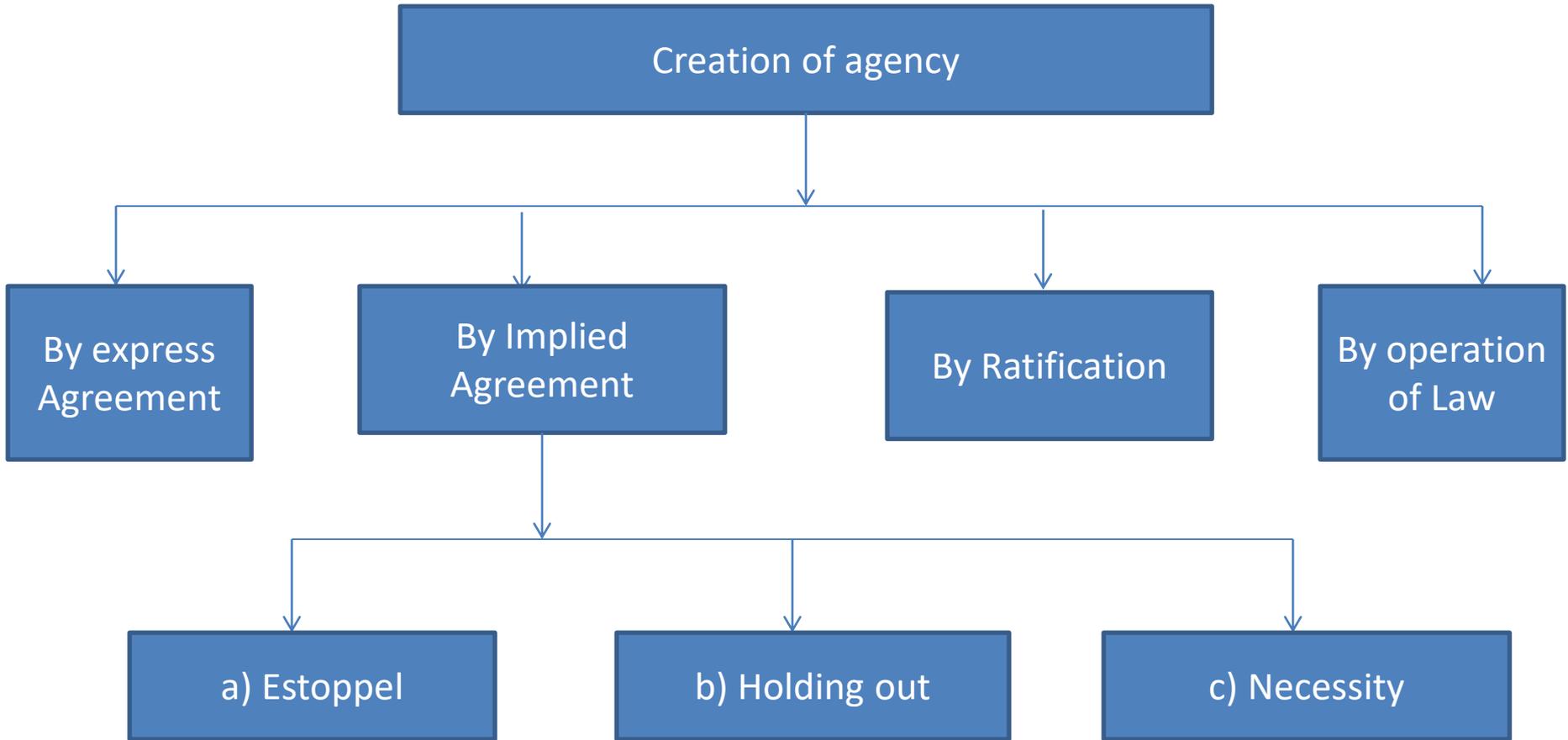
SUMMARY

- ❑ All agreements are contracts 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 hereby expressly declared to be void.
- ❑ When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.
- ❑ A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.
- ❑ 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 provision of this Act, or of any other law.

SUMMARY

- ❑ This obligation continues even after death of the promisors and before the performance, unless a contrary intention appears from the contract or where it involves the personal skill of the Promisor.
- ❑ Section 64: If one of the parties to a contract refuses or fails to carry out agreed obligation, the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.
- ❑ The phrase 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done".





The Indian Contract Act, 1872

(Sections 1 to 75 and 124 to 238)

- ❖ Extends to Whole of India except the state of Jammu and kashmir
- ❖ Deals with the matters relating to the contract
- ❖ Enacted on 25th April, 1872 ,came into force w.e.f. 1st september, 1872
- ❖ When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.
- ❖ The person making the proposal is called the Promisor and the person accepting the proposal is called Promisee
- ❖ When at the desire of the promisor, the promisee or any other person has done or abstained for doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a Consideration for the promise
- ❖ Every promise and every set of promise, forming the consideration for each other, is called an Agreement

- ❖ An agreement entered into with a minor is Void.
- ❖ Where a minor enters into a contract for purchase of necessary items, In such cases the minor is not personally liable
- ❖ 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 judgement as to its effect upon his interest
- ❖ Two or more persons are said to consent when they agree upon the same thing in the same sense.
- ❖ Consent is said to be free when it is not caused by Undue influence
- ❖ Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal code, 1860 or the unlawful detaining, or threatening to detain, any property, to the prejudice of any persons whatever, with the intention of causing any persons to enter into an agreement
- ❖ A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other
- ❖ A being in debt to B, the money lender of his village, contracts a fresh loan on terms which appear to be unconscionable say interest @ 5% per month. This will be termed as Undue influence

- ❖ An agreement not enforceable by law is said to be Void
- ❖ An agreement enforceable by law is Contract
- ❖ An agreement which is enforceable by law at the option of one or other is a voidable contract
- ❖ A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable
- ❖ Communication of a proposal is complete when it comes to the knowledge of the persons 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.
- ❖ An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards
- ❖ In order to convert a proposal into a promise, the acceptance must:
 - Be absolute and unqualified
 - Be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted

Sections (10 to 30)

- ❖ 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

- ❖ When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract Voidable at the option of the party whose consent was so caused.
- ❖ If the consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence
- ❖ A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract Voidable
- ❖ When consent to an agreement is caused by undue influence, the agreement is a contract Voidable at the option of the party whose consent was so caused
- ❖ Where both the parties to any agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void
- ❖ An erroneous opinion as to the value of the things which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact
- ❖ A contract is not voidable because it was caused by a mistake as to any law in force in India; but mistake as to a law not in force in India has the same effect as a mistake of fact

- ❖ A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian law of limitations-The contract is not voidable
- ❖ A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to **A mistake of fact**
- ❖ The consideration or object of an agreement is lawful, unless:
 - It is forbidden by law or is of such a nature that, if premitted, it would defeat the provision of any law
 - Is fraudulent or involves or implies injury to the person or property of another
 - The court regards it as immoral, or opposed to public policy
- ❖ If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful **The agreement is void**

- ❖ No consideration is required if:
 - It is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other
 - 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.

- ❖ The consideration may be **Past, present and future**
- ❖ The consideration **Need not be adequate**
- ❖ An agreement in restraint of the marriage of a major person is **Void**
- ❖ The agreements which are in restraint of trade are **Void**
- ❖ Every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights is **Void**

Sections (31 to 36)

- ❖ A 'contingent contract' is a contract to do or not to do something, if some event collateral to such contract:
 - Does or does not happen
- ❖ Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law:
 - Unless and until that event has happened

- ❖ If the event becomes impossible, such contract becomes **Void**
- ❖ A wagering contract is **Void** whereas a contingent contract is **Valid**
- ❖ Contingent contracts to do or not to do anything, if a specified uncertain event happened within a fixed time, become Void if at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible
- ❖ A agrees to pay B Rs 10000, if two straight lines should enclose a space. The agreement is **Void**

Sections (37 to 67)

- ❖ A promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for **Non-performance**
- ❖ A promisor has made an offer of performance to promisee and the offer has been accepted, then they must fulfill the condition:
 - It must be unconditional
 - It must be made at a proper time and place
 - If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver
- ❖ The two or more persons have made a joint promise, the promisee may in the absence of the express agreement to the contrary, compel to perform the

whole contract Jointly or severally as per the desire of the promisee

- ❖ An agreement to do an impossible act in itself is **Void**
- ❖ Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promise is a **Contract** but the second is a **Void** agreement
- ❖ Where there are several amounts due to be recovered from the debtor then a creditor is free to appropriate the money deposited by the debtor towards the time barred debts:
 - Where the debtor has omitted to intimate
 - Where there are no other circumstances indicating as towards which debt the payment is to be applied
- ❖ Where neither party does any appropriation, the payment shall be applied:
 - In discharge of the debts in order of time
 - Whether they are or are not barred by the law in force for the time being in as to the limitation of suits
 - If the debts are of equal standing, the payment shall be applied in discharge of each proportion apply
- ❖ Circumstances under which the original contract need not be performed:
 - If the parties to a contract agree to substitute a new contract

- If the parties to a contract agree to rescind it
- If the parties to a contract agree to alter it
- ❖ If an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is:
 - Bound to restore it
 - To make compensation for it, to the person from whom he received it .
 - This is based on the concept of no unjust enrichment.

