Module I
INDIAN CONTRACT ACT, 1872

The **Indian Contract Act, 1872** is the law relating to Contracts in India. It came into force on September 1, 1872 and is extended to the whole of India except to the state of Jammu and Kashmir.

Contract Defined

As per section 2(h) of the Act, "contract is an agreement enforceable by law".

ESSENTIALS OF VALID CONTRACT

1. Agreement - Offer and Acceptance

As per section 2(c) of the Act, "every promise and every set of promises forming consideration for each other is called as an agreement."

As per section 2 (b) of the Act, "when proposal is accepted, it becomes promise."

So there must be a "lawful offer" and "lawful acceptance" thus resulting in an agreement.

a. Legal purpose There must be an intention among the parties that the agreement should be attended to by legal consequences and create legal obligation. Agreements of social or domestic nature do not contemplate legal relations.

2. Lawful Consideration

Consideration means 'something in return'. In every legal contract, there must be something in return. An agreement is legally capable to be enforced only when each of the parties to it gives something and gets something. The consideration should not be unlawful, illegal, immoral or opposed to public policy.

3. Capacity to contract

Every person who enters into a contract must be competent. In other words, the person should be of the age of majority, should have a sound mind, and must not be disqualified from any law to which they subject. Minors, lunatics, unsound and intoxicated persons are incompetent to enter into a contract. However, there are exceptions as defined in Section 68. In case of an exception the minor or lunatic is not personally liable.

4. Consent to contract

All the parties must have agreed upon the subject matter of the agreement in the same sense. Section 14 says that if the agreement is induced by coercion, fraud misinterpretation or mistake, it is said to be "no free consent" and such a contract is voidable and cannot be enforceable by law.

5. Lawful object

If the object in the agreement is unlawful, the agreement is void. Eg: The landlord cannot recover rent through court of law when he knowingly lets his house to carry on prostitution.

6. Certainty

Every agreement of the contract must be certain. If the agreement is not certain or incapable of being made certain, it is void.

7. Possibility of Performance

Every contract must be capable of performance. Otherwise, the agreement is void. An agreement to do an impossible act whether physically or legally, is void.

8. Not expressly declared void

The agreement must not have been expressly declared to be void under the Act. Examples of such agreements are restrainment of trade, marriage, legal proceedings and wagering agreements. Such agreements are not enforceable by law.

9. Legal formalities like Writing, Registration etc.

A contract may be oral or in writing according to the Indian Contract Act. In certain special cases the agreement must be in written. In some cases like contracts by companies, selling or buying of shares etc., the contract must be registered.

All the above ingredients must be satisfied in every valid contract. It can be noted that all contracts are agreements, but not all agreements are contracts.

Types of Contracts

On the basis of validity :

1. Valid contract: An agreement which has all the essential elements of a contract is called a valid contract. A valid contract can be enforced by law.

2. Void contract [Section 2(g)]: A void contract is a contract which ceases to be enforceable by law. A contract when originally entered into may be valid and binding on the parties. It may subsequently become void.

3. 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 other or others, is a voidable contract. If the essential element of free consent is missing in a contract, the law confers right on the aggrieved party either to reject the contract or to accept it. However, the contract continues to be good and enforceable unless it is repudiated by the aggrieved party.

4. Illegal contract: A contract is illegal if it is forbidden by law; or is of such nature that, if permitted, would defeat the provisions of any law or is fraudulent; or involves or implies injury to a person or property of another, or court regards it as immoral or opposed to public policy. These agreements are punishable by law. These are void-ab-initio.

5. Unenforceable contract: Where a contract is good in substance but because of some technical defect cannot be enforced by law is called unenforceable contract. These contracts are neither void nor voidable.

On the basis of formation:

1. *Express contract*: Where the terms of the contract are expressly agreed upon in words (written or spoken) at the time of formation, the contract is said to be express contract.

2. *Implied contract*: An implied contract is one which is inferred from the acts or conduct of the parties or from the circumstances of the cases. Where a proposal or acceptance is made otherwise than in words, promise is said to be implied.

3. *Quasi contract*: A quasi contract is created by law. Thus, quasi contracts are strictly not contracts as there is no intention of parties to enter into a contract. It is legal obligation which is imposed on a party who is required to perform it. A quasi contract is based on the principle that a person shall not be allowed to enrich himself at the expense of another.

On the basis of performance:

1. *Executed contract*: An executed contract is one in which both the parties have performed their respective obligation.

2. *Executory contract*: An executory contract is one where one or both the parties to the contract have still to perform their obligations in future. Thus, a contract which is partially performed or wholly unperformed is termed as executory contract.

3. *Unilateral contract*: A unilateral contract is one in which only one party has to perform his obligation at the time of the formation of the contract, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence.

4. *Bilateral contract*: A bilateral contract is one in which the obligation on both the parties to the contract is outstanding at the time of the formation of the contract. Bilateral contracts are also known as contracts with executory consideration.

PROPOSAL OR OFFER

As per section 2(a) of the Act,

"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 the "promisee"

Examples:

1. Mr. A asks Mr. B, "I want to sell my car to you for Rs. 1,00,000. Do you agree to purchase it?'
2. Mr. A tells Mr. B, "I am ready not to file a civil case against you if you give me Rs. 1, 00,000 as a settlement amount."

Essential rules of making valid proposal

1. It mat be expresss or implied:

An offer may be made either by words or by conduct. An offer, which is made by words spoken or written, is called an express offer. The offer, which is made by the conduct of a person, is called an implied offer.

Example:

1. M says to N that he will sell his motorcycle to him for Rs.40,000. It is an express offer.
2. A railway coolie carries the luggage of B without being asked to do so B allows him to do so. It is an implied offer.

2. It must create legal relation:

The offer must be made in order to create legal relations otherwise, there will be no agreement. If an offer does into give rise to legal obligations between the parties it is not a valid offer in the eye of law.

Example:

1. A invites B to dinner B accept the invitation. It does not create any legal relations, so there is no agreement.
2. A offers to sell his watch to B for Rs.200 and B agrees. There is an agreement because here the parties intend to create legal relations.

3. It must be definite & clear:

An offer must be definite and clear, if the terms of an offer are not definite and clear, it cannot be called a valid offer. If such offer is accepted it cannot create a binding contract.

Example:

A has two motorcycles. He offers B to sell one motorcycle for Rs.27,000. It is not a valid offer because it is not clear that which motor cycle A wanted to sell.

4. It is different from invitation to offer:
An offer is different from an invitation to offer. It is also called invitation to treat or invitation to receive offer. An invitation to offer looks like offer but legally it is not offer.
In the case of an invitation to offer, the person sending out the invitation does not make an offer but only invites the other party to make an offer. His object is to inform that he is willing to deal with anybody who after getting such information is willing to open negotiations with him. Such invitations for offers are not offers according to law and so cannot become agreement by acceptance.

Example:
1. Quotations, Catalogues of prices, display of goods with prices issue of prospectus by companies are examples of invitation to offer.

2. Display of goods in an auction sale is not an offer rather it is an invitation to offer. The offer will come from the buyer in the form of bids.

5. It may be specific or general:
When an offer is made to a specified person or group of persons, it is called specific offer. Such an offer can be accepted only by the person or persons to whom it is made. A general offer, on the other hand, is one, which is made to public in general and it may be accepted by any person who fulfils the conditions mentioned in it. Both specified and general offers are valid.

Example:
1. M makes an offer to N to sell his bicycle for Rs.800, it is a specific offer. In this case, only N can accept it.
2. A announces in a newspaper a reward of Rs.1,000 for any one who will return his lost radio. It is general offer.

6. It must be communicated to the offeree:
An offer is effective only when it is communicated to the offeree. If an offer is not communicated to the offeree it cannot be accepted. Thus an offer, which is not communicated, is not a valid offer. It applies to both specific and general offers.

Example:
A without knowing that a reward has been offered for the arrest of a particular criminal, catches the criminal and informs the police. A cannot recover the reward as he was not aware of it.

8. It may be subject to any terms & conditions:
An offeror may attach any terms and conditions to the offer he makes. He may even prescribe the mode of acceptance. There is no contract, unless all the terms of the offer are accepted in the mode prescribed by the offeror. It must be noted that if the offeror asks for sending the acceptance by telegram and the offeree sends the acceptance by letter, and the offeror may reject such acceptance.

Example:

A asks B to send the reply of his offer by telegram but B sends reply by letter, A may reject such acceptance because it is opposed to the prescribed mode of communication.

9. It must not contain cross offers:
When two parties make similar offers to each other, in ignorance of each other's such offers are called cross-offers. The acceptance of cross-offers does not result in complete agreement.

Example:
On 23rd December 2007, A wrote B to sell him 100 ton of iron at Rs.10,000 per ton. On the same day, B wrote to A to buy 100 tons of iron at Rs.10,000 per ton. There is no contract between A & B because the offers wee similar and made in ignorance of the other and so there is no acceptance of each other's offer.
10. counter offer
It is a new offer in place of original offer. When counter offer is given, original offer automatically gets cancelled. On giving such offer, offeror becomes offeree and offeree becomes offeror.
Hyde Vs. Wench
Facts
Wrench offered to sell his farm in to Hyde for £1000,Hyde offered £950, and after examining the offer Wrench refused to accept, and informed Hyde. Hyde agreed to buy the farm for £1000, but Wrench refused to sell the farm to him he sued for breach of contract.

it was held that There was no contract. Where a counter offer is made this destroys the original offer so that it is no longer open to the offeree to accept.

ACCEPTANCE
According to Section 2(b), "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted."
Essential rules of making valid acceptance
1. Acceptance must be given by the person to whom the proposal is made:
An **acceptance** to be valid must be given only by a person to whom offer has been given. In other words, acceptance must move from the offeree and no one else.
2. Acceptance can be given only when the acceptor has the knowledge of the offer:
Acceptance therefore cannot be given without the knowledge of offer, as in case of Lalman Shukla v Gauri Dutt.

3. The acceptance must be absolute and unconditional:
It is another important essential element of a valid acceptance. A valid contract arises only if the acceptance is absolute and unconditional. It means that the acceptance should be in total (i.e. of all the terms of the offer), and without any condition.

Thus, an acceptance with a variation is no acceptance. It is simply a counter offer. A counter offer puts an end to the original offer, and it cannot be revived by subsequent acceptance.

