Block-IV

# Business Environment & Law

## Business Contracts

# Block

# IV

# BUSINESS CONTRACTS

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# BLOCK IV: BUSINESS CONTRACTS

*The fourth block* is an introductory block on business laws. Contract law is the basic structure of business law and every type of business involves the contracts in one form or the other. In this block we briefly review the essential features of a contract, the various types of contracts, the requirements of parties to the contract, and the features of special contracts such as guarantee contracts, indemnity contract, the modes of performance and remedies in case of breach of a contract.

*Unit 12* Law of Contracts outlines the general principles and rules governing contracts. This is discussed with reference to the Indian Contract Act, 1872 which deals with the essential features of a valid contract and the competence of parties to the contract. It also discusses the various remedies available to the parties in the event of breach of a contract.

*Unit 13* Special Contracts deals with concepts of special contracts such as contract of agency, contracts of guarantee, contracts of indemnity, and employment contracts.

It also deals with special rights available to parties in a contract. A brief discussion on the various important clauses in commercial contracts and procedural aspects of documentation has been discussed to fine-tune the legal skills.

# Unit 12

# Law of Contracts

**Structure**



## 12.1. Introduction

In the previous unit we discussed about ethics in business. Ethics can be defined as principles of morality or rules of conduct and moral judgment that differentiates right from wrong. Business ethics refers to a set of rules, moral principles, and standards that explain how organizations and their employees should behave in a given situation. We discussed about Ethical and unethical behavior in the business and about code of ethics document Ethical codes such as the Cadbury's code and the Kumar Mangalam Birla report on corporate governance have been laid down that define the principles of appropriate behavior in organizations.

Business flows certain rules and regulations and the rule of the land. This unit deals with law of contracts one of the important legal frame work with in which the business operates.

The daily life of an individual is governed by innumerable agreements such as the purchase of a bus ticket, a cool drink, or giving a vehicle for repair, which involve contracts. However, the Law of Contracts focuses not only on these simple consumer transactions but also on more complicated commercial transactions taking place between corporates.

All these contracts as such create legal rights and obligations.

The law of contracts is considered as a part of the law of obligations. A contract creates self-imposed obligations. It establishes the reciprocal responsibilities of

the parties along with the extent and standard of their performances. Finally, it also makes allowance for any loss arising out of any mishap or non-happening of any event. In this unit we shall deal with all the important aspects of contract law.

## 12.2. Objectives

After going through the unit, you should be able to:

- Explain the meaning and nature of the contract, essential elements of a valid contract;
- Assess the position of a minor and a person of unsound mind in contracts;
- Identify and differentiate voidable contracts from void contracts;
- Determine ways by which a contract is discharged by performance; and
- List out the remedies for breach of a contract.

## 12.3. Meaning of a Contract

A contract is the result of a promise to do or not to do a certain thing in exchange for a promise from another person. Contract law assures that the promise so made is legally enforced, if any one of the parties fails to abide by the contract.

A contract is said to create a legal bond – a *vinculum juris*. This arises only when the parties have intended to create a legal relationship between them. The infringement of such obligations will make the parties liable to the extent of the loss suffered by the aggrieved party for non-performance of the agreed act.

*Balfour vs. Balfour:* Balfour was employed in Ceylon and he promised to send his wife, 40 pounds a month so long as they had to remain separate. The wife owing to her ill health had to stay in England and could not accompany him to Ceylon. Subsequently the husband failed to send the money as agreed. The wife sued for breach of contract. It was held that this agreement was not a contract enforceable in a Court of Law. **The principle laid down is 'Agreements of social or domestic nature shall not constitute legal relationships and thus not valid contracts. Such agreements are not enforceable in the court of law'.**

All the definitions of contract refer to agreements between individuals and are enforceable by law constitutes two basic requirements. They are:

- An agreement.
- Legal enforceability.

According to Section 2(h) of the Contract Act, "An agreement enforceable by law is a contract."

According to Section 2(e) of the Act, "Every promise and every set of promises, forming the consideration for each other, is an agreement."

Section 2(b) defines a promise as: "When the person to whom a proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise."

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

Thus, a contract is an agreement; an agreement is a promise and a promise is an accepted proposal.

**Agreement**

An agreement becomes a contract only when one party makes a proposal or offer to the other party and that other party signifies his assent thereto. Thus, an agreement is an offer coupled with acceptance. There emerge two essentials of an agreement which are:

- Plurality of persons.
- *Consensus ad idem.*

**Plurality of Persons:** Obviously an agreement is between two or more persons as a person cannot enter into an agreement with himself or with an inanimate object.

***'Consensus ad idem':*** One of the most essential elements in the making of a contract is that the promisor and the promisee must agree about the same thing in the same sense. There should be a meeting of minds. The identity of minds is called *consensus ad idem.* This is the theory underlying the formation of contracts. In a contract of sale of house between 'A' and 'B' where A has two houses in Hyderabad and Chennai respectively; and A intends to sell his house at Hyderabad but B intends to buy A's house at Chennai, there is no *consensus ad idem* between the contracting parties and hence no valid contract ensues.

## 12.4. Essential Elements of a Valid Contract

Section 10 of the Indian Contract Act, 1872 describes the requirements of a valid contract. According to this section, "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."

"Nothing herein contained shall affect any law in force in India and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents."

From this definition we understand that an agreement becomes a contract when it involves competent parties, valid consideration, free consent and legal object.

Some of the essential elements of a valid contract are discussed below:-

### 12.4.1 Offer and Acceptance

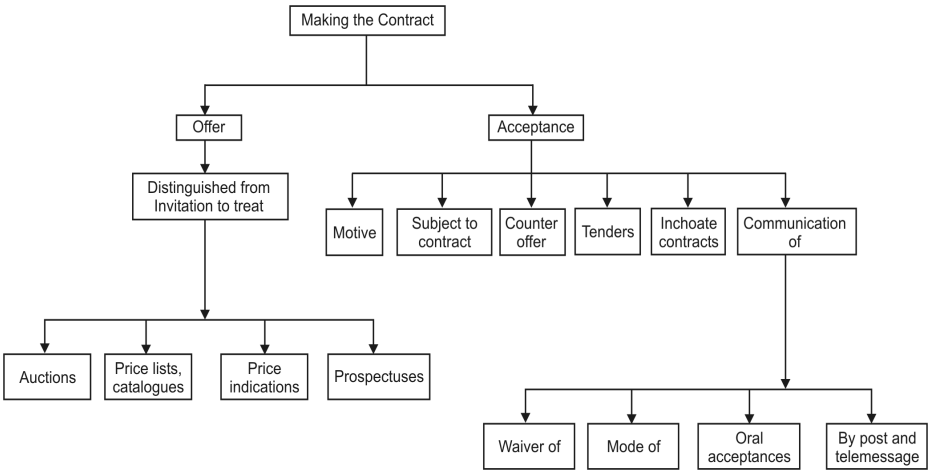
An agreement presupposes an offer by one party which is accepted by another party. Therefore one without the other does not bring an agreement into existence which can be legally enforced. Mere offer does not conclude a

contract unless it is accepted by the other party to the contract. It is in this aspect that distinction is sought to be made between an offer and an invitation to offer. Thus a proposal or offer is the starting point to initiate an agreement which could finally lead to a contract. There must be a 'lawful offer' and a 'lawful acceptance' for a valid contract.

Offer and Invitation to Offer are two distinct terms. An Offer is a definite term capable of converting an intention into Offer. It is legally enforceable. An invitation to offer is a process of circulating an offer. It is an attempt to induce the party/ies to accept the offer. It is not enforceable in any court of law.

The following figure gives an outline of the concepts covered under offer and acceptance:

**Figure 12.1**




*Source: Smith & Keenan's. Advanced Business Laws.*

Proposal has been used as a synonym for the term 'offer' as used under the English Law. Thus, the offer or proposal must be made with a view to obtain the acceptance of the person to whom it is made. If a statement is made without this intention then it remains a mere statement and not a valid offer. The person who makes the offer is called the 'offeror/ promisor' and the person to whom the offer is made is called the 'offeree/promisee'. From the definition of a proposal as mentioned in Section 2(a) of the Indian Contract Act, the following propositions follow:

- It must be an expression of the willingness to do or abstain from doing a particular act.
- The willingness must be communicated to another person.
- It can either be expressed or implied.
- It can be general or specific. It can be to public at large or to a category of persons or to a specific individual.