Section (68 to 72)

- ❖ If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies:
 - Shall be reimbursed from the property of such incapable person
- ❖ B holds land in kolkata, on a lease granted by A, the zamindar. The revenue payable by A to the government being in arrears, his land is advertised for sale by the government. Under the revenue law, the consequences of such sale will be the annulment of B's lease. B in order to prevent the sale and the consequent annulment of his one lease pays to the government the sum due from A. Whether B is entitled to get the reimbursement from A
 - A is bound to make good to B the amount so paid by B on his behalf.
- ❖ The person who enjoys the benefits is bound to make compensation to the provider of the goods/services

- ❖ Finder of lost goods
- ❖ Consequences when a persons who finds goods belonging to another and takes them into his custody:
 - He is bound to take as much care of the goods as man of ordinary prudence would do of his own goods
 - He must also take all measures to trace its owner
 - He is subject to the same responsibility as a bailee
- ❖ Quantum Meruit means **What one has earned**

Sections (73 to 75)

- ❖ When a contract is broken, What are the remedies available before the party who has suffered a loss:
 - He may rescind the contract
 - He may sue for damages
 - He may sue for the specific performance of the contract
- ❖ The Doctrine of restitution means:
 - To put the injured party in the same position
 - The position in which he would have been had there been performance and not a breach of the contract
 - To compensate for the pecuniary loss which naturally flows from the breach

- ❖ Vindictive damages means that these damages are in the nature of punishment
- ❖ Injunction is a mode of securing the specific performance of the negative terms of a contract

Section (124 to 147)

- ❖ A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person is called as **Contract of indemnity**
- ❖ The person who promises to make good the loss is called the **Indemnifier**
- ❖ The person whose loss is to be made good is called the **Indemnified**
- ❖ The liability of the indemnifier to the indemnified is **Primary and independent**
- ❖ A contract of indemnity may be called as **Contingent contracts**
- ❖ In the contract of indemnity there is **One contract**
- ❖ A contract to perform the promise, or to discharge the liability of a third person in case of his default is called as **Contract of guarantee**
- ❖ In a contract of guarantee there are **Three parties**
- ❖ In a contract of indemnity there are **Two parties**
- ❖ The persons who given the guarantee is called **Surety**

Contract of Indemnity

Promise to save the loss

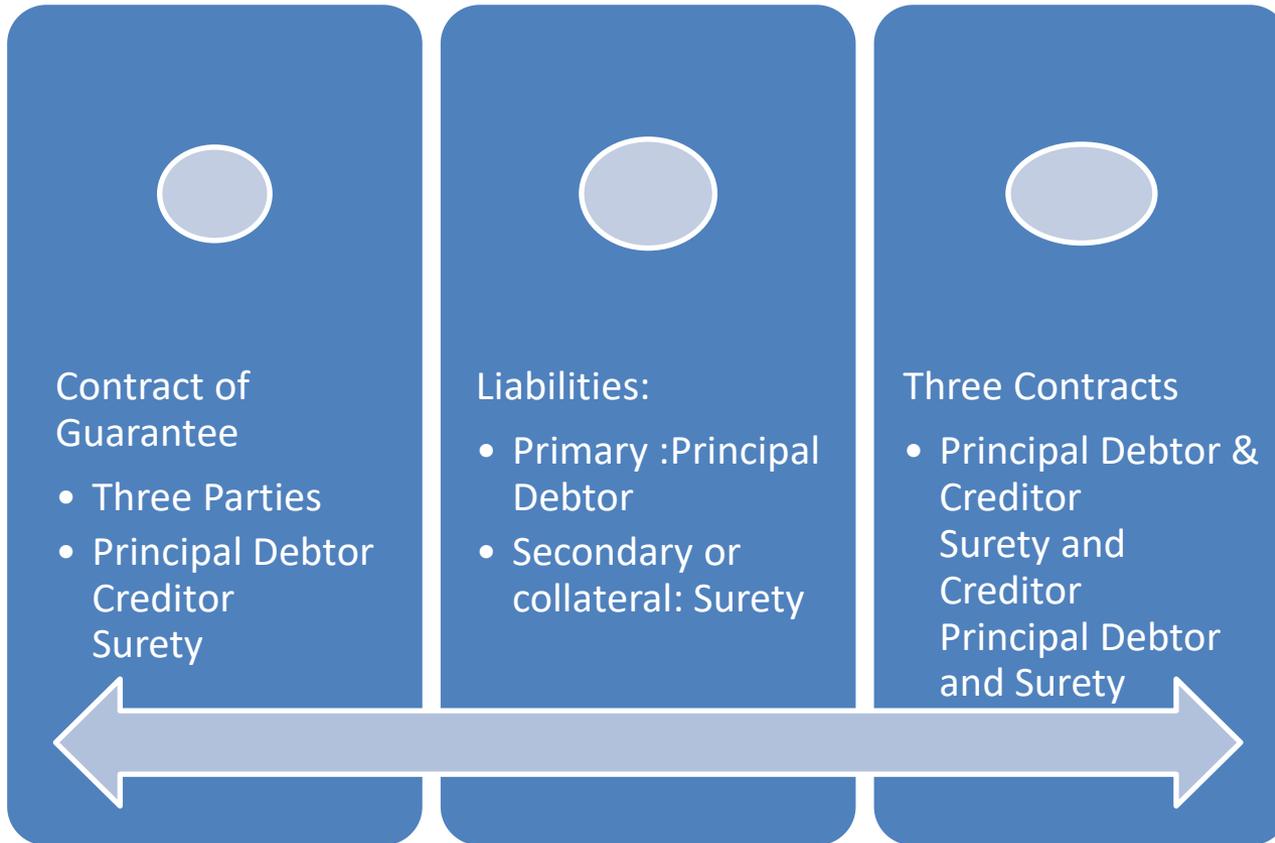
Loss may be
caused by

Conduct of
Promisor

Conduct of any other
person

Indemnifier :
promises to make
good the loss

Indemnified :
His loss is to be
made good



- ❖ In a contract of guarantee, the liability of the surety to the creditor is **Secondary or Collateral**
- ❖ In the contract of guarantee there are **Three contracts**
- ❖ The person in respect of whose default the guarantee is given is called **The principal debtor**
- ❖ The person to whom the guarantee is given is called **The creditor**
- ❖ **At the request of the debtor** the surety should give the guarantee
- ❖ A surety on discharging the debt due by the principal debtor steps into the shoes of the **Creditor**
- ❖ Anything done or any promise made for the benefit of the principal may be **Sufficient consideration** to the surety for giving guarantee
- ❖ The liability of the surety is co-extensive with that of **The principal debtor** unless it is otherwise provided by the contract
- ❖ A guarantee which extends to a series of transactions is called **Continuing guarantee**
- ❖ When can a continuing guarantee be revoked by the surety:
 - It can be revoked by the surety at any time as to future transactions by notice to the creditor
- ❖ A surety has the rights against the **creditor, principal debtor, co-sureties**
- ❖ A continuing guaranteed can be revoked **By notice to the creditors, death of the**

Discharge of Surety

Variation in terms
without his
knowledge

Release of Principal
Debtor

Release by Contract

Release by act or
omission of the
creditor

No discharge if
surety assents or
release of one surety
in case of co-sureties

Surety & notation

- ❖ Where the terms of the contract between the principal debtor and the creditor are changed /varied without the consent of the surety **It will discharge the surety as to transactions subsequent to the variance**
- ❖ The surety stands discharged in the following cases:
 - There is a contract between the creditor and the principal debtor to release the principal debtor
 - By any act or omission of the creditor, the legal consequences of which is the discharge of the principal debtor
 - If by virtue of a contract between the creditor and the principal debtor, the creditor makes a composition with or promises to give time to or not sue the principal debtor. However It will not discharge the surety, in case the surety has assented to such transactions
- ❖ Y owes to Z debt guaranteed by X. The debt becomes payable. Z does not sue Y for a year after the debt has become payable. Whether the surety X is discharged
 - No he is not discharged
- ❖ Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other co-sureties