4. The acceptance must be given within the time prescribed or within a reasonable time:
Sometimes, the time limit is fixed within which an acceptance is to be given. In such cases, the acceptance must be given within the fixed time limit. In case, no time is prescribed, the acceptance should be given within a reasonable time. The term 'reasonable time' depends upon the facts and circumstances of each case.

5. The acceptance must be given before the lapse of offer:

A valid contract can arise only when the acceptance is given before the offer has elapsed or withdrawn. An acceptance which is made after the withdrawal of the offer is invalid, and does not create any legal relationship.

6. The acceptance must be communicated:
It is an important and essential element of a valid acceptance. The definition of acceptance as given in Sec. 2(b) emphasises this requirement. According to this, the consent to the offer should be signified (i.e. indicated or declared).

CONSIDERATION
According to Section 2(d), Consideration is defined as:
"When at the desire of the promisor, Promise or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise

1. It must move at the desire of the promisor:
In order to constitute legal consideration the act or abstinence forming the consideration for the promise must be done at the desire or request of the promisor.
Example:
A saves B's house from the fire without being asked to do so. A cannot demand payment for his services because A performed this act voluntarily and not at the desire of B.

2. It may move from the Promisee or any other person:
The second essential of a valid consideration is that consideration may move from the promisee or from a third person on his behalf. In other words the act which is to constitute consideration may be done by the promise or any other person.

Example:
A, an old lady, gifted her property to her daughter R on the condition that she should pay certain amount annually to A's brother C. On the same day R, entered into an agreement with her Uncle C to pay the amount. Afterwards she refused to fulfill her promise. C filed a suit. It was held that C was entitled to recover the amo0unt as the consideration on his behalf had moved from her sister A.

3. It may be past, present or future:
It is clear from the definition of consideration that it may be past present or future. It means that the consideration is an act, which has already been done at the desire of the promisor, or in progress or is promised to be done in future.

A) Past Consideration:
When the consideration for a present promise was given before the date of the promise it is called a past consideration. It is not a valid consideration.
Example:
1. A has lot his pure and B a finder, delivers it to him. B cannot demand payment for his services because of past consideration.
2. A teaches the son of B at B's request in the month of January and in February B promises to pay A sum of Rs.2,000 for his services. The services of A will be past consideration.

B) Present Consideration:
When consideration is given simultaneously by one party to another at the time of contract, it is called Present Consideration. The act constituting the consideration is wholly or completely performed.

Example:
A sells a book to B and B pay its price immediately it is a case of present consideration.

C) Future Consideration:
When the consideration on both sides is to be given at a future date, it s called future consideration or executory consideration. It consists of promises and each promise is a consideration for the other.
Example:
X promises to deliver certain goods to Y for Rs.1500 after a week upon Y's promise to pay the agreed price at the time of delivery. The promise of X is supported by promise of Y and the consideration is executory on both sides.

4. It need not be Adequate:
It is not necessary that consideration should be adequate to the value of the promise. The law only insists on the presence of consideration and not on its adequacy. It is for the parties to the contract to consider the adequacy of consideration and the courts are not concerned about it.
Example:
A agrees to sell his car worth Rs.200,000 for Rs.50,000 only and his consent is free. The agreement is valid contract.

5. It must be Real:
It is necessary that consideration must be real and competent. Where consideration is physically impossible illegal uncertain or unreal it is not real and therefore shall not be a valid consideration.
A) Physically Impossible:
A promise to do something which is physically impossible.
Example:
A, promise to put life in B's dead brother on B's promise to pay him Rs.1 Lac.

B) Legally Impossible:
A promise to do something which is illegal.
Example:
A promise to pay Rs.1 Lac to B on his promise to beat C.

C) Uncertain Consideration:
A promise to do something, which is too unclear and uncertain.
Example:
A employs B for a certain work and B promises to pay A.

NO CONSIDERATION – NO CONTRACT

25. as a rule 'Agreement without consideration is void'.
However there are some exceptions to this rule which are prescribed by subsequent subsections. They are as follows.

1. Agreement made on account of natural love and affection [Sec. 25 (1)]: An agreement made without consideration is enforceable. If it is
(i) Expressed in writing
(ii) Registered under the law for the time being in force for the registration of documents
(iii) Is made on account of natural love and affection
(iv) Between parties standing in a near relation to each other.

Thus there are four essential requirements which must be complied with to enforce an agreement made without consideration, as per Section 25 (1).

Let us now study some some illustrations in this behalf

(a) A promises, for no consideration, to give to B Rs 1,000. This is a void agreement

(b) A for natural love and affection, promises to give his son B, Rs 1,000. A puts his promise to B into writing and registers it This is a contract.

(c) A registered agreement, whereby an elder brother, on account of natural love and affection, promised to a the debts of his younger brother, was held to be valid and binding an the younger brother cause the elder brother in the event of his not carrying out the agreement (Venkatasamy vs Rangasami)

2. Agreement to compensate for past voluntary service (Sec.25 (2)].

A promise made without consideration is also valid, if it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor,' or done something which the promisor was legally compelled to do.

Illustrations

(a) A finds B's purse and gives it to him. B promises to give A Rs 50. This is a contract.

(b) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract. (Note that B was legally bound to support his infant son).

(c) A rescued B from drowning in the river, and B, appreciating the service that had been rendered, promises to pay Rs 1,000 to A. There is a contract between A and B.

3. **Agreement to pay a time-barred debt** (Sec. 25 (3)]. Where there is an agreement, made in writing and signed by the debtor or by his authorised agent, to pay wholly or in part a debt barred by the law of limitation, the agreement is valid even though It is not supported by any consideration. A time barred debt cannot be recovered and therefore a promise to repay such a debt is without consideration, hence the importance of the present exception.

But before the exception can apply, it is necessary that:

(i) The debt must be such of which the creditor might' have enforced payment but for the law for the limitation of suits.

(ii) The promisor himself must be liable for the debt. So a promissory note executed by a widow in her personal capacity in payment of time-' barred debt of her husband cannot be brought within the exception (Pestonji vs Maherbai28);

(iii) There must be an 'express promise to pay' a time barred debt as distinguished from a mere 'acknowledgement of a liability' in respect of a debt. Thus. a debtor's letter to his creditor, "I owe you Rs. 1,000 on account of my time-barred promissory note" is not a contract. There must be a distinct promise to pay; and

(iv) The promise must be in writing and signed by the debtor or his agent. An oral. promise to pay a time-barred debt is unenforceable.

Illustration. *A* owes *B* Rs 1,000, but the debt is barred by the Limitation Act. *A* signs a written promise to pay *B Rs* 500 on account of the debt. This is Ii contract (Appended to Sec. 25).

4. **Completed gift.** The gift must, however, be complete.

5. **Contract of agency.** Section 185 of the Contract Act lays down that no consideration is necessary to create an agency.

ENFORCEABILITY OF CONTRACT

Section 10 - What agreements are contracts.- All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. So following are the essentials to make a valid contract.

I. **CAPACITY TO CONTRACT**

Section 11 of The Indian Contract Act specifies that every person is competent to contract provided:

1. He should not be a minor i.e. an individual who has not attained the age of majority i.e. 18 years in normal case and 21 years if guardian is appointed by the Court.

2. He should be of sound mind while making a contract. A person who is usually of unsound mind, but occasionally of sound mind, can make a contract when he is of sound mind. Similarly if a person is usually of sound mind, but occasionally of unsound mind, may not make a valid contract when he is of unsound mind.

3. He is not a person who has been personally disqualified by law to which he is subject.

MINORITY

Who is a minor?

A person who has not attained the age of majority is a minor. Section 3 of the Indian Majority Act, 1875 provides about the age of majority. It states that a person is deemed to have attained the age of majority when he completes the age of 18 years, except in case of a person of whose person or property a guardian has been appointed by the Court in which case the age of majority is 21 years.

Nature of a minor's agreement

As noted above a minor is not competent to contract. One question which arises in case of an agreement by a minor is, whether the agreement is void or voidable? The Indian contract Act does not have any provision to answer this question. In the absence of any statutory provision there had been controversy on this point. The controversy was set at rest by the decision of the Privy Council, in the case of **Mohori Bibee Vs. Dharmodas Ghose in 1903.** It was held that the agreement made by a minor is void.

The facts of **Mohiiri Bibee Vs. Dharmodas Ghose are as under :**

The plaintiff, Dharmodas Ghose, while he was a minor, mortgaged his property in favour of the defendant, Brahmo Dutt, who was a moneylender to secure a loan of Rs.20,000. The first installment of loan given was Rs.10,500. The minor brought an action against the moneylender stating that he was a minor when the mortgage was executed by him and, therefore, mortgage was void and inoperative and the same should be cancelled. The moneylender contended that the plaintiff had fraudulently misrepresented his age and therefore no relief should be given to him, and that, if mortgage is cancelled at all, he should be asked to repay the sum of Rs.10,500 advanced to him. Following are the observations of Privy Council.

1. Minor's agreement being void, he could not ask to pay the amount. The minor, therefore, could not be asked to repay the amount

2. Rule of esoppel is not applicable to minor. So even if minor falsely represents his age, contract remains void.

EXCEPTIONS TO THE RULE THAT MINOR'S CONTRACT IS VOID

1. If minor or any one whom he is legally bound to support, is supplied by another, with necessaries of life, the person who has furnished such supplies is entitled to be reimbursed from the property of such minor.

2. Minor can be admitted to the benefit of partnership with the consent of all the partners but he will not be liable for the losses or debts of the firm.

3. A minor may be appointed as an agent to act on behalf of his principal. But he cannot be made responsible for his acts to his principal.

4. Legal guardian of minor may enter into a contract on behalf of minor provided that it is for his benefit.

5. A contract in which minor is only getting benefits without incurring any liability, such contract is valid.

INSANITY

A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of un-sound mind, may not make a contract when he is of unsound mind.

Illustrations

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

DISQUALIFICATIONS FROM CONTRACTING

Following are the people disqualified by law from contracting.

1. Undischarged insolvent: An insolvent whose liability is still undischarged can make contract during the stage of insolvency.
2. Alien enemy: A person who is not a citizen of India is called an alien.
3. Convicts: convict is incapable of entering into contract. and the incapability ends when sentence expires or punishment finish.
4. Corporation: A company is artificial person created by law. It can only contractthrough its board of directors.

MODULE II

FREE CONSENT

According to Section 14, "two or more persons are said to consent when they agree upon the same thing in the same sense (*Consensus-ad-idem*).

Consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake.

Elements against free Consent

1. **COERCION (SECTION 15):**

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

ILLUSTRATION

"A" threatens to shoot "B" if he doesn't release him from a debt which he owes to "B". "B" releases "A" under threat. Since the release has been brought about by coercion, such release is not valid.

1. The coercion must be the committing of any act forbidden by the Indian Penal Code:

It is an important and essentials element of coercion. When the consent of a person is obtained by committing any act which is forbidden by the Indian Penal Code, the consent is said to be obtained by coercion.

4. The acts of coercion must be done with the intention of causing the other party to enter into a contract:
It is also an essential element of coercion. Threats, which amount to coercion, must be done with the intention of causing the other party to enter into a contract. If the act of coercion is done without any intention of obtaining the consent of the other party, it will not amount to coercion.

5. The Indian Penal Code may or may not be in force where the coercion is committed:
This legal rule for coercion is emphasised in the Explanation to Sec. 15 of the Indian Contract Act. According to this explanation, it is immaterial whether the Indian Penal Code is or is not in force in the place where the act amounting to coercion is committed.

6. The acts of coercion may be initiated by any person:
It is also a legal rule for coercion. According to this rule, the threat amounting to coercion need not necessarily be initiated from a party to the contract. It may be initiated by any person, even by a stranger. Similarly, it may be directed against any person including a stranger.

7. The coercion may be by way of threat to commit suicide:
Sometimes, by threat to commit suicide, a person obtains the consent of the other. In such cases also, the consent is said to be obtained by coercion.

2. **UNDUE INFLUENCE (SECTION 16):**

"Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other."

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

1. Where he holds a real or apparent authority over the other.

   For example, an employer may be deemed to be having authority over his employee.

   Or income tax authority over to the asessee.

2. Where he stands in a fiduciary relationship to other.

   For example, the relationship of Solicitor with his client, or a spiritual advisor with his devotee.

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

ILLUSTRATIONS:

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

FRAUD (SECTION 17):

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

(1) the suggestion as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

ILLUSTRATIONS :

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.
(b) B says to A--"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.

Essentials of Fraud

1. The fraudulent act must be committed with an intention to deceive:
It is an important and essential element of a **fraud**. The act, which constitutes fraud, must be committed by a party, to a contract, with the intention to deceive the other party.

2. The fraudulent act must be committed with knowledge of its falsity:
It is also an essential element of fraud that the party committing the fraudulent act must be aware that his act is falseA person making a false statement is not guilty of fraud if he honestly believes in its truthfulness.

3. The fraudulent act must have been committed by a party to the contract:
This essential elements has been emphasised in Section 17 of the Indian Contract Act, according to which, the fraud must have been committed only by the party to the contract or his authorised agent.

4. The fraudulent act must have been committed upon the party to the contract or his agent:
It is also an essential element of fraud, that it must have been committed upon the party to the contract. If it is committed on a stranger, then it will not amount to fraud, and a contract shall not be voidable on account of fraud.

5. The fraudulent act has actually deceived the other party:
The party, induced by fraud must have relied upon the fraudulent statement and must have been actually deceived. In other words, fraud must have induced the other party to enter into a contract.

MISREPRESENTATION (SECTION 18)

"Misrepresentation" defined

"Misrepresentation" means and includes -

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that whichis not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;

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

In simple words we can say that it is causing, however innocently, a party to an agreement to make a mistake as to the subject of the agreement".

ILLUSTRATIONS

(a) A, by a misrepresentation, leads B erroneously to believe that, five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(b) A, while filling the LIC form, writes that he is not suffering from any decease. While A does not know that he is already infected with tuberculosis. Contract is voidable at the option of insurance company on ground of misrepresentation.

19.Voidability of agreements without free consent.-When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is voidable at the option of the party whose consent was not free.

Essentials of misrepresentation

1. The misrepresentation must be of material facts:

It is an important and essential element of misrepresentation that the false statement must be of material **facts**. A mere expression of one's opinion is not a statement of facts.

2. The misrepresentation must be false, but the person making it honestly believes it to be true:

The statement of facts which amounts to misrepresentation must be a false statement. But the person making it should believe it to be true.

3. The misrepresentations must induce the other party to enter into contract:

The person making false representation must have the intention to induce the other party. Moreover, the second party must enter into a contract believing the representation to be true.

MISTAKE

1. Mistake of fact (section 20 and 22)

a. Bilateral Mistake (Section 20)

"Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void". Mistake must be bilateral mistake where both parties to an agreement are under mistake as to the matter of fact. The mistake must relate to a matter of fact essential to the agreement.

Illustration

A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

b. Unilateral Mistake (Section 22)

If only one party is under mistake of fact, which is called as unilateral mistake, contract remains valid. The mistaking party cannot ask for avoiding the contract.

Illustration

A purchases certain antique coins believing them to be of 17th century. But they were of 18th century. A cannot avoid the contract.

2. Mistake of law (section 21)

If contract is under mistake as to any Indian law, it remains valid as no one can take a plea of ignorance of Indian law.

If contract is under mistake as to any foreign law, it is treated just like mistake of fact.

IV. VOID AGREEMENTS

1. Agreement is void if **considerations and objects are unlawful.**
2. Agreement without consideration is void, unless it is protected by any exception as discussed in chapter of consideration.

3. Agreement in restraint of marriage. Every agreement in restraint of the marriage of any person, other than a minor is void. It is the policy of law to discourage agreements, which restrain freedom of marriage.

4. Agreement in restraint of trade. Every agreement, by which one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.
5. **Agreement in restraint of legal proceedings.** Every agreement by which any party thereto is restricted absolutely from filing legal proceedings is void.
6. Agreements for uncertainty. Agreements the meaning of which is not certain, or capable of being made certain, are void.
7. Agreements by way of wager/ Bet. Agreements by way of wager are void. Wager means betting or gambling. However certain prizes for horseracing are exempted.

DISCHARGE OF CONTRACT

Discharge means termination of contract where contractual relations between parties come to an end. This may happen in any of the following ways.

1. Discharge by performance
2. Discharge by agreement or consent
3. Discharge by impossibility of performance
4. Discharge by lapse of time
5. Discharge by operation of law
6. Discharge by breach of contract

1. DISCHARGE BY PERFORMANCE

Actual Performance
When both parties perform their promises & there is nothing remaining to perform, the contract discharges by performance.
Attempted Performance
When the promisor offers to perform his obligation, but promisee refuses to accept the performance, the contract discharges by attempted performance. It is also known as tender.

2. DISCHARGE BY AGREEMENT OR CONSENT

(i) NOVATION: New contract substituted for old contract with the same or different parties.

Illustration

A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(ii) RESCISSION: 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 promisor. The party rescinding voidable contract shall, if he have received any benefit there under from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Illustration

A under coercion employed by B, enters into contract with him. Later on he rescinds the contrat through court of law. The contract gets discharged. A has received Rs. 20,000 from B under the contract. A must return this amount to B.

(iii)REMISSION: Acceptance of a lesserfulfillmentof the promise made.

Illustration

A owes Rs. 1, 00,000 to B under a contract. B agrees to accept Rs. 60,000 as a full repayment. Contract has been discharged by remission.

(iv)WAIVER: Mutual abandonment of the right by the parties to contract.

Illustration

A owes money to B under a contract. B releases A altogether from repayment. Contract has been discharged by rescission.

(v) MERGER: When an inferior right accruing to a party to contractmerges into a superior right accruing to the same party.

Illustration

There is a contract of tenancy between A and B. while the contract is alive, A purchases the same house. The contract of tenancy has been discharged by merger.

3. DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE

If contract is impossible to perform, contract automatically gets discharged whether impossibility is known to the parties or unknown to the Parties.

Illustration

A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

Subsequent or Supervening impossibility

This is also called as ‘doctrine of frustration’. A contract which was possible to perform at the time of entering but becomes impossible to perform subsequently gets discharge when the impossibility occurs. For example, destruction of subject matter.

Case law

Krell v Henry (1903)

The property was hired for a particular purpose, viz., viewing the Coronation procession of of King Edward VII. However the ceremony got cancelled. It was held that purpose has become impossible owing to unforeseen circumstances beyond the control of either party and contract has been discharge due to Supervening impossibility.

Following are some examples of Supervening impossibility.

- Death or incapacity of personal services
- Change of law
- Outbreak of war

4. DISCHARGE BY LAPSE OF TIME

The Limitation Act 1963, clearly states that a contract should be performed within a specified time called period of limitation.If it is not performed and if the promisee takes no action within the limitation time, then he is deprived of his remedy at law.

5. DISCHARGE BY OPERATION OF LAW

- Death – death of promisor discharges the contract involving personal services.
- Insolvency – insolvency of either of the party discharges the contract.
- Unauthorised alteration of the terms of a written agreement discharges other party from the contract.
- Rights & liabilities becoming vested in the same person (e.g. bill of exchange gets into the hands of the acceptor).

6. DISCHARGE BY BREACH OF CONTRACT

When either of the parties fails to perform their promise made the contract, breach occurs. It may be –

A. ACTUAL BREACH

Actual breach occurs when breach is made -

- At the time when the performance is due
- During the performance of the contract.

B. ANICIPATORY BREACH

When a party repudiates the contract before the time fixed for its performance or when a party by his own act disable himself absolutely from performing the contract .

Examples:

1. Rashi Contracts To marry Raj , but before the agreed date of marriage she married to someone else . In this case Rashi committed anticipatory breach of contract .

2. Atul contracts to supply Amit with certain articles on 1st of august , on july 20 he informs arun that he will not be able to supply the goods. A has commited anticipatory breach of contract.

Section 39 deals with anticipatory breach of contract .

It provides when a party to a contract has refused to perform , or disabled himself from performing his promise in its entirely , the promise may put an end to the contract , unless he has signified , by words or by conduct his willingness in its continuance .

For Example :

If A man enters into a contract with a theatre that he will sing two nights in every week during the next two months and the manager agrees t0 pay a sum of Rs 2000 for that for each performance

On the sixth night Aman wilfully absent himself from the theatre , the manager gets the liberty to put an end to the contract .

The Promisse shall have two options when there is an anticipatory breach of the contract :

1) Rescind the contract and sue for damages fr breach of contract without waiting until the due date of performance

or

2) May not rescind the contract but treat the contract as operative and wait for the time of performance and then hold the other party liable for the consequences of non performance.