- It must be communicated with intent to receive the assent of the other person for such an act or abstinence. Therefore, a mere enquiry or statement of intention does not amount to an offer.
- It must be capable of creating a legal relationship.
- It must be certain and definite, leaving no room for ambiguity.

**Kinds of Offer**

Offers can be categorized into different classes as given below:

**General or Specific Offers:** An offer may be made either generally, to the whole world or specifically to an individual or group of individuals. The former is called the general offer and the latter, specific offer. A general offer is made to the world at large or to the general public and may be accepted by any person who fulfills the necessary conditions. The case of *Carlill vs. Carbolic Smoke Ball Co.* is an instance of general offer. On the other hand if the offer is made to a particular person(s), it may be accepted only by those person(s). Thus where X makes an offer to sell his library to the College, Z alone can accept it.

**Express or Implied Offers:** An offer may be made either in words, spoken or written or can be inferred from the conduct of the parties. Thus offers can be the express or implied. When R writes a letter to S offering to sell his car for Rs.2 lakh, it is an express offer. If D purchases an air ticket and boards a flight to go to Delhi; it is a case of an implied offer. The offer is made by the airlines company to take passengers to scheduled places at scheduled fares.

**Positive or Negative Offers:** An offer to do something is a positive offer, whereas an offer not to do something is a negative offer. For example, if C offers to sell his house to D, it is a positive offer. If C offers not to interfere in B's business if B agrees to shift his place of business to another locality, it is a negative offer.

**Counter-offer:** A counter-offer is a situation wherein the offeree attempts to change the terms of the offer initially made by the offeror. A counter-offer implies rejection of the original offer. The consequences of a counter-offer can be seen in *Hyde vs. Wrench,* involving some proposed negotiations between the defendant and the plaintiff regarding a farm. Wrench offered to sell his farm for 1,000 pounds. Hyde offered 950 pounds, which Wrench rejected. Hyde then informed Wrench that he accepted the original offer. Such an acceptance is not binding as a counter-offer itself implies the rejection of the original offer. In *Stevenson vs. Mc Lean,* it was observed that a counter-offer must not be mistaken with a request for information. A request for information can be accepted even after the new information has been provided.

**Acceptance**

Acceptance is the next step of an offer. Unless and until an acceptance is communicated to the offeror, it cannot be held as a valid and an effective acceptance. Acceptance takes place only when the offeree gives his consent to

the terms of the offer. Just as in case of offer, acceptance may also be express or implied. An acceptance is said to be express when it is communicated by words spoken or written or by doing some required act. It is implied when it is to be gathered from the surrounding circumstances or the conduct of the parties. In an auction sale, the highest bidder is assumed to be the buyer of the goods once the deal is struck.

An acceptance must be clear and unconditional. The acceptance becomes invalid if the terms of the offer differ from the original offer, at the time of acceptance or after acceptance. An acceptance can be valid even after the difference in terms of original offer, if the terms of counter-offer are acceptable to the original offeror. Counter-offer terminates the original offer.

In order to convert an offer into a promise, acceptance should be absolute and unqualified. It is also essential that the acceptance is given in some usual and reasonable manner. If the offer prescribes the manner in which the acceptance is to be given, then the acceptor should adhere to the prescribed mode. On failure to do so, the offeror can insist that his offer will be accepted only if it is given in the prescribed manner.

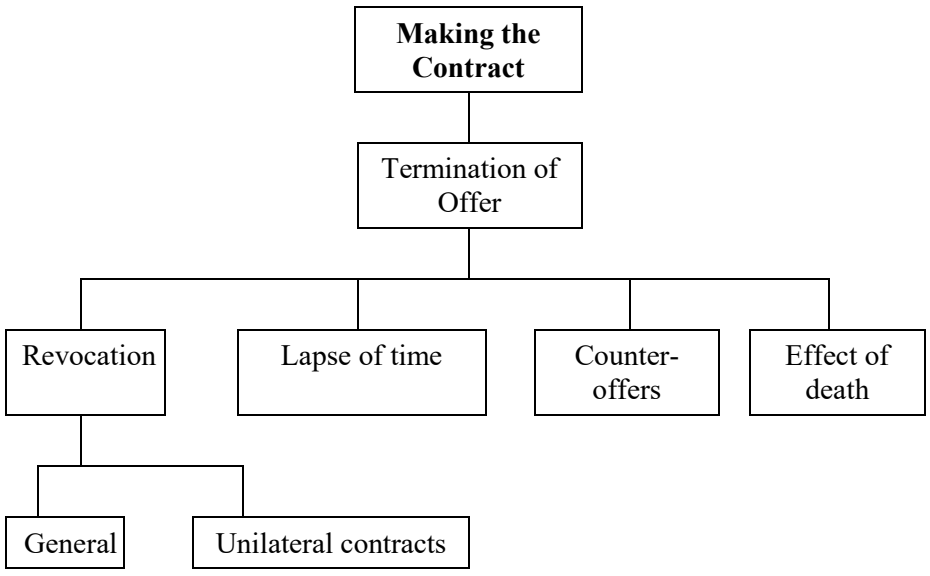
The following are the essential conditions for a valid acceptance:

- It must be made by the offeree or his agent.
- It should be absolute and unqualified.
- It shall be in a prescribed form.
- It should be within the specified time.
- Communication of acceptance.
- Acceptance during the course of negotiations.
- Acceptance must be positive.

**Lapse and Revocation of Offer and Acceptance**

An offer or acceptance extinguishes in some circumstances. The figure below states the circumstances under which an offer lapses.

**Figure 12.2**



**Lapse or Termination of an Offer**

An offer may lapse under any of the following circumstances:

**When the Offer is not accepted in the Prescribed Mode:** Section 7(2) of the Act lays down that "In order to convert a proposal into a promise, the acceptance must be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. Thus, it is the responsibility of the offeror to intimate to the offeree/acceptor, the mode of acceptance to be made. In case the acceptor/offeree deviates from the prescribed mode and makes acceptance in an alternative way and the offeror does not protest the deviation, he is deemed to have accepted the new method of acceptance.

**When it is not accepted within the Prescribed Time:** An acceptance communicated after the time prescribed by the offeror has lapsed then it cannot be termed as valid acceptance. It cannot become valid even if the offer gets revived. Hence, such acceptance, if accepted, cannot result in a valid contract.

However, if no time is prescribed, the acceptance has to be communicated within a reasonable time. If an offer is not accepted within the reasonable period, then it lapses at the end of such period. In case of perishable goods such as food, a "reasonable time" would likely be in terms of days. The term "reasonable time" would be longer, where the subject matter of the contract is a building.

**By Rejection or Counter-Offer:** If the offeree has rejected the offer, the offer terminates. The offeree cannot subsequently accept an offer so rejected. When the offeree makes a counter-offer or gives a conditional acceptance, it amounts to implied rejection, thereby resulting in lapse of the original offer.

**By Death or Insanity of Either Party to the Contract:** An offer lapses if the offeror dies or becomes insane before its acceptance and such a fact comes to the knowledge of the offeree. Thus, an acceptance made in ignorance of the death or insanity of the offeror, shall be a valid acceptance.

In *Bradbury vs. Morgan,* it was held that the deceased offeror's estate is liable for the acceptance rendered by him prior to his death. The court is of opinion that where an acceptance is a valid contract then it cannot be revoked on the death of the offeror. The substance of the contract is greater than its form. However, the same can be revoked where the contract is entered on the basis of personal qualifications of the offeror. The only remedy available here is to make an expression in the contract that the contract gets terminated on the death of the either party.

**By Revocation:** The offer may be terminated by the offeror, if he informs the offeree that he is withdrawing or revoking it. An offer may be withdrawn by the offeror at any point of time before it is accepted, even though such offer is specified for a particular period. This is known as 'revocation of offer'.

**By Subsequent Illegality or Destruction of Subject Matter:** An offer lapses if the subject matter is destroyed or becomes illegal, subsequent to making the offer but before its acceptance.

**On Failure to Fulfill a Condition Precedent to Acceptance:** In *State of Madhya Pradesh vs. Gobardhan Dass* the acceptance of a tender was to be

accompanied by payment of 25% of the amount. An omission by the successful tenderer to make the requisite payment did not give rise to a binding contract between the parties.

**Revocation of Acceptance**

Section 5 of the Contract Act declares, "An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor but not afterwards." Revocation of acceptance connotes the withdrawal of the acceptance to a proposal by the offeree himself.