- ❖ If the creditor does any act which is inconsistent with the rights of the surety or omits to do any act which his duty to the surety requires him to do and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged

Sections (148 to 181)

- ❖ A delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them, is called as **bailment**.
- ❖ The person delivering the goods is called **Bailor**
- ❖ Bailee means the person to whom they are delivered
- ❖ A bailment necessarily involves delivery of possession of goods by bailor to bailee. However the delivery of possession may be **Actual, constructive, symbolic**
- ❖ If the goods have some faults, the bailor is bound to disclose the faults, if he is aware about it
- ❖ A contract of bailment is voidable at the options of the bailor if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment
- ❖ A right to retain any property belonging to other party in respect of any payment lawfully due, provided the property is in the possession of the person exercising

The right is General Lien

- ❖ A right to retain a particular goods until the payment for services rendered is received is called **Particular lien**
- ❖ In the absence of the contract to the contrary, the bankers have the **General lien**
- ❖ The bailment of goods as security for payment of a debt or performance of a promise is called **Pledge**
- ❖ The pawnee may retain the goods pledged for **Payment of the debt, Performance of the promise and interest of the debt**
- ❖ If the pawnor (Say A) has obtained possession of the goods pledged by him under a contract voidable (Between A and B) under section 19 or section 19A, but the contract has not been rescinded (By B) at the time of the pledge:
 - The pawnee (Say C) acquires a good title to the goods

Section (182 to 238)

- ❖ A person employed to do any act for another, or to represent another in dealings with third person is called Agent
- ❖ Major may employ agent
- ❖ Any person may become an agent between the principal and third person
- ❖ Whatever a person can do personally, he can do through an agent
- ❖ No consideration is required in contract of agency

- ❖ An agent having an authority to do an act has authority to do Lawful thing which is necessary in order to do such act
- ❖ In an emergency, an agent has authority to do:
 - All such acts for the purpose of protecting his principal from loss
 - All such acts which a person of ordinary prudence, in his own case do under similar circumstances
- ❖ An agent cannot lawfully employ another to perform act which he has expressly or impliedly undertaken to perform Personally
- ❖ A sub-agent is a person employed by and acting under the control of The original agent
- ❖ When an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is called An agent of the principal for such part of the business of the agency as is entrusted to him
- ❖ Where acts are done by one person on behalf of another, but without his knowledge or authority:
 - He may elect to ratify
 - He may disown such acts
 - After ratification, he will be liable for all the acts done by such person(agent)

- ❖ Ratification of unauthorised act of a person can be ratified by the principal In full
- ❖ An agency may be terminated:
 - By the principal revoking the authority of the agent
 - By the agent renouncing the business of agency
 - By the business of the agency being completed
- ❖ What would be the position where the agent becomes a person of unsound mind:
 - The agency will be terminated
- ❖ The principal may revoke the authority given to his agent:
 - At any time before the authority has been exercised so as to bind the principal
- ❖ Partly exercised authority by the agency cannot be revoked
- ❖ The termination of the authority of an agent does not, so far as regards the agent, take effect:
 - Before it becomes known to him
- ❖ Test of determining whether a person is agent of another person or not:
 - If the person has
 - the capacity to bind the principal
 - If the person can make the principal answerable to third person
- ❖ How the agency can be created:

- By express or implied agreement
- By ratification
- Be operation of law
- ❖ Duties of an agent:
 - To render proper accounts to his principal on demand
 - To use all reasonable diligence in communicating with his principal and in seeking to obtain his transactions
 - To pay the sums received on behalf of the principal
- ❖ Position where one person employs another to do an act which is criminal:
 - The employer is not liable to indemnify him against the consequences of such criminal act. Say Act of Supari killing.
- ❖ Factor:
 - A factor is a mercantile agent entrusted with the possession of goods for the purpose of selling them
 - A factor has a general lien on the goods of his principal for a general balance of account between him and the principal
 - A factor has the authority to receive the price and give a good discharge to the purchaser

- ❖ 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 is called as Del credere agent. Basically he guarantees against realization of amount.

The Indian Partnership Act, 1932

- Extends to whole of India (except the state of Jammu and Kashmir)
- An act of a firm means:
 - Any act by all partners
 - Any omission by all the partners
 - Any partner or agent of the firm which gives rise to a right enforceable by or against the firm
- Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Does it mean that losses are not shared:
 - Sharing of profits also includes losses (negative profits)
 - It also depends on the partnership agreement. A person may share the profits but may not share in losses
 - A minor may be admitted in partnership, only for the profits, but he cannot share in losses

- Where a trader carried on his business under the supervision of his creditor and the object was to pay them off out the profits of the business
- It is not the partnership since the test of the mutual agency is absent
- The law of partnership is the law of principal and agent, which is not present in the case
- A consideration is must for every contract . Partnership is also an agreement enforceable at law, hence it is also a contract to carry on the business for profit. Consideration, which is of essence for the formation of a contract, is essential for the formation of the partnership as well.
- There is no need to have consideration in formation of the partnership since no consideration is required to create an agency .
- Partnership is an extension of the law of agency hence no consideration is required
- Can two companies form a partnership? Yes, since both are artificial judicial persons, competent to contract hence they may enter into the partnership
- However a partnership firm cannot enter into partnership with a company. Since in the eyes of the law, a partnership firm is not a distinct legal person
- The members of a hindu undivided family carrying on a family business are not the partners of firm run by HUF.
- Sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not amounts to partnership

- Where no provisions is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is called as partnership at will
- Following are the general duties of a partner:
 - To carry on business of the firm to the greatest common advantage
 - To be just and faithful to each other
 - To render true accounts and full information of all things affecting the firm to any partner or his legal representative
- The mutual rights and duties of the partners of a firm may be determined by contract between the partners and such contract may be express or implied by a course of dealing
- A partnership firm having 5 partners, is engaged in the business of running a restaurant providing vegetarian foods only. The 3 partners among them now want to provide non-vegetarian foods to the customers While the others 2 oppose to the proposal. Since there is change in the nature of the business, hence the consent of all the partners is must
- Where partnership deed is silent and any partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of 18% per annum

- Subject to contract between the partners, the property of the firm includes:
 - All property and rights and interest in property originally brought into the stock of the firm
 - Acquired by purchase or otherwise by or for the firm or for the purposes and in the course of business of the firm
 - The goodwill of the business
- Authority of a partner, to carry on the business of the firm, in the usual way
- The partner in a firm may, by contract between the partner:
 - Extend the implied authority of any partner
 - Restrict the implied authority of any partner
- In order to bind a firm, an act or instruments done or executed by a partner or other person on behalf of the firm shall be done or executed:
 - In the firm name, or in any other manner expressing or implying an intention to bind the firm
- A notice given to a partner, who habitually acts in the business of the firm of any matter relating to the affairs of the firm, will be deemed as notice to the firm except in the case of a fraud on the firm committed by or with the consent of that partner
- Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner

- M/S XYZ is partnership firm and x, y, z are the partners. During the course of business travel, partner x recovered a sum of Rs 15000 in cash from the debtor of the firm and credited the same in his personal bank account. The act of x will amount to mis-appropriating the funds of the firm and utilisation of the same for the personal gain
- A person may be deemed as partner by estoppels or holding out
 - When he expressly by words spoken or written let the others assume/believe that he is a partner in a firm
 - When he by his conduct represents himself to be a partner in a firm
 - When knowingly permits himself to be represented, to be a partner in a firm
- After the death of a partner if the business is continued in old firm name. The legal heirs of the deceased partner are not liable for any acts of the firm:
 - The continued use of the name or of the deceased partner name as a partner thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death
- A transfer by a partner of his interest in the firm either absolute or by mortgage, or by the creation by him of a charge on such interest, does entitle the transferee, during the continuance of the firm:
 - Only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners

- In case a minor is admitted to the partnership, the minor is not personally liable for the acts of the firm
- On attaining the majority, the minor partner has to decide and give a public notice within the prescribed period, whether he will continue as partner in the firm or will quit. This specified period is Within six months of his attaining majority or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later
- In case a minor elects to become a partner on his attaining majority
 - his rights and liabilities as a minor continue up to the date on which he becomes a partner.
 - He also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership
 - His share in the property and profits of the firm shall be the share to which he was entitled as a minor
- Position, where a minor elects not to become a partner:
 - His rights and liabilities as a minor continue to be those of a minor under this section up to the date on which he gives public notice
 - His share shall not to be liable for any acts on the firm done after the date of the notice
 - He shall be entitled to sue the partners for his share of the property and profits

- M/s XYZ is a partnership firm, consisting of three partners Mr. x, Mr. y, and Mr. z. Mr. w wants to be a partner in this firm and two partners Mr. x and Mr. y are ready for his inclusion, however Mr. z is against the proposal. In such a situation, the consent of all the partners is required. Since one of the partners has not consented, hence he cannot be included in the partnership firm.
- Circumstances in which a partner may retire:
 - With the consent of all the other partners
 - In accordance with an express agreement by the partners
 - Where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire
- The liability of a retiring partner, up to the date of his retirement:
 - He is liable for all the acts of the firm done up to the date of his retirement
 - He is liable for all the acts pending at the time of his retirement unless he is discharged from his liability
 - He may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement

- The liability of a retiring partner, after the date of his retirement:
 - He and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement
- Reasons for expulsion of a partner from the partnership firm:
 - If there is a contract between partners as per the partnership deed
 - A partner may not be expelled from a firm by any majority of the partners
 - The power to expel partner should be exercised in good faith or powers conferred by contract between the partners
- The effect of order of adjudication of insolvency on the partner in a firm:
 - He ceases to be a partner on the date on which the order of adjudication is made
 - When under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm
 - The firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made
- Where under a contract between the partners, the firm is not dissolved, by the death of a partner:
 - The estate of a deceased partner is not liable for any act of the firm done after his death

- Agreements in restraint of trade. An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not:
 - Use the firm name
 - Represent himself as carrying on the business of the firm
 - Solicit the customers who were dealing with the firm before he ceased to be a partner.
- Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of **6%p.a** on the amount of his share in the property of the firm
- When there is any change in the constitution of the firm, any continuing guarantee given to the firm shall be revoked as to future transactions from the date of any change in the constitution of the firm
- The dissolution of firm means the dissolution of partnership between all the partners of a firm

- Circumstances under which a firm may be dissolved:
 - A firm may be dissolved with the consent of all the partners
 - A firm may be dissolved in accordance with a contract between the partners
 - A firm may be dissolved by the court order
- Compulsory Dissolution of a firm
 - When all the partners of the firm have been adjudicated as insolvent
 - When excluding one partner all other partners have been adjudicated as insolvent
 - By the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership
- Certain contingencies when the firm has to be dissolved(subject to contract):
 - If constituted for a fixed term, by the expiry of that term
 - If constituted to carry out one or more adventures or undertakings, by the completion thereof
 - By the death of a partner and by the adjudication of a partner as an insolvent

- When a firm can be dissolved at the suit of a partner, by the order of court:
 - When a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner
 - When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner
 - When a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business .
- Where a partner wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him. The other partners may file a suit in the court for the dissolution of the firm
- Where a partner has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of order XXI of the first schedule to the code of civil procedure, 1908 or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner:
 - The court may dissolve the firm at the instance of any other partner(s)

- Persons not liable for the acts of the partners done after dissolution, if done before the dissolution, until public notice is given of the dissolution:
 - The estate of a partner who dies
 - Who is adjudicated an insolvent
 - A partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm (sleeping or dormant partner)
- Rights of the partners after dissolution:
 - To have the property of the firm applied in payment of the debts and liabilities of the firm
 - To have the surplus distributed among the partners or their representatives according to their rights
 - To have business wound up after dissolution
- After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners shall continue:
 - To wind up the affairs of the firm
 - To complete transactions begun but unfinished at the time of the dissolution

- Order of application of the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital:
 - In paying the debts of the firm to third parties
 - In paying to each partner rateably what is due to him from the firm for advances as distinguished from capital
 - In paying to each partner rateably what is due to him on account of capital
 - Shall be divided among the partners in the proportions in which they were entitled to share profits
- A, B, C were partners in a firm. Profits was to be dividend equally, but the capital contribution was different. A introduced more capital than B, C became insolvent. On the dissolution of the firm the assets, after satisfying all the liabilities to creditor and advances of the partners, were insufficeint to repay the capital in full. Nothing could be recovered From C on account of his status as insolvent. The facts of the case in based on the famous case titled as Garner v. Murray(1904) 1 Ch 57:
 - The deficiency of capital of the insolvent partner gets distributed among the solvent partners in the ratio of their capital just before dissolution
- Settlements of debts in case there are joints debts due from the firm, and also separate debts due from any partner:
 - Debts of the firm shall be paid first out of property of the firm and if there is any surplus, it shall be distributed among the partners
 - Private debts of the partners shall be paid first out the private estate of the partners and if there is any surplus and the liabilities of the firm exceed the assets of the firm, it shall be utilised towards the payments of the debts of the firm
- Whether a partner after dissolution of the partnership firm, carry on the business in the erswhile business name of the firm:

- He can use the business name of the dissolved firm, provided there was a contract between the partners of the dissolution firm
- He can use the business name of the dissolved firm name, if he has brought the goodwill of the firm
- Where a partner has paid a premium on entering into partnership of a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, whether any repayment of the premium is premissible:
 - He shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was partner
 - He will not be entitled for repayment of the premium if the dissolution is mainly due to his own misconduct
- Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentations of any of the parties thereto the party entitled to rescind is, without prejudice to any other right, entitled:
 - To a lien on, or a right of retention of, the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him
 - To rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm

- To be indemnified by the partner or partners guilty of the fraud or misrepresentations against all the debts of the firm
- Treatment of goodwill in settling the accounts of a firm after dissolution:
 - The goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm
- The state government may appoint Registrars of firms for the purpose of this act. Every registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal code, 1860
- Where a firm is registered with the Registrar of firms, the firm shall intimate the registrar:
 - When an alteration is made in the firm name or in the location of the principal place of business of a registered firm
 - When a registered firm discontinued business at any place or begins to carry on business at any place, such place not being its principal place of business
 - When any partner in a registered firm alters his name or permanent address
- Right to inspect the register and filed documents at the office of the registrar:
 - The partners of the firm
 - The partners of the other firms
 - Any government servant
 - Any person

- The registration of the partnership firm although is not essential, but if a firm gets itself registered, it may sue others.
- A partnership firm can get itself registered any time. There is no time bound provision in the act. If the firm wants to institute suit in any court against any third party it has got to be registered and the persons suing must have been shown in the register of firms as partners in the firm
- M/s XYZ was a registered partnership firm having its partners as X, Y and Z. The names of these partners were also shown in the relevant register with the registrar of the firms. Later on, one new partner joined the firm and two minors also admitted for the benefits of the partnership firm. The changes made in the firm, were however not informed and registered with the registrars of the firms.
In order to recover money this M/s XYZ initiated suit against another firm. It cannot file suit since the partners suing as on the date of the suit were not shown a partners in register of firms.
- Non-registration of a firm will not affect:
 - The right of a firm or partners of a firm having no place of business in India
 - The right to any suit or claim of set-off not exceeding Rs. 100 in value
 - The right of the partner to sue for the dissolution of the firm, or for the accounts of dissolved firm

- Information to be given to the registrar of firms by a registered Partnership firm:
 - Any change in the name of the firm or in location of the principal place of business
 - New opening/closing of the existing branch, if any
 - Change in the name of and address of the partners/change in the constitution of the firm
- Penalty for submission of false particulars to the registrar of the firms:
 - Imprisonment which may extend to three months, or fine or both
- Fee which shall accompany with the documents sent to the registrar of firms, or which shall be payable for the inspection of documents in the custody of the registrar of firms, or for copies from the register of firms
 - The state government may by notification in the official gazette make rules describing the schedules of fees
- The fees prescribed by each of the states shall not exceed the maximum fees specified in schedule I of the Indian Partnership Act, 1932.
- Matters which require notice to registrar of firms under section 63, and public notice by publication in the official gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates, has its place or principal place of business:
 - Retirement or expulsion of a partner from a registered firm
 - The dissolution of registered firm
 - The election to become or not to become a partner in a registered firm by a person attaining majority who has been admitted as a minor to the benefits of partnership

The Sale Of Goods Act, 1930

Delivery

It means Voluntary transfer of possession from one person to another.