REMEDIES FOR BREACH OF CONTRACT

When a contract is breached, the injured party is entitled to one or more of the following remedies.

1. Rescission of the contract

a. When one party to the contract breaches the contract, the other party need not perform his part of the obligations. The aggrieved party may rescind the contract.

2. Suit for damages

a. The aggrieved party of the contract is entitled for monetary compensation when the contract is breached. The objective of Suit for damages is to put the aggrieved / injured party in a position in which he would have been had there been performance and not breach. The aggrieved / injured party must be able to prove the actual loss or no damages will be awarded

3. Suit upon quantum merit

a. The term "Quantum Merit" is derived from Latin which means "what one has earned". The injured party can file a suit upon quantum merit and may claim payment in proportion to work done or goods supplied

4. Suit for specific performance of the contract

5. Specific Performance means the actual carrying out of the contract as agreed. The Court may grant for specific performance where it is just and equitable to do.

6. Suit for injunction

Injunction is an order of the Court restraining a person from doing a particular act. Where the defendant is doing something which he is promised not to do, then the injured party will get a right to file a suit for injunction.

MODULE III

SPECIAL CONTRACTS

I. CONTRACT OF INDEMNITY

As per section (124) of the Act, Contract of Indemnity has been defined as follows:

"A Contract whereby one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called a contract of indemnity."

Illustrations

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Indemnity, in simple words, means to compensate for loss.

The person who promises to save the other is called the Indemnifier and the person who is compensated is called as indemnity-holder. The Indemnifier may or may not be responsible for the loss suffered by indemnity-holder.

Essentials of indemnity contract

1. Contract of Indemnity should all satisfy the conditions of a valid contract such as consideration, free consent etc.
2. Indemnity is a type of contingent contract where execution depends upon happening of loss to indemnity-holder. So if indemnity-holder does not suffer loss, indemnifier need not give any compensation.
3. Loss must have been caused because of indemnity-holder himself or by the conduct of any other person. So accidental losses are not covered by indemnity contract.
4. Originally insurance contracts were not covered by indemnity contract because of its narrow scope. But now Supreme Court has held that except life insurance contracts, all other insurance contracts are indemnity contracts.

Rights of Indemnity Holder

Indemnity holder is entitled for -

- All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- All costs which he may be compelled to pay in any such suit.
- All sums which he may have paid under the terms of any compromise of any such suit

Rights of Indemnifier

The rights of the indemnifier are similar to the rights of a surety under *Section 141 of the Act.* (Discussed in chapter of Guarantee)

II. CONTRACT OF GUARANTEE

As per section (126) of the Act, Contract of Guarantee has been defined as follows:

A Contract to perform the promise, or discharge the liability, of a third person in case of his default is called Contract of Guarantee. A guarantee may be either oral or written.

1. The person who gives the guarantee is called the Surety
2. The person on whose default the guarantee is given is called the Principal Debtor
3. The person to whom the guarantee is given is called the Creditor

Essentials of guarantee contract

1. Contract of Indemnity should all satisfy the conditions of a valid contract such as consideration, free consent etc.
2. Contract of guarantee involves three contracts as under.

a. First is a primary contract between creditor and principal debtor by which principal debtor incurs liability.

b. Second contract is between surety and creditor by which surety promises to discharge the liability of principal debtor of his default.

c. Third is implied contract surety and principal debtor which is an indemnity contract. Here principal debtor promises to indemnify creditor for the loss which creditor may suffer because of his default. Thus every contract of guarantee includes implied contract of indemnity.

3. Guarantee is a tripartite contract. i.e. there are three parties in every Contract of Guarantee
4. Liability of principal debtor is primary, i.e. arises in the first place.
5. Liability of surety is secondary and arises in case of default by principal debtor.
6. Once surety performs his promise, he gets all the rights of creditor against principal debtor.
7. The liability of the surety can never be greater than that of the principal debtor. The surety however may restrict his liability by contract.

Types of guarantee

1. Simple guarantee - Guarantee which extends to a single transaction is called as simple guarantee. For example, A gives loan to B for which C stands as guarantor.

2. Continuing Guarantee - A Guarantee which extends to a series of transactions is called a continuing guarantee. For example, A employs B for collecting rent every month and remit amount to A after deducting his commission. C guarantees A that if in any month he makes default, C will pay that amount to A. Continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Rights of a surety

As against the Creditor

1. Sec. 133 - The creditor shall not vary terms of the contract between the creditor and the principal debtor without the surety's consent. Any such variance discharges the surety as to transactions subsequent to the variance if it is againt interests of surety.
2. Sec. 134 - The creditor should not release the principal debtor from his liability under the contract. The effect of the discharge of the principal debtor is to discharge the surety as well. Any act or omission on the part of the creditor which in law has the effect of discharging the principal debtor puts an end to the liability of the surety.

As against the Principal Debtor

3. Right of subrogation - The surety on payment of the debt acquires a right of subrogation. It means he as if puts his foot in a shoe of creditor. I.e. he gets all the rights of creditor against principal debtor.

III. CONTRACT OF BAILMENT

As per section (148) of the Act, Contract of bailment has been defined as follows:“Bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.”

The person delivering the goods is called the" bailor". The person to whom they are delivered is called, the" bailee".

Illustrations

1. Giving cloths for stitching
2. Giving TV for repair
3. Giving car on hire
4. Giving gold for making ornaments
5. Giving cloths for ironing
6. Giving grains for polishing etc.

Essentials of bailment contract

1) Contract of Indemnity should satisfy the conditions of a valid contract such as consideration, free consent etc.

2) Bailment is a delivery of goods by one person to another. According to Section 149 the delivery of goods may be actual or constructive.

3) Goods mean movable property. So if house is given on rent, it is not bailment.

4) The goods are delivered for some purpose. When they are delivered without any purpose there is no bailment.

5) The goods are delivered subject to the condition that when the purpose is accomplished the goods are to be returned in specie or disposed of according to the directions of the bailor, either in original form or in altered form.

6) No transfer of ownership- Incase of bailment ownership is not transferred. The bailor will be the actual owner of the goods bailment.

DUTIES AND RIGHTS OF BAILOR AND BAILEE

Duties of bailor: 1. To disclose all known faults in the goods.

2. It is duty of the bailor for those faults, which are unknown to him, where goods are bailed on hire.
3. The bailor is to bear the extraordinary expenditure of bailment.
4. The bailor is responsible to bear such types of loss, which arised due to his defective goods.
5. The bailor is to receive back the goods whenever it is returned by the bailee.

Duties of bailee-
i. It is the duty of the bailee to take reasonable care of the goods.
ii. The bailee is to act in consistent with the terms of bailment and follow these strictly.
iii. The bailee is to use the goods of bailment according to terms and conditions of bailment.
iv. It is a duty of bailee not to mix his own goods with the goods of bailment.
v. The bailee is to return the goods of bailment as soon as expiry of the specific period of time.
vi. The bailee is to deliver the profit to the bailor, if any such profit is acquired from the goods of bailment.
vii. It is a duty to the bailor to hold the goods on behalf of the bailor.

Rights of bailee-

i. Right of compensation for defective goods.
ii. Right to claim for necessary extraordinary expenditure.
iii. Right in case of gratuitous bailment.
iv. Right to claim for compensation or loss because of the defective enrollment of the bailor.
v. Right to delivery of goods to any of the joint bailors.
vi. Right to delivery of good to bailor without title.
vii. Right to ask the court to decide the ownership of the goods of bailment, if the third party claims the ownership of the good.
viii. Right to bring an action against third party, if a third party wrongfully deprives the bailee.
ix. Right of particular lien over the goods until his expenditure is paid.

Rights of bailor –

ii. Following are the rights of bailor-
i. Right of compensation for loss caused by lack of reasonable care by the bailee.
ii. Right to terminate bailment for consistent use of goods by bailee.
iii. Right to claim damages in case of unauthorized use of goods bailed.
iv. Right against mixture of goods bailed.
v. Right to terminate the contract and take back the goods in case of gratuitous bailment.
vi. Right to get the goods returned

ii. Right of compensation for non- return of goods.
viii. Right to get accretion to the goods.

Types of bailment

Bailment can be classified broadly under the three heads as follows.
1.Gratuitous bailment: when the goods are lent to somebody without any charge that is known as the gratuitous bailment. Gratuitous bailment is a bailment in which when one person gives the delivery of the goods to another person then he doesn't take a charge of that delivery. For example 'A' has given his scooter to the 'B' for two days and 'A' is not charging anything for that. It is known as the gratuitous bailment because there is no charge in it.
2. **Bailment for remuneration**: In this type of bailment bailer is charging from the bailee. For example 'A' has given his taxi to the 'B' for two days at the rate of hundred rupees per day. Now, in this 'A' is charging hundred rupees per day this is known as Bailment for remuneration or non-gratuitous bailment.

3.Pledge: Pledge can be defined as a special kind of bailment. Pledge is a transfer of goods as a security for the payment of a debt or for the performance of a promise. According to Section 172 of the Indian Contract Act, 1872, pledge is the bailment of goods as security for the payment of a debt or performance of a promise. In case of the contract of pledge the bailor is called pledger or powner and the bailee is called pledgee or pawnee. The contract of pledge can be only of movable properties. Transfer of goods in pledge can be either actual or constructive. The pledger should have judicial right on the goods pledged.

Example: X borrows a loan of Rs. 1, 00,000 from Y and X give his car as security. It is a valid pledge. In this case X is "pledger" and Y is the "pledgee"

IV. **CONTRACT OF AGENCY**

By contract of agency a person employs another person to do any act for him or to represent him in dealing with third persons. The person who is represented is called as principal and the person who represents is known as agent. The relation between them is known as agency.

PARTIES TO THE CONTRACT OF AGENCY

Agent – U/s 182An agent is a defined as a person employed to do any act for another or to represent another in dealing with third persons. Thus agent establishes a contract between such another person and 3rd person.

Who may be an agent?

U/s 184 any person (whether he has contractual capacity or not may become agent). Thus minor also can become an agent

Principal – U/s 182 The person for whom act is done by an agent or who is represented in dealings with third perso*ns by an agent is called as principal .Who may become principal? Any person who is of the age of majority according to the law of majority and who is of sound mind may employ an agent.