### 12.4.2 Consideration

Section 25 of the Contract Act declares that, an agreement made without consideration is void. No right of action arises out of an agreement not supported by consideration. *Ex nudo pacto non-oritur*, nobody would part with anything unless he gets a proper price. Hence, a contract without consideration raises a doubt as to its genuineness.

In *Misa vs. Currie* consideration has been defined as "the price for which a promise is brought'. Consideration itself means "some right, interest, profit, or benefit accruing to one party or some forbearance, detriment, loss of responsibility given, suffered or undertaken by the other."

**Indian Law:** Section 2(d) of the Indian Contract Act, 1872 defines consideration as "when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."

Consideration means the element of exchange in a bargain, in order to satisfy the requirements of the governing law. Consideration is necessary for the formation of a contract. Consideration need not be adequate. It is either a benefit to the promisor or a detriment to the promisee, negotiated for and given in exchange for a promise. It must have the exchange value that can be measured in terms of money or money's worth.

### 12.4.3 Legality of Consideration and Object

Section 10 reads as follows:

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.

Nothing herein contained shall affect any law in force in [India], and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Thus, all agreements are contracts if made for lawful consideration and with lawful object.

Section 23 covers the illegality of both the object of the contract and the consideration for it.

### 12.4.4 Intention to Create Legal Relationship

The validity of a contract is dependent on the intention of the contracting parties.
A contract will be valid only when the parties to the contract intend to create a legal relationship between themselves. Non-existence of such an intention will not give to a valid contract. Agreements of social nature do not contemplate legal relationship and hence they are not contracts.

The test to determine the intention of the parties is objective and not subjective. Just because the promisor contends that there was no intention to create legal relationship, he would not be exempted from liability.

'All contracts are agreements, but all agreements are not contracts.' The basis for this statement is that the existence of a mutual set of promises does not suffice for the courts to accord legal recognition to such promises unless the intention to create legal relations is clearly established.

There is a large area of legal obligations imposed and enforced by law. Therefore, obligation to look after wife and children, obligation to follow the law of the land or to comply with orders of authorities do not fall within the ambit of the Law of Contract.

### 12.4.5 Capacity to Contract

One of the essentials of a valid contract, mentioned in Section 10, is that the parties to the contract should be competent to make the contract. According to Section 11:

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

Thus, the law of contract declares that a person competent to contract shall be:

- A major;
- Of sound mind; and
- Not disqualified under any existing law in force.

### 12.4.6 Free Consent of the Parties

The parties must have entered into the contract out of their own free will. Consent implies agreeing upon the same thing in the same sense. According to Section 14 of the Act, the consent is said to be free when it is not caused by:

- Coercion, as defined in Section 15, or
- Undue influence, as defined in Section 16, or
- Fraud, as defined in Section 17, or
- Misrepresentation, as defined in Section 18, or

- Mistake, subject to the provisions of Section 20-22.

### 12.4.7 Conclusion of Contract

A Contract is said to be 'Concluded' only when the acceptance of an offer is in a detectable form. That means:

- Acceptance should be made only to the respective offer
- Acceptance rendered is not a conditional acceptance. It is an acceptance without imposing any conditions.
- Offeree must be fully aware of the offer for which he rendered his acceptance.

*Illustration:* Kiran bids at a public auction. Can this be treated as a 'Concluded Contract'?

*Solution:* No, this cannot be treated as a concluded contract owing to absence of acceptance from the auctioneer through any customary method.

### 12.4.8 Legal Formalities

A contract may be oral or in writing. Those contracts which require to be in writing may even require registration. Therefore, where law requires an agreement to be put in writing or be registered, the same must be complied with. For instance, the Indian Trusts Act requires the creation of a trust to be reduced to writing.

## 12.5. Certainty and Possibility of Performance

Section 37 of the Indian Contract Act provides as follows:

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

"Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract."

**Effect of incomplete performance by a party**

Section 39 of the Act provides that –

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

According to Section 39 of the Contract Act, a breach of contract by the promisor may arise in the following ways when –

- He refuses to perform the contract;
- He renders himself disabled to perform his obligation;

- He fails to perform; and
- By his conduct or action, it becomes impossible of performance.

**Effect of prevention of performance by the promisee**

Section 38 of the Act provides that –

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

Every offer must fulfil the following conditions:

- It must be unconditional.
- It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing to do the whole of what he is bound by his promise to do.
- If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing, which the promisor is bound by his promise to deliver."

**Doctrine of 'Substantial Performance'**

A contract has been substantially performed if the actual performance falls not far short of the required performance and if the cost of remedying the defects is not too great in amount in comparison with the contract price. For instance, if the builder has acted in good faith and has completed the job in substantial compliance with the contract, he can enforce the contract and collect the contract price. Any damages that result from noncompliance can be collected by the buyer or deducted from the amount of the contract price.

**Performance When "Time is the Essence of the Contract"**

Section 55 of the Indian Contract Act recognizes time as an essence of the contract, which means that in the performance of a contract the time factor will be given priority by the parties. The parties intend to perform the contract exactly as per the stipulated time alone. Such intention expressly gives a right to avoid the contract in case of default or breach by any one of the parties.

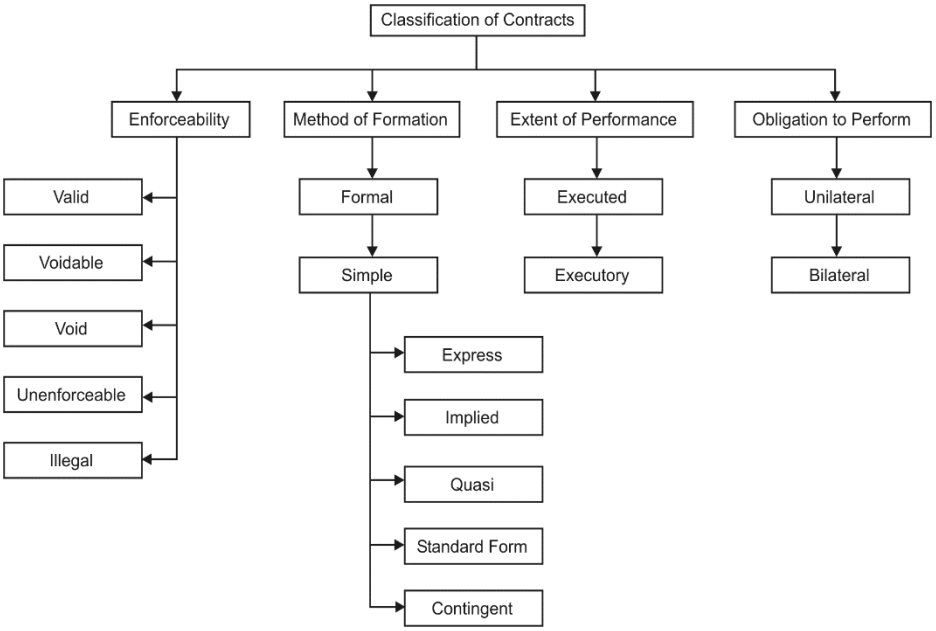
| **Self-Assessment Questions – 1** |
|---|
| a. 'A' accepts 'B's invitation to dinner by phone. Is this a contract? |
| b. Shyam advertises in a newspaper that he would pay Rs.5,000 to anyone, who finds and returns his lost briefcase containing valuables. Does this constitute a valid offer? Justify. |
| *Contd. ....* |

c. Ram communicates to Shyam that he will sell his car for Rs.1,50,000. Does this constitute a valid offer?

## 12.6. Classification of Contracts/Agreements

Contracts are of different kinds and can be classified on different bases. Classification may be based on the validity of the contracts, the mode of formation or the extent of their performance. It can be understood by the following figure:

**Figure 12.3**




### Enforceability

### Valid Contracts

A contract which fulfills all the requirements prescribed by Section 10 of the Act is a valid contract.

*Illustration*: A agrees to sell 10 bags of rice to B for Rs.10,000 by the end of May. B accepts. This is a valid contract.

### Void Contracts

Section 2(g) of the Act defines a void contract as, "An agreement not enforceable by law is said to be void". A contract may be void ab initio (from the inception) or may be rendered void subsequently.

### Voidable Contracts

According to Section 2(i) of the Act, "An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract". A contract that is not enforceable by both the parties is a void contract. But a contract that is enforceable by one and not by the other is voidable.