Three Kinds of delivery

It is actual when the goods are physically delivered to the buyer.

When it is effected without any change in the custody or actual possession of thing.

Where there is a delivery of thing in token of a transfer of something else.

E.g. Delivery by attornment (acknowledgement)
E.g. Where a warehouseman holding goods on behalf of A, agrees to hold them on behalf of B, at A request

E.g. Delivery of goods in transit by handing over the documents to title(ownership) to goods, Bill of lading, Dock warrant, Delivery of key of a Warehouse

Formation. The contract of sale may provide for any of the following methods

S.No.	Delivery	Payment of price
1	Immediate	Immediate
2	At future date	Immediate
3	Immediate	Future date
4	Future	Future
5.	Installment	Installment
Delivery or payment or both will be made a future date		

Types of Goods

Existing (i) Specific (ii) Ascertained (iii) Unascertained	Future	Contingent Goods
<p>Existing Goods Goods which are in existence at the time of contract of sale i.e. those owned & possessed by the seller.</p>	<ul style="list-style-type: none"> • Future goods are those goods, which do not exist at the time of the contract of sale. • Those goods are to be manufactured or acquired by the seller after making of the contract of sale. Say Making an Almirah as per specifications. • Future goods cannot be sold but there can only be an agreement to sell. 	<ul style="list-style-type: none"> • It is a kind of future goods. • It is goods, the acquisition of which is contingent upon the happening or non-happening of an uncertain event.

<p>Specific goods:</p> <ul style="list-style-type: none"> • Means goods identified & agreed upon at the time when a contract of sale has been made. • The goods must be both identified and agreed upon. 	<p>Future Goods Contd.. Example: A, a manufacture agrees to sell 5 tables and 50 chairs to B at Rs. 10,000. B agrees to purchase it. However, tables and chairs are yet to be manufactured by A.</p>	<p>Contingent Goods Contd.. Examples: A agrees to sell the goods loaded on the ship "Titanic", which is coming from London to Bombay. The ship may or may not arrive. So, these goods will be called as contingent goods.</p>
<p>Ascertained Goods Means goods identified in accordance with the agreement after the contract of sale has been made</p> <ul style="list-style-type: none"> • Identified but not agreed upon <p>"Unascertained" or "Generic" goods:</p> <ul style="list-style-type: none"> • Means goods defined only by description. • Neither identified nor agreed upon 		

Price Means the money consideration for sale of goods 2(10)

The following are the modes of determining price: {Sec 9}

1. Price is specified under the contract

- It is the most common method of determining the price.
- Generally, parties decide the price in advance.

2. Price is not determined under the contract

(i) Method of determining price is specified in the contract.

Example:
Delivery of rice on 1st December 2020 at the rate prevailing on that day.

(ii) Price may be determined in accordance to custom and usage of trade.

This method is applicable if parties regularly trade

(iii) Where the price is not fixed as above, the buyer shall pay the seller a reasonable price

What is a reasonable price is a question of fact and circumstances.

3. Fixation of price by third party Section 10

If it is so, contract shall specify name of third party

- If third party fails to specify, contract is void but if goods are delivered to buyer and used by him, he is required to pay reasonable price.
- If the third party is prevented from fixing price, defaulting party is liable for the damages.

Distinction Between Condition and Warranty

CONDITION	WARRANTY
Essential to the main purpose of contract.	Collateral to the main purpose of contract
Aggrieved party can repudiate the contract or claim damages or both in case of breach of condition.	Aggrieved party can claim only damages in case of breach of warranty.
A breach of condition may be treated as breach of warranty	A breach of warranty cannot be treated as breach of condition.

The Sale Of Goods Act, 1930

- The object :To Define and amend the law relating to the sale of goods
- Before the separate enactment of The Sale Of Goods Act, 1930, it was contained in The Indian Contract Act, 1872
- Came into force on 1st day of July, 1930
- Extends to The whole of India(except to the state of Jammu and kashmir)
- Distribution of assets on dissolution of the partnership firm among the partners in the ratio as mentioned in the partnership deed does not amount to sale.
- Buyer means a person who buys or agrees to buy goods
- Delivery means Voluntary transfer of possession from one person to another
- The goods are said to be in a deliverable state When they are in such state that the buyer would under the contract be bound to take delivery of them

- The “Documents of title to goods” includes:
 - Bill of lading dock-warrant
 - Warehouse keeper’s certificate
 - Wharfinger’s certificate
- Future goods means goods to be manufactured or produced or acquired by the seller after making of the contract of sale
- Goods may be Existing, Future, Contingent
- Goods mean every kind of moveable property other than actionable claims 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
- Transfer of immovable property is regulated by The Transfer Of Property Act, 1882
- The exchange of goods does not come under The Sale Of Goods Act, 1930
- The existing goods may be Ascertained, Unascertained and Specific or generic
- “Mercantile agent” means an agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods
- “Specific goods” means: Goods identified and agreed upon at the time a contract of sale is made

Sections (4 to 17)

- A contract of sale of goods is a contract whereby the seller:
 - Transfers or agrees to transfer the property in goods to the buyer at a price . There may be a contract of sale between one part owner and another
- ❖ A contract of sale may be Absolute or Conditional
- ❖ 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, but where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called An agreement to sell
- ❖ An agreement to sell becomes a sale:
 - When the time elapses or the conditions are fulfilled subject to be which the property in the goods is to be transferred
- ❖ The contract of sale may provide for:
 - The immediate delivery of the goods
 - The immediate payment of the price
 - The delivery or payment by installments, or that the delivery or payment or both shall be postponed
- ❖ A contract of sale may be made:
 - In writing or by word of mouth

- Partly in writing and partly by word of mouth
- It may be implied from the conduct of the parties
- ❖ The goods which form the subject of a contract of sale may be :
 - Existing goods
 - Owned or possessed by the seller
 - Future goods
- ❖ Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as:
 - An agreement to sell the goods
- ❖ Where there is a contract for the sale of specific goods, The contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract
- ❖ Where there is an agreement to sell specific goods, and subsequently the goods perish without any fault on the part of the seller or buyer or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer:
 - The agreement is thereby avoided
- ❖ The price in a contract of sale may be:

- Fixed by the contract itself
- Left to be fixed in an agreed manner
- Determined by the course of dealing between the parties
- ❖ Where the price is not determined by the parties to the contract of sale of goods, the buyer shall pay the seller a reasonable price.
- ❖ Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided
- ❖ Whether the stipulation of time in a contract of sale of goods is essential:
 - Usually time is not of essence in the contract of sale of goods, unless a different intention appears from the contract
- ❖ A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or warranty
- ❖ A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated
- ❖ A warranty is a stipulation collateral to the main purpose to the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated

- ❖ A breach of condition may be treated as a breach of a warranty. However a breach of warranty may not be treated as breach of condition.
- ❖ When the stipulation of condition may be treated as warranty:
 - The buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty
 - Where a contract of sale is not severable and the buyer has accepted the goods or part thereof
- ❖ The conditions and warranties in a sale of goods may be Express or implied
- ❖ An implied condition on the part of the seller is that, in the case of a sale He has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass
- ❖ There is an implied undertaking in a contract of sale of goods that:
 - The buyer shall have and enjoy quiet possession of the goods
 - The goods shall be free from any charge or encumbrance
- ❖ Where there is a contract for the sale of goods by description, there is an implied condition that:
 - The goods shall correspond with the description
 - If the sale is by sample as well as by description, the goods must correspond both with the sample and with the description

- ❖ **Assumptions in Cases where the buyer wants the goods for a specific purpose :**
- ❖ There is **no implied warranty or condition** as to the quality or fitness for any particular purpose of goods supplied under a contract of sale
- ❖ Where the **buyer makes known to the seller** the particular purpose for which the goods are required, so as to show that the buyer relies on the skill or judgement of the seller, and the goods are of a description which it is in the course of the seller business to supply, there is an implied warranty that the goods shall be reasonably fit for such purpose
- ❖ In the case of a contract for the sale of a specified article under its **patent or other trade name**, there is no implied condition as to its fitness for any particular purpose
- ❖ Where goods are bought by description from a **seller who deals in goods of that description**, there is an implied condition that the goods shall be of merchantable quality
- ❖ Where the **buyer has examined** the goods, there shall be No implied condition as regards defects which such examination ought to have revealed
- ❖ An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the **usage of trade**
- ❖ An Express warranty or condition does not negative a warranty or condition implied by this act unless inconsistent there with
- ❖ In a case of a contract for **sale by sample** there is an implied condition:

- That the bulk shall correspond with the sample in quality
- That the buyer shall have a reasonable opportunity of comparing the bulk with the sample
- That the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample

Sections (18 to 30)

- ❖ Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer in the goods unless and until the goods are ascertained
- ❖ Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer:
 - At such time as the parties to the contract intend it to be transferred
- ❖ Where there is an unconditional contract for the sale of specific goods in deliverable state, the property in the goods passes to the buyer:
 - When the contract is made
- ❖ Where there is a contract for the sale of Specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof
- ❖ Where there is a contract for the sale of specific goods in a Deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof

- ❖ Where there is a contract for the sale of Unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation
- ❖ Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have Unconditionally appropriated the goods to the contract
- ❖ When goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer:
 - When he signifies his approval or acceptance to the seller or does any other act adopting the transactions
 - If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time
 - If no time has been fixed, on the expiration of a reasonable time
- ❖ In a contract of sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. This doctrine is called as Caveat emptor which means Let the buyer beware.