Consideration for Agency

U/s 185 No consideration is required for creating an agency. Thus the contract of agency constitutes an exception to the rule contained in s.25 of ICA that no consideration – no contract. It means there can be a gratuitous contract of agency

Modes of Creation of Agency

1) By express authority

Principal may enter into a contract of agency either in writing or orally also.

2) By implied Authority

In some cases with having an express agreement, one person may treat other as his agent through his conduct. This is called as implied agency. A owns a shop in Shimla , living himself in calcutta and visiting occasionally . The shop is manage d by B and he is in the habit of purchasing goods from C in the name of A for the purpose of the Shop and of paying the money out of A's funds with the knowledge of A . B has an implied authority from A to order the goods from C in the name of A for the purpose of A's Shop .

3) Agency by estoppel

Where a person by his words / conducts induces third person to believe that certain person is his agent . The person who induces as such is estopped from denying the truth of agency

Ex – X tells Y in the presence and within the hearing of Z that X is Z's agent . Z doesn't deny this. Later on Y enters into contract with X believing that X is a agent of Z . In such case Z is bound by this contract.

4) Agency by necessity

Agency by necessity arises under following circumstances

1) There is an actual necessity for acting on behalf of principal
2) It is impossible to communicate with the principal and obtain his consent
3) The act must be done in the interest of principal.

Illustration: A who is captain of ship carries out urgent necessary repairs without permission from the owner of ship. There is Agency by necessity created between A and B.

5) Agency by Ratification

It arises when a person, on whose behalf the acts are done without his knowledge or authority, expressly or impliedly, accepts such acts. Thus, when the principal approves an act of the agent who never had an authority to undertake such acts, it is called as ratification.
Ex – A without B's authority, lends B's money to C. Afterwards B accepts the interest on the money from C. B's conduct implies ratification to loans.

Classification of Agent

1. General Agent- A general agent is one who has authority to do all the acts in the ordinary course of trade or profession

2. Special Agent -A special agent is one who has the authority to do a particular act in a particular transaction

3. Universal Agent -A universal agent is one who has authority to do all acts which the principal can do and delegate

4. Broker -A broker is the person who negotiates and makes contracts between the principal and third party. He is not entrusted with the possession of goods and hence he has no right of lien on the goods.

5. Factor -A factor is one who is entrusted with the possession of the goods and who has authority to buy, sell or otherwise deal with the goods. He has right of lien.

6. Auctioneer-He is the one who is entrusted with the possession of the goods for sale at a public auction. He has right to lien on the goods for his charges.

7. Commission Agent -This term is used for both – Factor and broker

8. Del – Creder Agent-he gives guarantee of 3rd person with whom he is entered into contract for the performance of obligation.

9. Sub-agent-he is agent appointed by agent. Sub agent is responsible only to agent. But agent is responsible to principal for the acts of sub-agent.

Duties of Agent

1. The agent must carry on the business as per the directions given by principal. If directions given by principal are ignored by the agent and business carried on by agent as per his own judgments, agent himself will be held responsible for the same .Ex – X is commissioned agent appointed by Y to sell certain goods on his behalf. Y has given instructions that goods are to be sold on cash payment. But X sold the goods on credit. If credit becomes bad debts due to insolvency then X himself will be held responsible for the same.

2. Agent should conduct the business with skill and diligence that is generally possessed by the person engaged in similar business .Ex – Lawyer, C A

3. The agent must keep proper accounts of the business

4. The agent should not make any secrete profit

6. Agent should not disclose the confidential information to 3rd party

Rights of Agent

1. The agent is entitled to receive the amount of remuneration from principal. The amount of remuneration is receivable only when the agent fulfills the object of agency.

2. The agent can retain the amount due to him from the principal into the forms of advances paid by him or expenses incurred by him during the business .Ex – If A an agent of B has paid advances Rs.20000 , he has also incurred the expenses of Rs. 30000 and his commission is Rs. 10000 . The amount of sales received by him on behlf of his principal is Rs. 200000. In this case the agent can retain Rs. 60000(20000+10000+30000=60000) and remit the balance amount to the principal.

3. Right of Lien Agent can exercise the right of lien on the goods which are there in his possession till the amount of commission or other dues paid to him by the principal. Right of lien can be exercised only when the agent is having possession over the property.

Duties of Principal

1. Duties of principal towards Agent

a. The principal is liable to indemnify the agent against the consequences of all lawful acts done by the agent while exercising the authority (except criminal acts of agent)

b. Principal must pay compensation to the agent for any injury suffered by the agent due to the principal's negligence or principal's lack of skills.

2. Duties of principal towards third party

a. The principal is liable to 3rd party for the acts committed by agent so long as such acts must be within the scope of authority

b. If the agent exceeds his authority and part of his act within the scope of his authority, the principal is liable for the act which is within the scope of authority of the agent . Principal will not be liable for the acts of the agent which are not within the scope of authority.

c. Even principal whose name is not disclosed remains liable to the 3rd party.

Rights of Principal

1. Right to recover damages -If the principal suffers from any loss due to the non adherence by the agent to his directions, principal can recover the same from the agent.

2. To Obtain the accounts of secrete profit-If the agent without the knowledge of the principal makes any secrete profit out of agency, the principal has right to recover the same from agent.

Termination of Agency

Agency may be terminated in the following ways.

1. Termination by the act of the Parties

a. Revocation by principal -A principal can revoke the authority of agent. This can be done by giving the notice to the agent . In case of continuing agency notice must be given not only to the agent but also to the third party.

b. Renunciation by Agent- If the agent himself do not want to continue with the agency, he can renounce the agency by giving sufficient notice. If the agency is for the fixed period and the agent wants to terminate the agency before the expiry of that period, principal must be given compensation.

c. By performance of the Agency -Sometimes the agency is created for the specific purpose. If the purpose is fulfilled automatically the agency will come to an end .Ex – If A has been appointed by B to sell his land, A's agency will come to an end when the piece of land is sold.

d. Agreement -Agency comes into an existence and comes to an end by mutual agreement. If both the principal and the agent agrees to end the agency, then agency will come to an end by agreement .

2. Termination by operation of law

a. Death or insolvency of principal or agent- If either principal or agent becomes insolvent or either of two dies, the agency is terminated.

b. Expiry of the fixed time period -If the agency is for the fixed time period, then after the expiry of the fixed time period agency expires.

c. Dissolution of company-When company whether acting as agent or principal comes to an end or dissolved, the contract of agency also comes to an end.

MODULE IV
II SALE OF GOODS ACT 1930

Originally, the law relating to sale of goods was contained in Chapter VII of the Indian Contract Act, 1872. The same was repealed and re-enacted by the Sale of Goods Act, III of 1930.

Sale and agreement to sell

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

From the above definition, the following essentials of a contract of sale may by noted:
1. There must be at least two parties
2. Transfer or Agreement to transfer the ownership of goods.
3. The subject matter of the contract must necessarily be goods.
4. The consideration is Price.
5.A Contract of sale may be in writing or by words
6. All other essentials of a valid contract must be present
7. It is a contract where the ownership in the goods is transferred by seller to the buyer immediately at the conclusion contract. Thus, strictly speaking, sale takes place when there is a transfer of property in goods from the seller to the buyer. A sale is an executed contract.
8. It must be noted here that the payment of price is immaterial to the transfer of property in goods.

- Ex - A sells his Yamaha Motor Bicycle to B for Rs. 10,000. It is a sale since the ownership of the motorcycle has been transferred from A to B.

8. It is a contract of sale where the transfer of property in goods is to take place at a future date or subject to some condition thereafter to be fulfilled.

- Ex- A agreed to buy from B a certain quantity of nitrate of soda. The ship carrying the nitrate of soda was yet to arrive. This is `an agreement to sale`. In this case, the ownership of nitrate of soda is to be to transferred to A on the arrival of the ship containing the specified goods (i.e. nitrate of soda)
- [Johnson V Mcdonald (1842) 9 M & W 600, 60 RR 838] On 1st March 1998, A agreed to sell his car to B for Rs. 80,000. It was agreed between themselves that the ownership of the car will transfer to B on 31st March 1998 when the car is got registered in B`s name. It is an agreement to sell and it will become sale on 31st March when the car is registered in the name of B.

DISTINCTION BETWEEN A SALE AND AN AGREEMENT TO SELL ARE:

Sale	**Agreement to sell**
Nature of contract Executed contract One of the parties has already performed the contract.	Executory contract Both the parties have agreed but are yet to perform the contract.
Creation of right Principle Right on goods against the whole world. Latin: Jus in rem — right in possessing the good.	Creates personal right. Latin: Jus in personam—against the person in contract.
Remedies on breach of contract The seller has the right to sue for the price of goods, lien, and stoppage.	The seller has the right only to damages to performance of the contract.
Risk of loss :- The loss will be borne by the buyer even when the goods are still lying with the seller.	The loss will be borne by the seller since the ownership is not yet transferred to the buyer.
Insolvency of the buyer Seller is entitled to sue for the price of the goods and can	The seller has the right to sue only for damages for non-performance of the contract.

exercise right of lien, stoppage in transit, and resale.		
Right The buyer is the owner. Even if the goods are with the seller, he cannot resell	The seller may dispose-off the goods as he deems fit; the buyer may sue him only for the breach of contract.	

Distinction between Sale Hire purchase

Sale	**Hire purchase**
Nature of contract Sale and agreement to sell.	Bailment and agreement to sell.
Transfer of property in goods Property in goods is transferred to the buyer immediately atthe time of contract.	Property passes to the hirer upon payment of the installment.
Position of the buyer Owner of the goods.	Bailee till he pays all the installments.
Power to terminate the contract Buyer cannot terminate the contract.	May terminate the contract by returning goods to its owner without paying remainder of the installments.
Tax payable Tax is levied at the time of sale and agreement to sell.	Tax is not leviable until it turns into sale.