### Unenforceable Contracts

If a contract is not enforceable in the court of law then such contract is an unenforceable contract.

### Illegal Contacts

The contract is illegal if the object or consideration of that agreement is unlawful for any of the reasons such as forbidden by law, defeats the provisions of law, fraudulent, immoral etc.

## METHOD OF FORMATION

### Simple Contracts

All contracts other than formal contracts are simple contracts. Based on their mode of creation they may be classified as express contracts, implied contracts, quasi contracts, standard form contracts and contingent contracts.

**Express Contracts:** Contracts which are made orally or in writing are called express contracts. Thus a telegram by A offering to sell a car at affixed rate to B and a return telegram by B accepting the same is an express contract.

**Implied Contracts:** A contract is said to be implied or tacit when it can be inferred from the conduct of the parties. Keeping our belongings in the cloak room for safe custody is an implied contract.

**Quasi Contracts:** These are agreements which are ascribed the nature of contract by the law. Where no express or implied contract exists between the parties, the law creates and enforces legal rights and obligations under certain circumstances. These obligations are known as quasi contracts. Sections 68 to 72 of the Indian Contract Act deal with quasi contracts. A quasi contract rests on the doctrine of unjust enrichment that a person shall not be allowed to enrich himself unjustly at the expense of another. The obligations in a quasi contract are not the result of an agreement; they only resemble the obligations that arise from contracts. For example, necessaries supplied to a minor are treated as quasi contracts so as to enable others to enter into agreements with minors. Otherwise no person shall come forward to render any service to the minors as they would be agreements void *ab initio.*

**Standard Form Contracts:** Standard form contracts have printed forms of standardized contracts containing a number of terms and conditions. The individuals entering into such contracts can hardly negotiate and they have to accept the terms and conditions already mentioned. Ex: Life Insurance Corporations, Railways, Unit Trust of India etc., wherein similar nature of contracts are agreed with so many people.

**Contingent Contracts:** Section 31 of the Act provides for such contracts which are collateral to do or not to do something, if some event, collateral to such contract, does or does not happen. In *Muthu vs. Secretary of State*, a person was the highest bidder for a house which was put up for sale. However, one of the conditions was that the sale could be confirmed only if the collector authorizes it. The collector declined to confirm the sale. It was held that there was no contract.

The event on which the happening of the contract is dependent should be uncertain. Further, the event should be collateral to the contract. The event should not form part of the consideration of the contract though the contract is made to depend upon it. Contracts of indemnity and insurance are examples of contingent contracts. Section 32 to Section 36 specifies the rules that are applied in evaluating whether a contract is a contingent contract or not.

## EXTENT OF PERFORMANCE

### Executed Contract

An executed contract is a contract concluded in toto. For instance, A agrees to pay B, a film actress, Rs.10,000 for an appearance at a stage show conducted by him. A pays the amount after B makes an appearance. This is an executed contract.

### Executory Contract

An executory contract is one in which both the parties may agree to do something in the future or one of the parties has performed his part of the contract and the other party has yet to perform his part of the promise.

## OBLIGATION TO PERFORM

### Unilateral Contracts

A unilateral contract is a contract where the obligation to perform remains only on one party to the contract, the other party already having performed his part of the contract. Most of the implied contracts are unilateral contracts. For instance where a person enters a hotel and pays money for his lunch in advance, he has performed his promise. It is for the hotel personnel to serve him lunch when he takes a place in the dining hall.

### Bilateral Contracts

In a bilateral contract obligation rests upon both the parties to the contract to perform their promise. The promise may be to do or refrain from doing some act. In these contracts both can sue the other for breach of contract. This category comprises of executed and executory contracts.

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**Check Your Progress - 1**

1. An agreement is between two or more persons as a person cannot enter into an agreement with himself or with an inanimate object. This is an essential part of the agreement and is called _____

2. One of the most essential elements in the making of a contract is that the promisor and the promisee must agree about the same thing in the same sense. There should be a meeting of minds. The identity of minds is called _____

3. Identify one of the following which is not an essential element of a valid contract?

   a. Offer and acceptance

   b. Consideration

   c. Capacity to contract

   d. Legal relationship

   e. General acceptance to the offer

4. Identify the doctrine of substantial performance from the following statements?

   a. Actual performance falls far short of the required performance

   b. Actual performance is almost similar of the required performance

   c. Actual performance falls not far short of the required performance

   d. Actual performance exceeds the required performance

   e. Actual performance is very little compared to the required performance

5. Identify one of the following contract which cannot be classified under enforceable contract?

   a. Illegal

   b. Void

   c. Voidable

   d. Valid

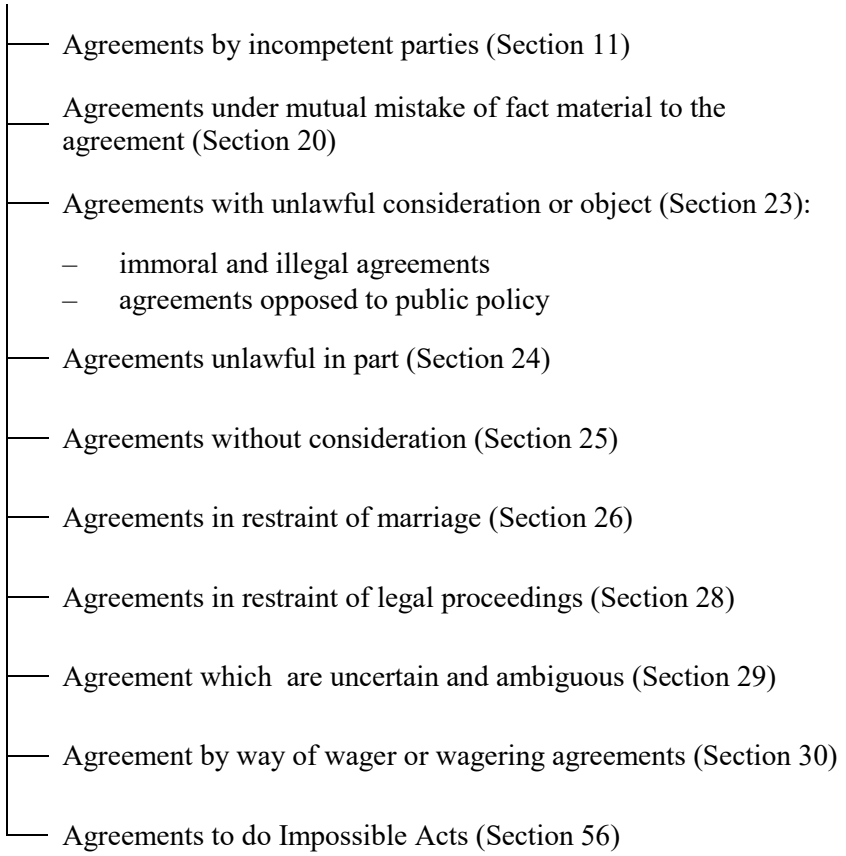
   e. Executed

## 12.7. Void Agreements

An agreement expressly declared to be void under the Contract Act or any other law, is not enforceable and is, thus, not a contract.

Section 2(g) of the Act defines a void agreement as, "An agreement not enforceable by law is said to be void." A contract may be void ab initio (from the inception) or may be rendered void subsequently. A valid contract may be made void by some subsequent impossibility or when a voidable contract is made void by the aggrieved party. For instance, where the consent of the aggrieved party was not a free consent, the contract becomes void though at the beginning it was an enforceable contract. Following are the instances of void agreements:

**Figure 12.4: Void Agreements**




**Check Your Progress - 2**

6. Agreements in restraint of legal proceedings is called_____
   a. Voidable contract
   b. Void contract
   c. Valid
   d. Illegal
   e. Unenforceable
7. An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is Called
   a Voidable contract
   b. Void contract
   c. Valid contract
   d. Illegal contract
   e. Unenforceable contract

8. Identify the definition of simple contract from the following sentences?
   a. All contracts other than formal contracts
   b. Contracts which are made orally or in writing
   c. A contract where in it can be inferred from the conduct of the parties.
   d. When no express or implied contract exists between the parties
   e. Contract which contains a number of terms and conditions.
9. A contract in which both the parties may agree to do something in the future is called _____
10. A contract in which the obligation rests upon both the parties to the contract to perform their promise is called _____
    a. Unilateral contract
    b. Bilateral contract
    c. Executory contract
    d. Executed contract
    e. Simple contract

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The above agreements are explained below in detail

**AGREEMENTS BY INCOMPETENT PARTIES (SECTION 11)**

The agreements entered into by the following three categories of persons are void:

- A person who has not attained the age of majority, i.e., one who is a minor.
- A person who is of unsound mind.
- A person who has been disqualified from contracting by some law.