- ❖ Unless otherwise agreed, the goods remain at The seller risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer risk whether delivery has been made or not
- ❖ Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller authority to sell
- ❖ When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of The Indian Contract Act, 1872, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title

PERFORMANCE OF THE CONTRACT

- ❖ It is the duty of the seller to deliver the goods and of the buyer **To accept and pay for them**, in accordance with the terms of the contract of sale
- ❖ Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions
- ❖ A delivery of part of the goods, with an intention of severing it from the whole:
 - Does not operate as a delivery of the remainder
- ❖ Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery

- ❖ Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them Within a reasonable time.
- ❖ Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf
- ❖ Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller
- ❖ Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them
- ❖ Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may:
 - Accept the goods
 - Reject the extra goods,
 - Reject the whole goods
- ❖ Where the seller delivers to the buyer the goods he contracted to sell, mixed with goods of a different description not included in the contract, the buyer may:
 - Accept the goods which are in accordance with the contract
 - Reject the rest of the goods
 - Reject the whole of the goods

- ❖ Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments
- ❖ Where, in pursuance of a contract of sale, the seller is authorised to send the goods to the buyer, through a carrier:
 - It shall be deemed to be a delivery of the goods to the buyer
- ❖ Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do:
 - He is not bound to return them to the seller
 - He has to intimate to the seller that he refuses to accept them
- ❖ When the seller is ready to deliver the goods and request the buyer to take delivery, and the buyer does not within a reasonable time take delivery of the goods:
 - The buyer is liable to the seller of any loss occasioned by his neglect or refusal to take delivery
 - The buyer is liable for a reasonable charge for the care and custody of the goods

Sections (45 to 61)

- ❖ A seller of goods shall be deemed to be an **“unpaid seller”**
 - When the whole of the price has not been paid or tendered
 - When a bill of exchange or other negotiable instruments 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 instruments or otherwise

- ❖ Rights of the unpaid seller
 - A **lien** on the goods for the price while he is in possession of them
 - In case of the insolvency of the buyer a **right of stopping the goods in transit** after he has parted with the possession of them
 - A **right of re-sale** as limited by this act
- ❖ Circumstances when an unpaid seller, who has possession of the goods may exercise lien over the goods:
 - 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
- ❖ A lien can be exercised by the unpaid seller only:
 - When the goods are still in possession of the unpaid seller
- ❖ When the lien exercised by the unpaid seller comes to an end:
 - When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods
 - When the buyer or his agent lawfully obtains possession of the goods
 - By waiver thereof
- ❖ The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods:

- ❖ When a seller can stop the goods in transit:
 - When the buyer of goods becomes insolvent and goods are in transit
- ❖ How stoppage in transit is affected by the unpaid seller:
 - By taking actual possession of the goods
 - By giving notice of his claim to the carrier in whose possession the goods are there.
 - By giving notice of his claim to the other bailee in whose possession the goods are there.
- ❖ When a seller can sue the buyer:
 - He may sue for the price and interest
 - He may ask for the damages for non-acceptance of the goods
 - Suit for damages for repudiation of the contract
- ❖ When a buyer can sue the seller:
 - He may initiate suit for delivery of the goods, if not delivered
 - He may ask for the specific performance, if this being the part of the contract
 - He may initiate for the breach of the warranty

The Transfer Of Property Act, 1882

(Sections 1 to 137)

- The act relating to the transfer of immovable property is called as The Transfer Of Property Act, 1882
- Came into force with effect from First day of July, 1882
- Extends to:-
 - first instance to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in part B states or in the states of Bombay, Punjab and delhi
 - This act or any part thereof may by notification in the official gazette be extended to the whole or any part of the said territories by the state government concerned
 - Any state government may from time to time, by notification in the official gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such state government from all or any of the following provisions, namely section 54, paragraph 2 and sections 3, 59, 107 and 123
- “Immovable property” does not include Standing timber, Growing crops, Growing grass

- “Attached to the earth” means:
 - Rooted in the earth, as in the case of trees and shrubs
 - Imbedded in the earth, as in the case of walls or buildings
 - Attached to wall is so imbedded for the permanent beneficial enjoyment of that to which it is attached
- “Actionable claim” means:
 - A claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property
 - Any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent

Section (5 to 53A)

- “Transfer of property” means: An act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons and “to transfer property” is to perform such act
- The property of any kind may be transferred except as otherwise provided by this act or by any other law for the time being in force
- A transfer of property may be made without writing in every case in which writing is not expressly required by law. Where the value of property is less than Rs 100 (Section 54)

- Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is Void
- A property may be transferred to or for the benefit of a women(not being a hindu, muhammadan or buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein
- A transfers his property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. It does not take effect of the interest so created for the benefit of the eldest son
- An estate is given to a living person A for life, then to a living person, B for life and then to the unborn sons of B. Whether the son of B can have interest in the property:
 - The son of B must be in exercise on or before the date of expiry of the life estate in favour of B
- Where the terms of the transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than the life of the transferor, or a period of eighteen years from the date of the transfer, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the

aforesaid periods, and at the end of such last mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to made had elapsed

- The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind
- Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property
- An interest created on a transfer of property and dependent upon a condition fails:
 - If the fulfillment of the condition is impossible, or is forbidden by law
 - If it is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injuries to the person or property of another
 - If the court regards it as immoral or opposed to public policy
- Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled:

- If it has been substantially complied with
- Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor:
 - Shall be voidable at the option of any creditor so defeated or delayed

Section (54 to 57)

- In the matter of immovable property the seller is bound :
 - To disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover
 - To produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power
 - To answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto
- In the matter of immovable property the buyer is bound :
 - To disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest
 - To pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs

- Where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller

Sections (58 to 104)

- A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability
- Types of Mortgages:
 - Simple Mortgage
 - Mortgage by Conditional Sale
 - Usufructuary Mortgage
 - English Mortgage
 - Mortgage by deposit of Title Deeds
 - Anomalous Mortgage
- Where without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a **simple mortgage**
- Where, the mortgagor ostensibly sells the mortgaged property on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a **mortgage by conditional sale**

- Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage money and to receive the rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage money, the transaction is called a **usufructuary mortgage**
- Where the mortgagor binds himself to repay the mortgage money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a provision that he will retransfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called as **English mortgage**
- Where a person in any of the following towns, namely, the towns of Calcutta, Madras and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called **mortgage by deposit of title deeds**
- A mortgage which is not a simple mortgage, a mortgage by conditional sale, a usufructuary mortgage, an English mortgage or a mortgage by deposit of title deeds within the meaning of this section is called an **anomalous mortgage**

- Where the principal money secured is **one hundred rupees or upwards**, a mortgage other than a mortgage by deposit of title deeds can be effected only by a **registered instruments** signed by the mortgagor and attested by at least two witnesses

- **Rights of Mortgagor:**
 - To receive Back documents, deeds on repayment
 - To get back possession of property
 - To get back the property on retransfer to him or to any other person at his direction and cost
 - Extinguishment of any right in derogation of his interest to the mortgagee

- At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee
 - To deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee
 - Where the mortgagee is in the possession of the mortgaged property, to deliver possession thereof to the mortgagor
 - At the cost of the mortgagor either to retransfer the mortgaged property to him or to such third person as he may direct, or to execute and to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished

- **Rights of Mortgagee:**
 - A suit for foreclosure
 - Right to sue
 - Two or more mortgages-Bound to sue on all which have become due
 - Right to ask for replenishment in case of depletion in value of mortgaged property
 - Right to any construction etc. on a plot of land mortgaged
 - Right to new lease in case of Leasehold Property
 - Interest @ 9% over Principal amount
 - Subsequent Mortgagee entitled to enforce his right immediately after satisfaction of right of first mortgagee, of which he has knowledge.