`GOODS` (section 2(7))

Goods means every kind of moveable property and includes stock and shares, growing crops, grass, nd things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.□ Actionable claims and money are not included in the definition of goods.□ Thus, goods include every kind of moveable property other than actionable claim or money. Example - goodwill, copyright, trademark, patents, water, gas, and electricity are all goods and may be the sub-ject matter of a contract of sale.□

Classification of Goods

- Sec. 6 of the Sale of Goods Act classifies ‘goods’ under following categories:
- 1. Existing goods These are the goods which are owned or possessed by the seller at the time of sale.
  a. Specific goods or ascertained goods: These are identified and agreed upon at the time of sale. b. Unascertained or generic goods These are not identified and agreed upon at the time of sale but defined only by description and may form part of the lot.
- 2. Future goods These are not possessed by the seller at the time of the contract but which will be produced, procured, and supplied by him in the future. It is similar to the goods in an agreement to sell.
- 3. Contingent goods These are of two types: contingent goods and contingent and future goods.
  a. Contingent goods The acquisition and supply of these goods depends upon certain conditions, such as arrival of a consignment. The seller is not liable for such goods since it is specifically under conditions.
  b. Contingent and future goods The procurement of contingent goods depends on a contingency, whereas it is not so in a future contingency. The parties are liable for production or procurement of goods. The promise, for instance, to produce and supply spare parts, must be delivered in the future.

CONDITIONS AND WARRANTIES

Every contract has certain terms and conditions. They are as follows.

“**CONDITION” defined**.

According to section 12 (2) of the sale of goods Act, 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.
Thus a condition forms the very basis of the contract the breach of which causes a irreparable damage to the buyer, and he has a right to terminate the contract of sale entitling him to return the goods and get the refund of the price paid. It goes to the root of the contract. **In Baldry v. Marshall (1925) 1 KB 26**, A consulted B a car dealer and told him that he wanted to purchase a car for touring purposes suggested that a Buggati car will be fit for the purpose. Relying upon the statement, he bought the Buggati car. Later on the car turned to be unfit for the purpose of touring. The Court observed that the suitability of the car for touring purpose was ac condition because, it was so important that the non fulfillment defeated the very purpose of defeated the very purpose of purchasing the car. It was held that A was entitled to return the car and get back the price paid.
WARRANTY DEFINED
As per section 12 (3) of the Act, warranty is defined as
"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract."

DISTINCTION BETWEEN CONDITIONS AND WARRANTIES

Condition	Warranty
Condition is a stipulation which is essential to the main purpose of contract.	which is only collateral or to the main purpose of the subsidiary to the main purpose of the contract
A breach of condition gives right to repudiate the contract and to sue for damages.	A breach of warranty gives the aggrieved party a right to only the right to sue for sue for damages. The contract cannot be repudiated.
A breach of condition may be treated as breach of warranty in certain circumstances.	breach of warranty cannot treated as a breach of condition.
Conditions which have been well-announced, articulated, or written into a contract.	As directly communicated in the contract.

Implied warranties
1. Warranty of Quiet Possession In a contract of sale, unless the circumstances of the contract are such as to show different intention, there is a implied warranty that the buyer shall have and enjoy quiet possession of the goods.
- 2. Warranty of Freedom from Encumbrances

IMPLIED CONDITIONS.
Whether any express condition is made or not law presumes certain standards which are to be ensured by the seller before selling the any product .These presumptions as to nature, quality, and rightful ownership of the product are termed as **implied conditions.** The implied conditions in sale of goods are laid down in sections 14 to 17.

(1.)CONDITION AS TO TITLE.
It is presumed in law that in the case of sale, the seller has the right to sell the Goods, and in the case of an agreement to sell the, the seller will have the right to sell the goods at the time of sale. In case a seller sells without the right to sell them, the buyer has the right to repudiate the contract. The term "right to sell" infers that the seller should have a valid title to the Goods**.** According to section 14 of the Act, In a contract of sale, unless the circumstances of the contract are such as to show a different attention, there is an implied condition on the part of the seller that-(a).in the case of a sale, the seller has the right to sell.

(b). in the case of an agreement to sell the seller will have a right to sell at the time of sale.

In Rowland v. Divall, {1923}2K.B.500,B bought a second hand car from S a car dealer. After few months the car was taken away by the police as it was a stolen one. The court observed that it was a breach of condition as to title as S had no right to sell the car. It was held that B could recover full price from S.
In Niblett v. Confectioners Material Co [.1921] 3 KB 387,B bought 3000 tins of condensed milk from S. Out of these 1000 tins were labeled as Nissly Brand.N, another manufacturer of the milk under the brand name of Nestle, claimed that this was an infringement of his trademark. Consequently B had to remove all the labels from the tins and had to sell them at loss. The court held that the seller had breached the implied condition that he had a right to sell.

2.SALEBY DESCRIPTION.
"If you contract to sell peas, you cannot oblige a party to take beans." This is the rule laid down in section 15, 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.**In Shepherd v. Kane (1821),**A ship was contracted to be sold as "copper fastened vessel" to be taken with all faults, without any allowance for any defects whatsoever. The ship turned to be partially Copper fastened .The court held that that the buyer was entitled to reject the goods.
When a descriptive word or phrase is used in a contract of sale to describe the product it creates an implied condition that the goods will correspond to the description. For example a sale of Seedless Grapes, signifies that the fruit will have no seeds. If it turns that the fruit is with seeds the buyer can reject the goods.
InNicholson&Vennv.Smith Marriot,(1947),in an auction sale of a set of Napkins and table clothes, these were described as dating from the seventh century; the buyer bought the set after seeing it. Subsequently it was found that the set was not of the seventh century but of the eighteenth century, it was held that he could reject the goods.
Sale by description as well as by sample.
Section 15 further provides that if the sale is by sample as well as by description then it is not sufficient that it corresponds to the description but it should also correspond to the sample.
In Wallis v. Pratt, (1911), in a contract for the sale of a quantity of the sale of seed described as "common English Sainfoin", the seed supplied was of a different kind, though the defect was not discoverable except by sowing the defect also existed in the sample. Held the buyer was entitled to recover damages for the breach of contract.
3. CONDITION AS TO QUALITY OR FITNESS.
Ordinarily there is no implied condition that the goods supplied by the seller should be fit for the particular purpose of the buyer. The rule **Caveat emptor** applies instead It means that while buying it is the responsibility of the buyer to ensure that the goods corresponds to the particular purpose he want to meet. However in the following situation the responsibility of the fitness as to Goods falls on the seller.
EXCEPTIONS TOTHE RULE OF CAVEAT EMPTOR
A the buyer make known to the seller the particular purpose for which he requires goods.,
B The buyer and seller relies on the skill and judgment of the buyer.
C The sellers business is to supply such goods whether he is the manufacturer or producer or not.
Firstly the particular purpose for which goods are required must be known to the seller The purpose may be made known explicitly or by implication
If the goods can be used for many purposes, the buyer should make known the specific purpose to the seller; otherwise the condition as to fitness would not apply.
In Re Andrew Yule &Co, AIR 1932,a buyer ordered for Hessian cloth which is generally used for packing purposes the cloth was supplied accordingly, on receiving the cloth, the buyer found that the cloth was not suitable for packing food products as it had unusual smell He wanted to reject the cloth. The court observed that the buyer had no right to reject the cloth because although it was not fit for the specific purpose, it was fit for the purpose of packing otherwise for which it was commonly used. There was no breach of condition of fitness in this case. In this case had the buyer have informed to the seller that he needs the cloth for the packing of food products, situation would have been different.

It is not necessary that the purpose should be expressed in words only. If the goods could only be used for one purpose only, it is implied that the seller had knowledge about the purpose for which the buyer need the goods.
In Priest v Last (1903),B went to Sa chemist and demanded a hot water bottle from him, S gave a bottle to him telling that it was meant for hot water, but not boiling water. after few days while using the bottle B's wife got injured as the bottle burst out, it was found that the bottle was not fit to be used as hot water bottle. The court held that the buyer's purpose was clear when he demanded a bottle for hot water bottle, thus the implied condition as to fitness is not met in this case.
Secondly, the buyer must have relied upon the skill and judgment of the seller. B asked S, he need a car for touring purpose, S supplies a car which is not fit for touring. A breach of condition has been committed here.
However mere mention of a particular trade name by the buyer doesnot mean that he has ordered for the product of that trade name only. He may still rely upon the skill and judgment of the seller.
Thirdly, the seller should be a dealer of the kind of products transacted.

4.CONDITION AS TO MERCHANTABILITY.

Section 16 (2)-Where goods are bought by description from a seller who deals in goods of that description whether he is not the producer or manufacturer or not, there is an implied condition that the goods shall be of merchantable quality
The above provision reveals that the condition of merchantability is applicable when,
a) The goods are sold by description
b) The seller deals with such goods
In Grant v. Australian Knitting MillsAIR1936PC34, B bought underwear from S, B examined it while purchasing .Later on it turned out to be harmful for his skin because of the presence of hidden sulphites in the underwear which could not have been revealed by ordinary examination. The court held that the implied condition of merchantability is applicable in this case.
In Morreli v Fitch &gibbons (1928)2K.B.636,M asked for a bottle of Stones Ginger Wine at S's shop. Which was licensed for the sale of wines.while M was drawing the cork, the bottle broke and M was injured. Held the sale was by description and M was entitled to recover damages as the bottle was not of merchantable quality.

5. CONDITION AS TO WHOLESOMENESS.

In the case of food products the condition of fitness or merchantability requires that the goods should be wholesome, that is it should be fit for consumption**. In Chapronier v. Mason,(1905)21 TLR633,**C brought a Bun from a baker's shop .The bun contained a stone which broke of C's teeth. The court held that the seller was liable to pay damages as he breached the condition of wholesomeness.

6 . CONDITION IMPLIED BY CUSTOM.

An implied condition as to quality or fitness for a particular may be annexed by the usage of trade. Section 16(3), there are instances where the purpose of purchasing goods may be ascertained from the conduct of parties to the sale. Or from the nature of description of the thing purchased. For, example if a water bottle is purchased the purpose for which it is bought is implied in it; in that case the buyer need not tell the seller the purpose for which he buys it.
In Dr. Baretto v. T. R. Price, AIR 1939 Nag 19, A bought a set of false teeth from a dentist. The set did not fit into A's mouth. Held A could reject the set as the purpose for which anybody would buy it was implicitly known to the seller, here the dentist.
In Priest v Last (1903)2K.B.148,P asked for a hot water bottle to S ,retail chemist ,he was supplied one whichburst after few days use and injured P's wife. The court held that S was liable for the breach of implied condition because P had made known to the Chemist the purpose for which he buys the goods.

7. SALE BY SAMPLE

A contract of sale by sample is a contract for sale by sample where there is a term express or implied in the contract, to that effect. (Section 17). In the case of contract of sale by sample, there is an implied condition –
1.That the bulk shall correspond to the sample in quality.
2. That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

3. That the goods shall be free from any defect, rendering them unmerchantable. The defect should not however be apparent on a reasonable examination of the sample.
In the case of patent defect there is no breach of implied condition as to merchantability.