**AGREEMENTS UNDER MUTUAL MISTAKE OF FACT MATERIAL TO THE AGREEMENT (SECTION 20)**

An agreement is void where the parties to an agreement are under the mistake of fact which is of primary importance or subject to the contract.

*Illustration:* A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.

**AGREEMENTS WHICH RENDER THE CONSIDERATION/OBJECT UNLAWFUL (SECTION 23)**

The object of an agreement is lawful, unless it:

- Is forbidden by law; or
- Is of such nature that, if permitted, it would defeat the provisions of law; or

- Is fraudulent; or
- Involves or implies injury to the person or property of another; or
- The court regards it as immoral, or opposed to public policy.

**The Object/Consideration is forbidden by Law**

According to Section 23, where the object/consideration of an agreement is forbidden by law, the agreement is unlawful.

*Illustration:* The sale of liquor without license is illegal.

*Solution:* The sale is void and the price is also irrecoverable.

**Object/Consideration/Performance Defeats the Provisions of Law**

Where the object of or the consideration for an agreement is such that though not directly forbidden by law, it would, if permitted, defeat the provisions of some law, such an agreement is also void.

*Illustration:* 'Mr. Old man takes a seat in a public bus. His act is voluntary.' Is his voluntary act questionable under the Indian Contract Act, 1872?

*Solution:* No. His Act is not questionable in terms of Indian Contract Act, 1872. Because, there exists an implied offer to public at large by a transport company to carry passengers from one place to another. When Mr. Old man took a seat in a public bus, it means an implied acceptance of an offer is rendered by him to the company. Being both offer and acceptance is lawful, the contract between the parties is a valid contract. The case holds good in terms of section 9 of the Indian Contract Act, 1872.

**Object/Consideration are Fraudulent**

An agreement made for a fraudulent purpose is void.

*Illustration:* Mr. Bell, well established doctor, has been fighting a long drawn litigation with Mr. Cell, another well-established doctor. To support his legal campaign Mr. Bell hires the services of Mr. Well, a legal expert, stating that an amount of Rs.5 lakhs would be paid if Mr. Well does not take up the case of Mr. Cell. Mr. Well agrees. However, at the end of the litigation, Mr. Bell refuses to pay. Decide whether Mr. Well can recover the amount promised by Mr. Bell in terms of the provisions of Contract Act, 1872?

*Solution:* Mr. Well cannot recover the amount from Mr. Bell because the contract entered by them is for an unlawful purpose which is not enforceable in the court of law.

**Object/Consideration are Injurious to any Person or Property**

If the object or consideration of an agreement is injurious to the person or property of another, it is a void agreement and is unlawful.

*Illustration:* Mr. Nice agreed to become an assistant for 5 years to Mr. Perfect, who was a chartered accountant, practicing at Hyderabad. It was also agreed that during the term of agreement Mr. Nice will not start his own practice at Hyderabad. However, at the end of one year, Mr. Nice left the assistantship of Mr. Perfect and began doing his own practice at Hyderabad. Can Mr. Perfect

restrain Mr. Nice from carrying out his practice, taking the help of Indian Contract, Act, 1872 provisions?

*Solution:* Mr. Perfect can restrain Mr. Nice from carrying out his own practice at Hyderabad. Any agreement of service through which a person agrees not to take up any service with anyone else for a specified term is a valid contract in the eyes of law because it may pose direct competition to his employer's business.

**Object/Consideration is Immoral**

When in an agreement the object or consideration is immoral, it cannot be enforced. These include generally sexual immorality, interference with marital relations, acts against good public morals etc.

**The Object/Consideration is Against Public Policy**

An agreement is unlawful if the court regards it as 'opposed to public policy.

*Illustration:* Mr. Bad and Mr. Unkind are partners in a partnership firm. They came to a consensus to defraud the government department by sending the tenders in individual names in place of their firm's name. Is this consensus becomes a valid contract?

*Solution:* it is not a valid contract, because defraud the government department means defrauding the state at large which is against the interests of the public policy.

## AGREEMENTS THAT IS UNLAWFUL IN PART (SECTION 24)

Section 24 of the Indian Contract Act says:

Agreements are void, if considerations and objects are unlawful in part – If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void.

Where the object or consideration is illegal in part and is not severable from the rest the whole agreement is void. Section 24 comes into play when a part of the consideration for an object or more than one object of an agreement is unlawful. The whole of the agreement would be void unless the unlawful portion can be severed without damaging the lawful portion.

*Illustration:* A promised to superintend on behalf of B, the manufacture of Indigo, which was legal and also certain other illegal business. B agreed to pay him a consolidated salary of Rs.15,000. The agreement was void. A had made two promises but got one consideration. If the salary had been promised for the two promises separately, then the legal part would have been valid and recoverable.

## AGREEMENTS WITHOUT CONSIDERATION (SECTION 25)

Any agreement which does not have consideration is void unless:

- It is made on account of natural love and affection between parties standing in a near relation to each other; or

- If it is a promise to compensate wholly or in part, a person who has already done voluntarily something for the promisor (past consideration), or
- If it is a promise to pay a time-barred debt.

*Illustration:* If A promises to pay B Rs.100 for nothing and B neither does nor promises to do anything in return to compensate A for the money paid by him, A's promise has no force in law.

## AGREEMENTS IN RESTRAINT OF MARRIAGE (SECTION 26)

Every agreement in restraint of the marriage of any person, other than a minor, is void (Section 26).

The restraint may be partial or general.

*Illustration:* Two widows (of the same deceased husband) agree that if any one of them remarries, she must forfeit her right of share in the deceased husband's property. This kind of agreement is not in restraint of marriage and has been upheld by the court, which stated that nothing in the agreement reflected that restraint was imposed upon either of the two widows to 'remarry'.

## AGREEMENTS IN RESTRAINT OF TRADE (SECTION 27)

According to Section 27 of the Indian Contract Act, every agreement, by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is void to that extent.

*Illustration:* In *Madhub Chander vs. Raj Coomar,* there were two rival shopkeepers in a locality and one of them agreed to pay a sum of money to the plaintiff if he would close the business in that area. The plaintiff accordingly did so, but the defendant refused to give any money to him. The court held the agreement to be void.

### Exceptions to Section 27 of the Act

There are two kinds of exceptions to the rule,

- Those created by statute; and
- Those arising from judicial interpretations of Section 27.

## AGREEMENTS IN RESTRAINT OF LEGAL PROCEEDINGS (SECTION 28)

Any clause in the agreement restraining either of the party to enforce his agreement is void. Section 28 does not apply to the agreements which restrict the enforcement of legal right partially.

The following agreements are declared as void under Section 28:

- Agreement which restricts absolutely the parties from enforcing their legal rights under a contract, and
- Agreement which limit the time within which a party may enforce his contractual rights.

*Illustration:* If A and B agree that A will never realize the price by a suit in any court, that agreement is void.

*Illustration:* A has supplied goods to B. If A promises that he will not sue B after a period of two years or if A fails to sue within 2 years he will have no right to sue. Such an agreement is void.

**Exceptions to Section 28 of Indian Contract Act**

There are two exceptions to the rule that an agreement in restraint of legal proceedings is void. These are:

- Reference of future disputes to arbitration; and
- Reference of existing disputes to arbitration.

This section does not make such of those contracts void wherein two or more persons agree that any dispute which may arise between them shall be referred to arbitration and also the amount awarded in the arbitration shall only be recoverable.

## AGREEMENTS WHICH ARE UNCERTAIN AND AMBIGUOUS (SECTION 29)

Any agreement the meaning of which is not certain or capable of being made certain, is void. This provision is explained in Section 29 of the Indian Contract Act, 1872.

In *Guthing vs. Lynn* A horse was bought for a certain price coupled with a promise to give 5 pounds more if the horse proved lucky. The agreement was held to be void for uncertainty. The court had no machinery to determine what luck, bad or good, the horse has brought to the buyer. Such cases have generally arisen in connection with the sale of goods, bearing uncertainty as to the price.