- A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called A suit for foreclosure
- A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary:
 - Be bound to sue on all the mortgages in respect of which the mortgage-money has become due
 - The mortgagee has a right to sue for the mortgage-money:
 - Where the mortgagor binds himself to repay the same
 - Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient and the mortgagor has failed to do so
 - Where the mortgagee is deprived of the whole or part of his security by or in consequences of the wrongful act or default of the mortgagor
- **Right of Sale by the mortgagee:**
 - In case of English Mortgage
 - In case Govt. is mortgagee and power of sale conferred on Govt. without Court's intervention
 - Mortgaged property situated in specified area

- When the power of sale by the mortgagee is said to be valid:
 - Where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a hindu, Mohammedan or Buddhist or a member of any other race, section, tribe or class from time to time specified in this behalf by the state government, in the official gazette
 - Where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage deed and the mortgagee is the government
 - Where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage deed and the mortgaged property or any part thereof was, on the date of the execution of the mortgage deed situate within the towns of Kolkata, Chennai, Mumbai, or in any other town or area which the state government may, be notification in the official gazette, specify in this behalf
- Mr. A mortgage the properties named as X and Y to Mr. B and then mortgages Y alone to Mr. C. If Mr. B seeks to realize his mortgage out of property Y, Mr. C can compel Mr. B to proceed first against X and realize the debt from it. In case Mr. B is unable to realize the whole amount due to him from X, he is entitled to recover the balance of Y. this situation is called **Marshalling of securities**
- The limitation of rule enunciated in marshalling of securities is the claim to marshal must not be allowed to prejudice the rights of the first mortgagee or of others who have acquired an interest for consideration

- Rateable Contribution in case the mortgaged property is jointly owned:

Value for this purpose is the value on the date of the mortgage

Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage

- Who are the persons besides the mortgagor to redeem the property:

Besides the mortgagor, following may redeem, or institute a suit for redemption of, the mortgaged property:

- Any persons (other than the mortgagee of the interest sought to be redeemed) **who has any interest in, or charge upon, the property** mortgaged or in or upon the right to redeem the same
- **Any surety** for the payment of the mortgage debt or any part thereof
- **Any creditor of the mortgagor** who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property
- **Puisne mortgagee** means subsequent mortgagee has right to redeem a prior mortgage

- **Subrogation:** Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights in the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.
- Kinds of Subrogation : Legal, Conventional
Legal subrogation arises by operation of law
- Conventional subrogation : Where a person paying off the mortgage debt is a stranger and has no interest of his own to protect, but he advances money under an agreement, express or implied, that he would be subrogated and the rights and remedies of the mortgagee whose mortgage is paid off by his money.
- A charge is confined to immovable property
- A charge may be created by the act of parties or by operation of law
- The High Court is the authority to make rules relating to The Transfer Of Property Act

Sections (105 to 117)-Lease, Lessor, Lessee- Meaning and Types

- A lease of immovable property is a transfer of a right to enjoy such property

<p>A lease of immovable property (other than for agricultural or manufacturing purposes</p>	<p>lease from month to month, terminable, on the part of either lessor or lessee, by 15 days notice</p>
<p>A lease of immovable property for agricultural or manufacturing purposes</p>	<p>lease from year to year, terminable, on the part of either lessor or lessee, by 6 months notice</p>
<p>lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent,</p>	<p>can be made only by a registered instruments</p>
<p>All other (other than from year to year, or for any term exceeding one year or reserving a yearly rent) leases of immovable property may be made</p>	<p>Either by a registered agreement or by oral agreement accompanied by delivery of possession.</p>

○ **Rights and liabilities of the lessor:**

- The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter is not with ordinary care discover
- The lessor is bound on the lessee's request to put him in possession of the property
- The lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption

Sections (118 to 121)

- When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an exchange
- Difference between sale and exchange:
 - In case of sale, the price is paid in money while in exchange one specific property is transferred for another

Sections (122 to 129)-Gift

- Gift is the transfer of certain **existing movable or immovable property** (A gift of future property is Void) made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. **If the donee dies before acceptance , the gift is void.**
- For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses
- For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery
- A gift of a thing to two or more donees, of whom one does not accept it, is Void as to the interest which he would have taken had he accepted
- Conditional Gift Test-Whether depends upon the will of the donor or not: The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is Void wholly or in part, as the case may be
- Complete Bundle with Obligations: Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.
- Universal Donee: Where a gift consists of the donor's whole property, the donee is personally Liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein.

Sections (130 to 137)-Actionable Claim

- The transfer of an actionable claim may be either with or without consideration
- The essential requirements of a valid notice of transfer of an actionable claim are:
 - It shall be in writing
 - It shall state the name and address of the transferee
 - It shall be signed by the transferor or this agent and on his refusal to sign, by the transferee or his agent
- The transferee of an actionable claim shall take it subject to all the liabilities and equalities and to which the transferor was subject in respect thereof at the date of the transfer:
- Where the transferor of a debt warrants solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is consideration, to the amount or value of such consideration
- Mortgaged debt :Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable first, in payment of the cost of such recovery; secondly in or towards satisfaction of the amount for the time being secured by the transfer, and the residue, if any, belongs to the transferor or other person entitled to receive the same.
- Rights of assignee by endorsement or other writing, of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy has been made with the assignee himself

The Specific Relief Act, 1963

- ❖ Extends to whole of India except the state of Jammu and Kashmir
- ❖ Specific relief can be granted only for the purpose of Enforcing individual civil rights and not for the mere purpose of enforcing a penal law
- ❖ How the recovery of specific immovable property may be enforced:
 - A person entitled to the possession of specific immovable property may recover it in the manner provided by the code of civil procedure, 1908
- ❖ What recourse is available to a person if he is dispossessed without his consent of immovable property otherwise than in due course of law:
 - He or any person through whom he has been in possession or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit
- ❖ Is there any time limit, if any person is dispossessed without his consent of immovable property otherwise than in due course of law, for filing suit, to recover possession thereof-6 months from the date of dispossession.

- ❖ No Appeal, No review: No appeal shall lie from any order or decree passed in any suit instituted under this section 6 of The Specific Relief Act, 1963:, nor shall any review of any such order or decree be allowed
- ❖ In which circumstances, any persons having the possession or control of a particular article of movable property of which he is not the owner may be compelled specifically to deliver it to the persons entitled to its immediate possession:
 - When the thing claimed is held by the defendant as the agent or trustee of the plaintiff
 - When compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed
 - When it would be extremely difficult to ascertain the actual damage caused by its loss
 - When the possession of the thing claimed has been wrongfully transferred from the plaintiff
- ❖ The specific performance of a contract shall be enforced by the court:
 - Subject to the provisions contained in section 11(2), section 14 and 16 of the specific relief act, 1963

- ❖ Specific performance of a contract shall be enforced when the act agreed to be done is in the performance wholly or partly of a trust
- ❖ A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced
- ❖ The following contracts cannot be specifically enforced namely:-
 - A contract the performance of which involves the performance of a continuous duty which the court cannot supervise
- ❖ No substituted performance of contract shall be undertaken unless the party who suffer such breach has given a notice in writing, of not less than 30 days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on the refusal or failure to do so, he may get the same performed by a third party or by his own agency
- ❖ Notwithstanding any thing to the contrary contained in the code of civil procedure, 1908 any person suing for the specific performance of a contract for the transfer of immovable property may, in a appropriate case, ask for possession, of the property, in addition to such performance or any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him in case his claim for specific performance is refused

- ❖ Any person interested in a contract may sue to have it rescinded and such rescission may be adjudged by the court in following case(s)
 - Where the contract is voidable or terminable by the plaintiff
 - Where the contract is unlawful for cause not apparent on its face and the defendant is more to blame than the plaintiff
- ❖ A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced:
 - It may be rescinded and delivered up to be cancelled: and the court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly
- ❖ How the preventive relief is granted under The Specific Relief Act, 1963 by the court:
 - At the direction of the court by temporary injunction
 - At the discretion of the court by perpetual injunction
- ❖ Temporary injunction are such as are to continue until a specific time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the code of civil procedure, 1908
- ❖ A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from, the assertion of a right, or from the commission of an act, which could be contrary to the rights of the plaintiff

❖ An injunction cannot be granted:

- To restrain any person from applying to any legislative body
- To restrain any person from instituting or prosecuting any proceeding in a criminal matter
- To prevent the breach of a contract the performance of which would not be specifically enforced

The Negotiable Instruments Act, 1881

- ❑ Is an act to define and amend the law relating to Promissory notes, Bills of exchange, Cheques
- ❑ Extends to the whole of India
- ❑ Does not affect The Indian paper currency act, 1871
- ❑ Came into force with effect from first day of march, 1882
- ❑ “Banker” includes any persons acting as a banker and any post office saving bank
- ❑ A “promissory note” is an instrument in writing (not being a bank-note or a currency note) 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 instruments
- ❑ An IOU is not an example of “promissory note”. “Mr. B, I.O.U Rs . 1,000.” is not a promissory note. As against this, “I acknowledge myself to be indebted to B in Rs 1,000, to be paid on demand, for value received” is an example of a promissory note.