In E&SRuben Ltd v.Fair Bros, 1949 1K.B.254.A agreed to buy some rubber material from B. The sample of the rubber was shown to A .On receiving the rubber material, A found that the measurement of the rubber material was different from that of the sample. The court held that measurement of the rubber material was part of its quality. It was held that the goods did not correspond to the sample.

UNPAID SELLER

- Section 45 lays down that a seller is unpaid :

(1) When the whole of the price has not been paid or tendered.

(2) When a negotiable instrument or a bill of exchange has been received as conditional payment and the condition in which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.

The seller remains as unpaid seller as long as any portion of the price, however small, remain unpaid. Where the whole of price has been tendered, and the seller refused to accept such a tender, seller ceases to be an unpaid seller. In such a case the seller loses all high right against the goods.

If there is a period of credit then the seller is not unpaid until the price become due. Against if there is a condition attached to payment it must be fulfilled.

The unpaid seller's right can be exercised by an agent of the seller to whom the bill of leading has been endorsed, or a consignor or an agent who has himself paid, or is directly responsible for the price.

Rights of an unpaid seller

The sale of Goods Act has expressly given two kinds of right to an unpaid seller of goods, namely :

1. (1) Against the goods

(a) When property in the goods has passed

(i) Right of lines

(ii) Right of stoppage of goods in transit

(iii) Right of re-sale

(b) When property in the goods has not passed

(i)Right of withholding delivery.

2) Against the buyer personally

(i) Right to use for price

(ii) Right to sue for damages

(iii)Right to sue for interest

Right of lien

'Lien' is the right to retain possession of goods and refuse to deliver them to the buyer until the price due in respect of them is paid or tendered. An unpaid seller **in possession of goods** sold is entitled to exercise his lien on the goods.

Right of stoppage of goods in transit

It is a right of stopping further transit of the goods while they are with a carrier for the purpose of transmission to the buyer, resuming possession of the goods and retaining the possession until the price is paid. Thus, in a way this right is an extension of the right of lien.

An unpaid seller can exercise this right only when-

a. The buyer becomes insolvent;

b. The property (ownership) has passed to the buyer;

c. The goods are in the course of transit.

It must be noted that this right can be exercised only when the goods are still in transit to the buyer; and this right comes to end when the buyer has obtained possession of the goods.

Right of Resale

The third right available to unpaid seller is the right of resale. It is called right of *resale* because there has been already a sale by which the ownership has passed to the buyer. An unpaid seller can resell the goods in the following cases:

a) Where the goods are of a perishable nature; or

b) Where such a right is expressly reserved in the contract in case the buyer should make a default; or

c) Where the seller has given notice to the buyer of his intention to resell and the buyer does not pay or tender the price within a reasonable time.

Rights of unpaid seller against buyer personally

In addition to the rights against the goods which we have discussed above, the unpaid seller has the following rights against the buyer personally:

1. **Suit for price.** Where the property in the goods has passed to the buyer, the seller is entitled to sue for price, whether the possession is with the buyer or the seller. Similarly, where the price is payable on a certain day irrespective of delivery, the seller may sue for the price, if it is not paid on that day, although the property in goods has not passed.
2. **Suit for damages for non-acceptance.** Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller has a right to sue the buyer for damages for non-acceptance. Here, the seller seeks to recover the loss sustained by him due to breach of contract by the buyer rather than the price of the goods.

SALE BY AUCTION

64. Auction sale.—In the case of sale by auction—

(1) where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;

(4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

(5) the sale may be notified to be subject to a reserved or upset price;

(6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and, until such announcement is made, any bidder may retract his bid. – Sec. 64(2)

When you go to a shop to buy a wrist watch, it is an individual, private sale; it is between you the buyer and the seller. At an auction an article of sale is exhibited publicly. The auctioneer is an agent of the owner of the article who performs the role of a salesman for the former. There are a number of prospective buyers for one and the

same article. They announce their bids or their offer, in terms of money. The auctioneer announces the same loudly. The bids are raised until one by one gives up and finally one is left with the highest bid. The auctioneer ceremoniously announces the last bid thrice adding to good measure the count 1, 2, and 3. Then the last act of the ceremony: A knock by bringing down the hammer that signals the contract is consummated. The bid can be retracted before the fall of the hammer; once the hammer falls the bid is sealed and the article is considered sold.

Passing of Property

Two things are essential for transfer of property (see Figure) These are

(a) goods must be ascertained, and

(b) Intention to pass property in the goods.

FEATURES OF PASSING THE PROPERY IN GOODS

Note: please refer next page

Features	**Explanation**	**Example**
Specific goods Secs 20–22	The goods identified and agreed upon: • There should be an unconditional contract. • Goods should be in deliverable state.	You place an order for 1,000 bags of cement. You agree with the seller/factory and you are promised that the goods will be delivered.
Sale of goods on approval	When the goods are delivered to the buyer on approval basis, from the moment of approval the goods transferred to the ownership of the buyer.	A book seller sends a consignment of books to the library; the librarian approves some and keeps them and sends back the rest.
Sale of unascertained goods (Sec. 23)	The goods are not transferred to the buyer until and unless they are ascertained.	You buy 100 bags of cement and pay for it and take it away; you promise to take another 100, but you have not ascertained unconditionally, that is, you may take them if you need—there is no contract for the next 100 bags.
Transfer of title to goods	Only the owner of the property in goods can transfer the ownership-title to goods. Principle: *Nemo dat quad non habet*—No one can give a better title than he himself has. This ensures ownership; and only an owner can dispose it according to his will to another. Title by estoppel: The buyer may obtain titleif the owner has no objection a third party selling the property in goods. Sale by mercantile agent allows the transfer of title.	You steal a car and sell it to your friend. Your friend has the car but does not have the title to it. By stealing a car you cannot own its title, and what you do not own you cannot transfer. The car neither belongs to you nor your friend who physically has it: it can only belong to its rightful owner who can claim title to it. X sells you a box of dry fruits in the presence Y who is the real owner who, by an act of omission, leads you to believe X is the owner. You buy goods from mercantile agent who furnishes documents of bona fide sales in the ordinary course of business or with the express consent of the owner.

THE NEGOTIABLE INSTRUMENTS ACT 1930

Negotiable Instruments :-

The word "Negotiable" means transferable by delivery and the word instruments means written documents. It entitles a person to a certain sum of money. In simple words we can say it is a written document which is transferable from one person to another by delivery.

as per section 11 of the Act, it is defined as , "A negotiable instrument means a promissory note, bill of exchange or cheque payable by order or bearer."

Example :- Cheques, Bill of Exchange and Promissory Notes are the important examples of negotiable instruments.

Characteristics Of Negotiable Instruments :-

Following are the important characteristics of negotiable instruments :

1. In Writing :-

It is the basic condition of the negotiable instrument that it is always in writing. It can not be verbal.

2. Unconditional :-

It is an unconditional instrument if any condition is attached then it can not be called negotiable instrument.

3. Transferable :-

It can easily transferable from one person to another. In these instruments right of ownership passes either by delivery or by endorsement.

4. Payable On Demand :-

The amount of the instrument is payable on demand or at any predetermination future time.

5. Payable In Money :-

The amount must be written on the instrument and it is always payable in terms of money.

6. Payable To The Bearer :-

The amount written on it is payable to the bearer or to a specified person.

7. Payment of Debt :-

It can be very easily used for the payment of debt. It is very simple and convenient method of payment.

8. Right of Recovery :-

A cheque or Note gives the right to the creditor to recover the written amount from the debtor. He can recover this amount by himself or he can transfer this right to another.

9. Better Title :-

If there is a defect in the title of the previous holder it does not affect the holder in due course. So it is abetter little than others.

10. Exception of General Law :-

In case of transfer of property the general concept of law is that "No body can transfer a better title than that of his own."

But in case of instrument this law does not apply. A negotiable instrument even got in good faith from thief is better title.

11. Specified Amount :-

It is also a characteristic of negotiable instrument that specified and definite amount is written on the instrument.

PROMISSORY NOTE :-

As per section 4 of the Act, “promissory note is an unconditional undertaking, signed by the maker to pay certain sum of money only to or to the order certain person or to the bearer of the instrument.

1. Written :-

Promissory notes must be in writing. There is no such thing as a “verbal” promissory note. Someone may promise to repay you, but it will be difficult to prove, and you may not be able to get it enforced in court without a written record

2. Maker's Signature :-

Promissory note must be signed by the maker or payer.

3. Unconditional :-

The promise to pay must be unconditional. If it contains a conditional promise, it is not a valid. This means once it’s written and signed, the only thing left to happen is repayment. If payment may or may not happen, the promissory note is not valid.

Example :- I promise to B one lac after the death of A.

4. Definite Sum of Money :-

A promissory note is valid only if it is a promise to pay money. A promise to give property (or both property and money) is not a promissory note. The amount to be paid must be definite in terms of money, for example I promise to pay one thousand two hundred and fifty paisa 1200/50 only.

5. Time Decision :-

The promissory note must be payable on demand or at a fixed determinable future date.

6. Payee To be Certain :-

The promissory note must be payable to the bearer or to specified person.

Example :- A promissory note payable to the principal of the college is regarded as payable to certain person.

7. Parties Involved :-

There are two parties involved in the promissory note, the maker and the payee.

8. Payable on Demand or on Specific Date. Many differences among promissory notes relate to when and how the borrowed amount will be repaid. Although you are free to negotiate terms that work for your arrangement, your note must either have an end date or be payable when the lender demands it.

9. Specific Amount. The note must indicate a specific amount owed that will be paid. If the document indicates the payment will be of "$10,000 and other amounts owed," the promissory note is not valid. This does not apply to interest that may be required by the note. A note that doesn't state exactly how much interest will be paid over time (i.e., has just an interest rate and not a dollar amount) it is still valid.

10. Transferable. A promissory note must state that it's either "payable to order" or "payable to bearer." These phrases mean the amount owed by the borrower could be payable to some unknown third party in the future. In other words, the note is transferrable from one person to another.

BILL OF EXCHANGE

Section 5 defines a bill of exchange as "an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to order of, a certain person or to the bearer of the instrument." A bill of exchange is also called a draft.