## AGREEMENTS TO DO IMPOSSIBLE ACT (SECTION 56)

According to Section 56 of Indian Contract Act, "An agreement to do an act which is impossible to perform is void."

"Where one person has promised to do something which he knew or with reasonable diligence, might have known that the promise is impossible or unlawful, such promisor must make compensation to such promisee for any loss which the promisee sustains through the non-performance of the promise."

*Illustration:* A agrees with B to discover treasure by magic. The agreement is void. A already married to C contracts to marry B while polygamy is forbidden by law. A must make compensation to B for loss caused to her by non-performance of the promise.

## Check Your Progress - 3

11. When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance. The suit so filed by the aggrieved party is called

    a. Suit for Rescission

    b. Suit for Injunction

    c. Suit for Specific Performance

    d. Suit for Damages,

    e. Suit for Quantum Meruit

12. Identify from the following, an order from a court that prohibits a party to do or refrain from doing a certain act?

    a. Suit for Rescission

    b. Suit for Injunction

    c. Suit for Specific Performance

    d. Suit for Damages,

    e. Suit for Quantum Meruit

13. The losses that naturally and directly arise out of the breach of the contract in the usual course of the things are called_____

    a. General damages

    b. Special damages

    c. Punitive damages

    d. Nominal damages

    e. Vindicative damage

14. _____ actually describes the measure of damages for recovery on a contract that is said to be "implied in fact

15. Though the breach of a contract does not cause any loss, still the seller can recover damages in a technical sense. This type of damage is called_____

    a. General damages

    b. Special damages

    c. Punitive damages

    d. Nominal damages

    e. Vindicative damage

| Self-Assessment Questions – 2 |
|---|
| a. 'An agreement collateral to a wager.' Is this agreement void? |
| b. Agreement in restraint of carrying of trade after sale of goodwill. Can this agreement be considered as an agreement in restraint of trade? |
| c. Compensation for voluntary services. Is this agreement without consideration void? |
| d. A supplied goods to B. A promises B that he will not sue B after a period of 3 years. Is the agreement valid? |

## 12.8. Remedies for Breach of Contract

A condition is a major term of the contract. In the event of a breach, the injured party is entitled to rescind the contract and to claim damages.[1] The right to rescind is lost in the same way as in cases of misrepresentation.

The innocent party is always entitled to affirm the contract. In such a case, he will still be entitled to damages, but not to treat the contract as at an end. Exhibit 12.1 gives a Supreme Court rule on insurance claim rejection of a vehicle that was used without registration.

[1] Wallis sons and Webb vs. Pratt & Haynes (1910).

**Exhibit 12.1: Insurance Claim Can Be Rejected If Vehicle Was Used Without Valid Registration: Supreme Court**

This is the case of fundamental breach of the terms and conditions of the contract. The policy holder has purchased a new Bolero car and got the insurance done. However he did not get the permanent registration done and the temporary registration also expired and he did not bothered to get the registration done. He travelled to many places and in the process parked his car outside his friends residence and then visited a guest house where his car was stolen. He applied for claim from the insurance company but was rejected forthright as the car was not registered and there was a fundamental breach of contract as per the company.

He approached District forum to get instructions from them directing the insurance company to pay him the sum insured for the vehicle with rent amount of ₹1,40,000/- and also claimed relief for mental agony and costs of litigation pay. However the case was dismissed the forum upheld the reason for rejecting the claim by the insurance company. He subsequently approached State Consumer Disputes Redressal Commission. The revision petition filed by the insurer before National Consumer Disputes Redressal Commission hich upheld the insurers contention .Finally the car owner approached the Apex Court

The Supreme Court observed that an insurance claim can be rejected if a vehicle is used/driven without a valid registration, since that would constitute a fundamental breach of the terms and conditions of the contract of insurance. Further the Supreme court contended that since the vehicle in question, had no registration, it constituted a fundamental breach contract of the policy and the case was dismissed.

*Source: https://www.livelaw.in/top-stories/supreme-court-vehicle-registration-fundamental-breach-ll-2021-sc-522-sushil-kumar-godara-182796 dated 30th September 2021*

*Illustration:* A hired B's ship to carry cargo from Russia. Later, B repudiated the contract.

A delayed a decision as to whether to treat the contract as at an end or sue for damages, hoping that B would change his mind. War then broke out between Great Britain and Russia before the performance date, thus frustrating the contract. It was held that A had kept the contract alive by his actions, which led to the frustration of the contract. As such he had lost his right of action (*Avery vs. Bowden)*.

The law has provided certain remedies to the aggrieved party in case of breach of contract by the other parties. The important feature in the event of breach of

contract is that each party has a responsibility to mitigate its losses at a minimum possible level.

When a contract is broken, the injured party has one or more of the following remedies:

- Suit for Rescission,
- Suit for Injunction,
- Suit for Specific Performance,
- Suit for Damages,
- Penalty by Courts, and
- Suit for *Quantum Meruit*.

These remedies are discussed below:

### 12.8.1 Suit for Rescission

When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance. The aggrieved party may need to approach the court to grant him a formal rescission, i.e. cancellation of the contract. This will enable him to be free from his own obligations under the contract.

Thus formal declaration of rescission clears the way for other consequences to take effect following the breach of contract.

### 12.8.2 Suit for Injunction

Injunction is the order from a court that prohibits a party to do or refrain from doing a certain act. This is available in contract actions in only limited circumstances. Such an order of injunction from a court that is granted at the instance of the aggrieved party against the person who has breached the contract acts as remedy and makes the guilty party refrain from doing or not doing precisely the act, which is causing the breach of contract.

*Illustration:* R enters into an agreement with M to present an entertainment program at M's hotel on the eve of the New Year's Day. Later, R enters into another agreement with N to conduct the same type of performance at the same time at N's hotel. M treats it as an anticipatory breach of performance on the part of R and seeks for an injunction from the court. The court may pass an injunction order against R not to present the program at N's hotel at that time.

### 12.8.3 Suit for Specific Performance

"Specific performance" means doing exactly what had been intended to be done by the parties in the contract. The specific performance is the remedy granted by the courts to the aggrieved party in equity only in cases where it is absolutely essential to grant it. *Illustration:* If A agrees to sell a house to B, B can enforce

the contract specifically. So A will be required to convey the house to B. This remedy is granted because the court finds that the remedy of damages is not an adequate remedy in such a case.

### 12.8.4 Suit for Damages

Damages are a monetary compensation allowed to the injured party by the court for the loss of injury suffered by him by the breach of a contract. The object of awarding damages for the breach of a contract is to put the injured party in the same position, so far as money can do it, as if he had not been injured i.e., place him in the position in which he would have been had there been performance and not breach. This is called as "*the doctrine of restitution* (*restitution in integrum*)."

*Hadley vs. Baxendale* – (The rule of remoteness and special circumstances).

A broken shaft was given to a carrier to bring it to a repair shop. The carrier was not told that the absence of the shaft would completely stop the work of the owner. The carrier was in breach of contract because the delivery was delayed by several days. Admitting to damages, the defendant nevertheless argued that the loss of profit damages were too remote.

Damages can be classified under the following types based on the courts' judgments and the provisions of Section 73 of the Indian Contract Act, 1872 and also depending upon the circumstances of the case.

- General damages or Ordinary damages;
- Special damages;
- Exemplary or vindictive or punitive damages; and
- Nominal damages.

The details of the above types of damages are discussed below:

#### General or Ordinary damages

The losses that naturally and directly arise out of the breach of the contract in the usual course of the things are called as general damages. They would be the unavoidable and logical consequence of the breach. The damages for such losses are called as general damages or ordinary damages.

#### Special Damages

Special damage is what arises in the peculiar circumstances of a particular case, quite apart from the usual course of things. While making the contract, one party to the contract may bring to the notice of the other party about the particular type of losses that he would suffer under certain special circumstances. In case the contract is not performed properly and if the other party still proceeds to make the contract, it is construed that the other party has expressly agreed to be responsible for the special losses that may be caused by improper performance of his obligation. Compensation for such special losses is called as "special damages."

*Illustration:* M told C that there should not be any delay in the performance of the contract i.e., repairs to be made to the specified machinery, as his business would be affected and he would incur losses for any delay by the latter and C has promised not to cause delay. This would imply that C has agreed to become

liable for the special losses that may be caused by means of the improper performance of his obligation. Compensation for such losses are called as 'special losses'.