- ❑ A promissory note does not contain a conditional undertaking
- ❑ A “promissory note” is an instrument to pay a certain sum of money to the order of, a certain person, or to the bearer of the instrument
- ❑ In a promissory note, two parties are involved
- ❑ A “promissory note” contains an unconditional promise by maker to pay the payee
- ❑ The definition of “promissory note” has been defined in the NI act in section 4
- ❑ A “bill of exchange” is 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 the order of, a certain person or to the bearer of the instruments
- ❑ Section 5 of the NI act deals with Bills of exchange
- ❑ In case of “bills of exchange”, the acceptance is necessary if the bill is payable after sight
- ❑ A “bill of exchange” does not contain a conditional order
- ❑ Three parties are there in the bills of exchange
- ❑ A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form
- ❑ A cheque is a BOE and has been defined under The Negotiable Instrument Act, 1881

- A cheque is a BOE drawn upon a specified banker and payable on demand
- The cheque cannot contain a conditional order
- The maker of a bill of exchange or cheque is called The drawer
- Drawee in case of need:
 - When the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a “drawee in case of need”
- The person who is directed by the maker of a BOE or cheque to pay is called the Drawee
- The person named in the instruments, to whom or to whose order the money is by the instrument directed to be paid, is called a Payee
- The “holder” of a promissory note, BOE or cheque means:
 - Any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto
- Holder is entitled at the time of loss or destruction of a note, bill or cheque
- “Holder in due course” means any person who for consideration became the possessor of a promissory note, BOE or cheque if payable to bearer, or the payee or indorse thereof, if payable to order, before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the

title of the person from whom he derived his title

- A holder in due course is a person who becomes the possessor of the instruments:
 - For consideration
 - Before maturity
 - Without any notice as to the defect in title of the transferor
- A “holder in due course” of a negotiable instruments:
 - Can sue on the instruments in his own name
- “Payment in due course” means the payment in accordance with the apparent tenor of the instruments 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
- Inland instruments means a promissory note, BOE or cheque drawn or made in India and made payable in or drawn upon any person resident in, India.
- A promissory note, BOE or cheque drawn or made out of India and made payable in, or drawn upon any person resident in India shall be deemed to be Foreign instrument
- A “negotiable instrument” means a promissory note, bill of exchange and cheque payable either to order or to bearer

- ❑ A promissory note, BOE or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank
- ❑ A negotiable instruments may be made payable:
 - To two or more payees jointly
 - In the alternative to one or two
 - To one or some of several payees
- ❑ The following are negotiable instruments:
 - A promissory note, BOE 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
- ❑ Section 13 of the NI act defines the words , “negotiable instruments”
- ❑ Banker demand draft are the negotiable instruments
- ❑ A promissory note, BOE or cheque is transferred to any person, so as to constitute the person the holder thereof, The maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same. This activity is called as Endorsement

- ❑ Blank Endorsement: The endorser signs his name on the back of the instrument only.
- ❑ An instrument which may be constructed either as a promissory note or BOE is called as ambiguous instrument
- ❑ If the amount mentioned on the cheque differs in words and figures the amount stated in words should be considered.
- ❑ A promissory note or BOE are payable on demand in which no of time for payment is specified .
- ❑ Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instruments, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. This is called Inchoate stamped instrument
- ❑ The days of grace of maturity of promissory note or BOE is the third day after the day on which it is expressed to be payable
- ❑ Instruments entitled to 'period of grace' is a bill or note payable 'after sight'
- ❑ A negotiable instrument dated 29th january, 2018, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February,2018

- ❑ A negotiable instrument, dated 30th august, 2017, is made payable three months after date. The instrument is at maturity on the 3rd december, 2017
- ❑ A promissory note or bill of exchange, dated 31st august, 2017 is made payable three months after date. The instruments is at maturity on the 3rd december, 2017
- ❑ When the day on which a promissory note or BOE is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day
- ❑ A minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself
- ❑ The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default. This is governed by section 31 of the NI act .
- ❑ A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration:
 - Creates no obligation of payment between the parties to the transactions
- ❑ A promissory note, BOE or cheque payable to bearer is negotiable by delivery thereof

- ❑ A promissory note, bill of exchange or cheque payable to order, is negotiable by endorsement and delivery thereof
- ❑ Where an endorsement by express words, restrict or exclude the right of further negotiability of the instrument, it is called Restrictive endorsement
- ❑ Where the holder of an instrument endorses it in a manner that does not incur any liability as an endorser, such endorsement is called as Sans recourse endorsement
- ❑ Part amount on the instrument cannot be endorsed
- ❑ A holder of an instrument cannot sue in his own name in relation to the instrument
- ❑ Sole maker, drawer, payee, indorse , all of several joint makers, drawers ,payee or indorsees can make negotiation of a negotiable instrument
- ❑ The liabilities of a collecting banker:
 - To present cheque within a reasonable time else liable for damages
 - To handover the proceeds after the realisation without delay
 - To serve notice of dishonour on the customer so that customer can claim the amount from his debtor
- ❑ When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of 18% pa

- ❑ Under section 85 a paying banker is protected where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee bank is discharged by payment in due course
- ❑ The liability of a banker when a cheque has been materially altered but does not appear to have been so altered, and payment thereof has been made according to the apparent tenor thereof at the time of payment and otherwise in due course:
 - The banker shall discharge from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered
- ❑ A bill is said to be dishonoured:
 - By non-acceptance by the drawee
 - One of several drawee makes default in acceptance upon being duly required to accept the bill
 - Where presentment is excused and the bill is not accepted

- ❑ The protection to paying bank for crossed cheque is covered under section 128
- ❑ Conditions for availing statutory protections available to a banker under section 131:
 - Banker has in good faith and without negligence received payment
 - The payment is received for a customer of the bank
 - Cheque is crossed generally or specially before it is presented to the paying bank
- ❑ The liability of the drawer of a foreign bills of exchange is regulated in all essential matters by the law of the place where the instrument is made
- ❑ 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 be extended to 2 years, or with fine which may extend to twice the amount of the cheque, or with both

- ❑ For invoking section 138 of NI act, the payee or the holder in due course of the cheque, as the case may be, shall have to make a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, Within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid
- ❑ For invoking the provisions of section 138 whether a legally enforceable debt or other liability should exist.
- ❑ Courts eligible to entertain any offence punishable under section 138:
 - Court not inferior to that of a metropolitan magistrate
 - Court not inferior to that of a judicial magistrate of the first class
- ❑ Notwithstanding anything contained in the code of criminal procedure, 1973 no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque and such complaint is made Within one month of the date on which the cause of action arises under clause (c) of the provision to section 138
- ❑ With respect to multicurrency cheque dishonour the offence under section 138 shall be inquired into and tried only by a court within local jurisdiction of the payee or the holder or the drawer .

- ❑ In the case of any conviction in a summary trial under section 143, it shall be lawful for the magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding 5000 rupees
- ❑ The court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant, which shall not exceed 20% of the amount of the cheque
- ❑ The interim compensation shall be paid within 60 days from the date of the order or within such further period not exceeding 30 days as may be directed by the court on sufficient cause being shown by the drawer of the cheque
- ❑ The interim compensation payable under section 143A may be recovered as if it were a fine as per the provisions of the code of criminal procedure, 1973
- ❑ Notwithstanding anything contained in the code of criminal procedure, 1973 (2 of 1974), every offence punishable under the NI act shall be Compoundable
- ❑ In an appeal by the drawer against conviction under section 138, the appellate court may order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court

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