There are three parties to a bill of exchange, namely drawer, drawee and payee. The maker of the bill is called the drawer, the person who is ordered to pay is called the drawee and the person to whom or to whose order the money is directed to be paid is called the payee. In some cases drawer and payee may be one person. The payee, or if, it is endorsed; endorsee is called the holder of the bill. The drawee of a bill of exchange who has signified his assent to the order of the drawer is called the acceptor. The acceptor becomes liable to the holder only when he has communicated his assent but not before.

Essential Elements of a bill of exchange:

A bill of exchange to be valid must fulfil the following requirements:

1. The instrument must be in writing.

2. The instrument must be signed by the drawer.

3. The instrument must contain an order to pay, which is express and unconditional.

4. The drawer, drawee and the payee must be certain and definite individuals.

5. The amount of money to be paid must be certain.

6. The payment must be in the legal tender currency of India.

7. The money must be payable to a definite person or according to his order.

8. A bill of exchange must be properly stamped.

9. The bill may be made payable on demand or after a definite period of time. But no one except the Reserve Bank and the Government of India can draw a bill payable on demand to the bearer of the bill.

Difference between promissory note and bill of exchange

(1) Parties.

There are three parties to a bill of exchange, namely, the drawer, the drawee and the payee; while in a promissory note there are only two parties – maker and payee.

(2) Nature of payment.

In a bill of exchange, there is an unconditional order to pay, while in a promissory note there is an unconditional promise to pay.

(3) Acceptance.

A bill of exchange requires an acceptance of the drawee before it is presented for payment, while a promissory note does not require any acceptance since it is signed by the persons who is liable to pay.

(4) Liability.

The liability of the maker of a promissory note is primary and absolute, while the liability of a drawer of bill of exchange is secondary and conditional. It is only when the drawee fails to pay that the drawer would be liable as a surety.

(5) Notice of dishonor.

In case of dishonor of bill of exchange either due to non-payment or non-acceptance, notice must be given to all persons liable to pay. But in the case of a promissory note, notice of dishonor to the maker is not necessary.

(6) Maker’s position.

The drawer of a bill of exchange stands in immediate relationship with the acceptor and not the payee. While in the case of a promissory note, the maker stands in immediate relationship with the payee.

(7) Nature of acceptance.

A promissory note can never be conditional, while a bill of exchange can be accepted conditionally.

(8) Copies.

A bill of exchange can be drawn in sets, but a promissory note cannot be drawn in sets.

(9) Payable to bearer.

A promissory note cannot be made payable to a bearer, while a bill of exchange can be so drawn provided it is not payable to bearer on demand.

(10) Payable to maker.

In a promissory note, the maker cannot pay to himself. While in the case of a bill of exchange, the drawer and the payee may be one person.

CHEQUE

Section 6 of Negotiable Instruments Act defines cheque as :

‘6. “Cheque“.-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. Explanation I.-For the purposes of this section, the expressions-

(a) “a cheque in the electronic form” means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum

safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system;

(b) “a truncated cheque” means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation

of an electronic image for transmission, substitu ing the further physical movement of the cheque in writing.

Explanation II.-For the purposes of this section, the expression “clearing house” means the clearing house

managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.’.

ESSENTIALS OF CHEQUE

1. In Writing :-

The cheque must be in writing. It can not be oral.

2. Unconditional :-

The language used in a cheque should be such as to convey an unconditional order. If the banker is ordered to pay upon the condition of payee's signing the receipt, then the instrument is a conditional order and thus not a cheque. 'But if the order regarding receipt is too construed as addressed to the payee, the instrument can be treated as a cheque.

3. Signature of the Drawer :-

It must be signed by the maker.

4. Certain Sum of Money :-

The amount in the cheque must be certain.

5. Payees Must be Certain :-

It must be payable to specified person.

6. Only Money :-

The payment should be of money only.

7. Payable On Demand :-

It must be payable on demand.

8. Upon a Bank :-

It is an order of a depositor on a bank.

Types of Cheque

A. Bearer Cheque

When the words "or bearer" printed on the cheque is not cancelled, the cheque is called a bearer cheque. A bearer cheque is made payable to the bearer i.e. it is payable to the person who presents it to the bank for encashment. However, such cheques are risky, this is because if such cheques are lost, the finder of the cheque can collect payment from the bank. Bearer cheque can be transferred by mere delivery; they need no endorsement. In simple words a cheque which is payable to any person who presents it for payment at the bank counter is called ‘Bearer cheque’.

B. Order Cheque

When the word "or bearer" printed on the cheque is cancelled and and the word ‘order’ may be written on the cheque, the cheque is called an order cheque. An order cheque is one which is payable to a particular person. The payee can transfer an order cheque to someone else by signing his or her name on the back of it.

Crossing are of the following types:

(1) General crossing;

(2) Special crossing;

(3) restrictive crossing:

(4) Not negotiable crossing.

1. General Crossing:

In a general crossing, simply two parallel transverse lines, with or without the words 'not negotiable' in between, may be drawn. Such a cheque is crossed generally.

The effect of general crossing is that the payment of the cheque will not be made at the counter, it can be collected only through a banker.

2. Special Crossing:

In a special crossing, the name of a banker with or without the words 'not negotiable' is written on the cheque. Such a cheque is crossed specially to that banker.

It should be noted that two transverse parallel lines are necessary for a general crossing, whereas for a special crossing, no such lines are necessary.

The effect to special crossing is that the paying banker will be the amount of the cheque only through the bank named in the cheque.

3. Restrictive crossing:

Besides the two statutory types of crossing discussed above, there is one more type of crossing namely, restrictive crossing. This type of crossing has been recognised by usage and custom of the trade.

In a restrictive crossing the words 'Account Payee' or Account Payee Only' are added to the general or special crossing.

The effect of restrictive crossing is that the payment of the cheque will be made by the bank to the collecting banker only for the account payee named. If the collecting banker collects the amount for any other person, he will be liable for wrongful conversion of funds.

It should be noted that the duty of the paying banker is only to ensure that the payment is made through the named bank, if there is any. He is not liable, in case the collecting banker collects the cheque for any other person than the account payee. In that case collecting banker will be liable to the true owner.

4. Not negotiable Crossing (Sec. 130):

A person taking is cheque crossed generally or specially, bearing in either case the words 'not negotiable' shall not be able to give a better title to the holder than that of the transferor.

The effect of a not negotiable crossing is that the cheque can be transferred but the transferee will not acquire a better title to the cheque. Thus a cheque is deprived of its essential feature of negotiability.

The objects of "not negotiable" crossing is to protect the drawer against loss or theft in the course of transit.

Example:

A cheque was drawn in favour of a firm B & Co. The cheque was crossed 'not negotiable'; one of the partners, A in fraud of his Co-partner B, endorsed the cheque to P who encashed it. Held that B, who under the terms of the partnership agreement was entitled to the cheque could recover the amount from P as A could not transfer better title than he himself had [Fisher v. Roberst]

Who may cross a cheque? As a rule, it is the drawer who can cross a cheque. However, Sec. 125 provides that even a holder can cross the cheque. It further provides that a banker can cross the cheque specially for collecting to another banker as his agent for collection.

DIFFERENCE BETWEEN BILL OF EXCHANGE AND CHEQUE

1. Drawee:

A cheque is always drawn on a bank or a banker while a bill of exchange can be drawn on any person including a banker.

2. Acceptance:

A cheque does not require any acceptance while a bill must be accepted before the drawee can be made liable upon it.

3. Payment:

A cheque is payable immediately on demand without any days of grace, but a bill of exchange is normally entitled to three days of grace unless it is payable on demand.

4. Crossing:

A cheque may be crossed but there is no such provision in the case of a bill of exchange.

5. Notice of dishonor:

When a cheque is not met, notice of dishonor is not necessary. Want of assets in the hands of the banker is sufficient notice. It is necessary to give a notice of dishonor in order to make the drawer of a bill liable.

6. Payable to bearer on demand:

A cheque can be drawn payable to bearer on demand. But a bill of exchange cannot be so drawn.

7. Stamp:

A bill of exchange must be stamped, whereas a cheque does not require any stamp.

8. Countermanding payment:

A cheque may be revoked by countermand of payment. The payment of a bill, however cannot be countermanded.

10. Presentment:

A bill of exchange must be duly presented for payment otherwise the drawer will be discharged. The drawer of a cheque is not discharged by failure of the holder to present it in due time unless the drawer has sustained damage by the delay.

Dishonour of cheques Dishonor of cheques

Section 92 of the Negotiable Instruments Act states that –

“A promissory note, bill of exchange or cheque is said to be dishonored by non-payment when the

maker of the note and acceptor of the bill makes default in payment.”

Dishonour of cheque is an offence.

Section 138 of the Negotiable Instruments Act states that, A banker shall return the cheque when the money standing to the credit of the account holder is insufficient to honour the cheque.

Dishonour of cheque is a criminal offence. The drawer shall be deemed to have committed an offence and such offence will be punishable with imprisonment and with fine.(imprisonment shall be extend 1 years or fine twice the amount of the cheque or both).

Provisions of section 138 of the Act are applicable only if –

(a) The cheque is issued for discharge of a liability only. A cheque given as gift will not fall in this category.

(b) The cheque is presented to the bank for payment within 6 months or its specific validity period, whichever is earlier.

(c) The payee or holder in due course has given notice demanding payment within 30 days of the receiving information of dishonour as regarding the insufficiency of funds.

(d) The drawer does not make payment within 30 days of the receipt of the notice. The complaint can be made only by the payee/holder in due course, within 1 month.

When banker shall refuse the payment.

A banker will be justified or bound to dishonour a cheque in the following cases if-

(1) The cheque is undated.

(2) The cheque is stale i.e. it has not been presented within the validity period of the cheque. (3)The instrument is inchoate (unclear or unformed or tentative) or not free from reasonable doubt. (4)The cheque is post-dated and presented for payment before its ostensible date.

(5) Authority of the banker to honour a cheque of his customer is determined by the notice of the drawer's death, lunacy and insolvency. However, any payment made prior to the receipt of the notice of death is valid.

(6) Bank receives notice in respect of closure of the account.

(7) The cheque contains material alterations, irregular signature of irregular endorsement.

(8) The customer has countermanded payment.

(9) Any difference between the amount of cheque in words and in figures.

(10) Any irregular endorsements.

(11) The cheque is mutilated.

(12) Signature of the drawer has been forged.