**Indirect Damages (Loss of Profits)**

The following illustration shows the nature of the indirect damages:

"A delivers to B, a courier company, a machine to be delivered overnight to A's factory. B does not deliver the machine on time, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the factory during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract."

The leading case on this subject is that of *Hadley vs. Baxendale*[2]. Section 73 and various cases clearly provide that knowledge of circumstances leading to loss of profits to the plaintiff imposes liability on the defendant.

**Exemplary or Vindictive Damages**

The principle underlying the award of damages is compensation to the aggrieved party. But, law generally would find it difficult to heal the mental pain or suffering or sense of humiliation that may be caused to the aggrieved party by the breach. In two exceptional cases, the courts award damages that can be punitive. i.e., by way of punishment. These are: (1) Breach of promise to marry, (2) Bank dishonoring a customer's cheque, though customer has sufficient funds in his account. Damages awarded in these two exceptional cases are called exemplary damages or vindictive damages.

**Nominal Damages**

Sometimes the breach of a contract does not cause any loss. Still the breach of a contract being a wrong, the seller can recover damages in a technical sense. The damages awarded in such a case are called nominal damages (for example, one rupee or even one pie).

**Liquidated Damages**

Such an amount that is specifically mentioned in the contract by the parties themselves to be payable to the aggrieved party in case towards the breach, is also called as liquidated damages.

Usually it is for the court to determine the quantum of damages.

In *Mehta & Sons vs. Century Spinning and Manufacturing Co.*[3], the plaintiff claimed damages for premature termination by the defendant company of the plaintiff's service as managing agents. They claimed as damages 10% of the gross profits of the company, (which was their remuneration as managing agents under the Managing Agency Contract) for unexpired period of the contract of service.

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2 9, Ex. 341: 96 R.R. 742.

3 (1962) SC 1314.

### 12.8.5 Suit for Quantum Meruit

*Quantum meruit* means, simply, "for what it's worth." *Quantum meruit* also means
"as much as he deserves." Even where there is no contract, *per se*, there may be a cause of action where a person gives value to another under circumstances that would cause the first person (if reasonable) to believe the second person will give fair market value for what he received.

The term *quantum meruit* actually describes the measure of damages for recovery on a contract that is said to be "implied in fact''.

Since specific terms in an implied contract are absent, the law supplies the missing contract price by asking what one would have to pay in the open market for the same work. Thus the measure of damages under *quantum meruit* is defined as "the reasonable value of the labor performed and the market value of the materials furnished" to the project.

**Self-Assessment Questions – 3**

a. What type of damages are awarded in case of breach of a promise to marry?

b. Michel, a popular singer, enters into a contract with the manager of a theatre, to sing at the theatre two evenings a week for the next two months and the manager of the theatre agrees to pay him at the rate of Rs.1,000 for each performance. From the sixth evening onwards, Michel absents himself from the theatre. In this context, which of the following remedies is/are available to the manager of the theatre against Michel?

c. Govind agrees to sell a house to Arvind and a contract is entered into. However, Govind subsequently refuses to sell. Arvind approaches the court. What type of remedy can the court award if it finds that the remedy of damage is not adequate in this specific case?

## 12.9. Summary

A contract creates self-imposed obligations. It establishes the reciprocal responsibilities of the parties and the extent and standard of their performances. Further a contract also facilitates the allocation of burden of risk in case of any contingency in advance. Finally, it also makes allowance for any loss arising out of any mishap or non-happening of any event.

The essential elements of a valid contract are Offer and Acceptance, Free Consent, Capacity, Consideration, Lawful Object, Certainty and Possibility of Performance, a clear term of contract.

Classification of contracts may be classified into valid, voidable, void, unenforceable and illegal contracts based on the validity of the contracts. Contracts are classified into formal and simple contracts based on the mode of formation. Contracts can be classified as executed and executory contracts based on the extent of their performance.

The law has provided certain remedies to the aggrieved party in case of breach of contract by the other parties. The important feature in the event of breach of contract is that each party has a responsibility to mitigate its losses at a minimum possible level.

There are five remedies available for breach of contract: they are damages, specific performance, Injunction, Quantum Meruit and Rectification. The Court awards damages in order to put the injured party into the position he would have been in, if the contract had been performed so far as money can make this possible.

## 12.10. Glossary

- **Ab inito** is a latin word that means 'from the beginning'.
- **Bona fide** is a good faith, honestly, without fraud, collusion or participation in wrongdoing.
- **Breach of Contract** is a legal claim that one party failed to perform as required under a valid agreement with the other party.
- **Consensus Ad Idem** is a true meeting of minds between the parties on all the terms of the contract.
- **Damages** mean the money awarded in a law suit to one party based on injury or loss caused by others.
- **Estoppel** is a concept that prevents a party from acting in a certain way because it is not equitable to do so. The concept of estoppel is applied in several areas of law.
- **Restitution** means compensation for loss or injury.

## 12.11. Suggested Readings / Reference Material

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## 12.12. Answers to Check Your Progress Questions

1. **Plurality of persons**
2. **Consensus ad idem**
3. **(e)** Acceptance should be made only to the respective offer and cannot be general
4. **(c)** Actual performance falls not far short of the required performance
5. **(e)** Executed.- This comes under the classification of Extent of performance
6. **(b)** Void contract.
7. **(a)** Voidable contract
8. **(a)** All contracts other than formal contracts
9. **Executory contract**
10. **(b)** Bilateral contract
11. **(a)** Suit for recession
12. **(b)** Suit for injunction
13. **(a)** General damages
14. **Quantum meruit**
15. **(d)** Nominal damage

**Self-Assessment Questions – 1**

a. A legal obligation having its source in an agreement only will give rise to a contract. The agreement 'A' accepts 'B's invitation to dinner by phone' indicated is a social agreement and does not give rise to any legal consequences.

b. Shyam advertises in a newspaper that he would pay Rs.5,000 to anyone, who finds and returns his lost briefcase containing valuables. This is not a valid offer. It is only an example of invitation to offer.

c. When Ram communicates to Shyam that he will sell his car for Rs.1,50,000. This is a valid offer.

**Self-Assessment Questions – 2**

a. No. An Agreement collateral to a wager is not void. Only agreements by way of wager are void and no suit shall be brought for recovering anything alleged to be won on any wager.

b. Public policy requires that every man should be at liberty to work for himself and an agreement which interferes with the liberty of a person to engage himself in any lawful trade is referred to as 'an agreement in restraint of trade'. An exception to this rule is the sale of goodwill. A seller of goodwill of a business may be restrained from carrying on a similar business subject to certain conditions.

c. No. The general rule of law is that an agreement without consideration is void. A promise to pay for a past voluntary service is binding and is an exception to agreements without consideration. (Section 25)

d. No. The agreement is void. Every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract is void and falls under the category of 'Agreements in restraint of legal proceedings (Section 28).

**Self-Assessment Questions – 4**

a. Exemplary or vindictive damages are to be awarded for breach of a promise to marry. The courts would award a large amount as damages to the aggrieved party which could cause a certain degree of discomfort to the guilty person.

b. He is at liberty to put an end to the contract, and also entitled to compensation for the damages sustained by him through Michel failure to sing from the sixth evening onwards.

c. Where the court finds that the remedy of damages is not adequate remedy, the court can enforce the contract specifically. Specific performance means doing exactly what had been intended to be done by the parties in the contract. Courts grant this to the aggrieved party in equity only in cases where it is absolutely essential to grant it.

## 12.13 Self-Assessment Questions

### A. Multiple Choice

1. Which of the following statements construe(s) an offer?
   a. Display of various varieties of silk sarees with prices marked upon them by a cloth shop owner.
   b. A publishing company provides a catalogue with prices indicated on it for sale of books.
   c. An auctioneer placed an advertisement in the newspaper to sell a car.
   d. Ram informs Shyam that he wants to sell his Bajaj Scooter for Rs.8,000.
   e. All of the above.

2. Which of the following agreements is/are valid?
   a. Agreement in restraint of legal proceedings.
   b. Agreement curtailing period of limitation.
   c. Agreement to stifle prosecution.
   d. Agreement by an outgoing partner with his partners not to carry on any business within a specified period or within specified local limits.
   e. All of the above.
3. Under which of the following modes is a contract said to have been discharged by operation of law?
   a. Performance of the contract by both the parties.
   b. Mutual consent of both the parties.
   c. Lapse of time in performance of the contract.
   d. Insolvency of either of the parties.
   e. Breach of contract by either of the parties.
4. The contract entered with a lunatic during the times of his sound mind is
   a. Valid
   b. Void
   c. Void abinitio
   d. Viodable
   e. Not enforceable.

***B. Descriptive***

**1.** To be enforceable by law an agreement must consists of an offer and acceptance by competent parties, is there any exceptions to the above principle, Explain.

**2.** State the various acts which constitute fraud as set out under section 17 of the Indian Contract Act, 1872.

**3.** Describe in detail the suit for *Quantum Meruit.*

These questions will help you to understand the unit better. These are for your practice only.

# Unit 13

# Special Contracts

**Structure**



## 13.1. Introduction

In our earlier unit we have learnt the general principles and rules governing contracts.
In this unit we shall deal with contract of agency, indemnity and guarantee, bailment and pledge which are contracts of special type.

Contracts of indemnity and guarantee are dealt under sections 124 to 147 of the Indian Contract Act, 1872. Indemnity in general is the protection given against loss or a security against or compensation for loss. The law relating to agency is dealt in sections 182 to 238. An agent is a connecting link between the principal and third parties as it is very difficult to attend all matters personally, wherever necessary, to bring the legal relations in this complex modern business world. Additionally, this unit also deals with essentials of employment contracts and documentation of commercial contracts.

## 13.2. Objectives

After going through the unit, you should be able to:

- Differentiate between contract of indemnity and guarantee;
- Recall the different kinds of guarantee, rights of surety and discharge of surety's liability;

- Familiar with the concept of bailment and pledge
- Describe the different ways of creation of agency, the rights and duties of principal and the modes of termination of agency;
- Describe the conditions in an employment contract;
- State the special rights enjoyed by parties in a contract; and
- Recall the mode of drafting the contracts.
- List the important clauses/ terms of contracts

## 13.3. Contracts of Indemnity

According to Section 124 of the Indian Contract Act, 1872 a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person, is called a 'contract of indemnity'.

A contract of insurance is an example of a contract of indemnity according to English Law. In consideration of a premium the insurer promises to make good the loss suffered by the assured on account of the destruction by fire of his property insured against fire. The person who promises or makes good the loss is called the indemnifier (promisor) and the person whose loss is to be made good is called the indemnified or indemnity holder (promisee).

However, a contract of life insurance does not come under the category of a contract of indemnity. This is because, in the case of life insurance, the insurer agrees to pay a certain sum of money either on the death of a person or on the expiry of a stipulated period of time. The question of having suffered a loss does not arise. Moreover, as the life of a person cannot be valued, the whole of the sum assured becomes payable and for that reason also it is not a contract of indemnity.

The contract of indemnity in a real sense is a contingent contract. It must have all essentials of a valid contract. It can be expressed or implied. It is relevant to discuss the following cases in this regard.

Certain rights have been granted to the indemnity holder under Section 125.

### 13.3.1 Rights of Indemnity Holder when Sued

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor:

- All damages within the scope of the terms of the indemnity;
- All costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the indemnifier authorized him to bring or defend the suit;
- All sums to be paid under the terms of any compromise of any such suit, provided the compromise is not contrary to the orders of the indemnifier, and should be authorized by him.

## 13.4. Contracts of Guarantee

Section 126 deals with Contract of Guarantee. As per this Section 'contract of guarantee' is a contract to perform the promise, or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the 'surety', the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written.

The purpose of a contract of guarantee is to provide additional security to the creditor in the event of default by the principal debtor. In a contract of guarantee, there are three parties i.e., the creditor, the debtor and the surety. Also, there are three contracts in a contract of guarantee (i.e., between the creditor and the debtor, between the creditor and the surety and between the debtor and the surety).

If the debt to be guaranteed is already time barred, guarantee given will not be valid and the surety will be discharged from his liability.

### 13.4.1 Types of Guarantees

A guarantee may be specific or continuing.

**Specific Guarantee**

A specific guarantee covers only one transaction or objective, is limited to a certain sum of money and is limited as to time. Any amount paid towards the advance by the borrower in his debt account with the creditor will go to reduce the guarantor's liability.

**Continuing Guarantee**

A continuing guarantee is defined in Section 129 of the Indian Contract Act. It covers a series of transactions; subject to the limit as mutually agreed upon, irrespective of the payments towards the advance and irrespective of the fluctuations of the balance in the debtor's account between debit and credit. Whether a guarantee is a continuing guarantee or not depends upon the construction of the document. If there are several documents covering a debt and guarantee, all the documents must be read as whole. In case of ambiguity in the contract, the nature of the contract is to be determined basing upon the surrounding circumstances.

In *Nottingham Hide Co. vs. Bottrill*[4] it was held that the following words used in a guarantee made the guarantee a continuing one: "Having every confidence in him, he as but to call on us for a cheque and have it with pleasure for any account he may have with you and when to the contrary we will write to you."

**Methods of Revocation of Continuing Guarantee:** A continuing guarantee may be revoked in two ways:

- By the surety giving notice oral or in writing to the creditor as to future transactions (Section 130), and
- In the absence of a contract to the contrary, by the death of the surety as to future transactions, (Section 131).

4 (1873) L.R.8 C.P 694

Mrs. C issued a bank guarantee for the bank loan of Mr. D. Subsequently, she expired. Her legal representatives argued that she is no more held liable for such guarantee owing to her death. The bank argued that she is held liable for such guarantee in respect of all transactions taken place based on such guarantee prior to her death. Because there is no revocation of guarantee placed on records from her side at any time before her death. The parties knocked the court's door for justice. The court held that judgment in favor of bank honoring the provisions of section 130 and 131 of the Indian Contract Act, 1872. [Shri Rajan Gupta vs. Bank of India and Another (2007)].

### 13.4.2 Liability of Surety

According to Section 128, the liability of the surety is co-extensive with that of the principle debtor, unless otherwise provided by the contract.

It has been specifically provided in the contract that the surety's liability arises only when the principal debtor is made liable, the surety continues to be liable in the given instances:

- Death of the principal debtor;
- Discharge of the principal debtor's liability by operation of law;
- Creditor's failure to sue the principal debtor within the period of limitation; and
- Release of one of the co-sureties by the creditor.

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**Check Your Progress - 1**

1. Mr Babji has obtained an insurance policy from LIC for Rs 2.00 lakhs. The contract entered by Mr Babji with LIC is called _____

2. Contract of guarantee' is a contract to perform the promise, or discharge the liability of a counter party/ person in case of his default (True/ False)

3. M/S Pragathi construction Pvt Ltd has entered into a specific contract to execute a housing project for GHMC. Identify the nature of contract entered by Pragathi Constructions Pvt Ltd?

   a. Covers many transaction, is objective, is limited to a certain sum of money and time period

   b. Covers only one transaction, is subjective, is limited to a certain sum of money and time period

   c Covers only one transaction, is objective, is limited to a certain sum of money and time period

   d. Covers many transaction, is subjective, is limited to a certain sum of money and time period

   e. Covers only one transaction, is objective, is unlimited limited in terms of of money and time period

4. M/S Raj construction Pvt Ltd has entered into a continuing contract to execute a housing project for GHMC. Due to certain issues, GHMC wanted to revoke the guarantee. Which is the appropriate method to revoke the guarantee?

    a. By the surety giving notice oral or in writing to the creditor and in the absence of a contract to the contrary or by the death of the surety as to future transactions.

    b. By the surety giving notice only in writing to the creditor and in the absence of a contract to the contrary or by the death of the surety as to future transactions.

    c. By the surety giving notice oral or in writing to the debtor and in the absence of a contract to the contrary or by the death of the surety as to future transactions.

    d. By the surety giving notice oral or in writing to the debtor and in the absence of a contract to the contrary or by the death of the surety as to past transactions.

    e. By the surety giving notice oral or in writing to the creditor and in the absence of a contract to the contrary or by the death of the surety as to past transactions.

5. Mr Ram Mohan, a Government employee has given his surety for a housing loan of Mr Krishnanand. Identify from the following, when will the liability of the surety Mr Ram Mohan come into effect?

    a. Surety's liability arises only when the principal debtor is made liable

    b. Principal debtor is prompt in repayment.

    c. Discharge of the principal creditor's liability by operation of law;

    d. Creditor's failure to sue the principal debtor after the period of limitation;

    e. Release of one surety by the creditor

### 13.4.3 Discharge of Surety

**By Revocation**

- A continuing guarantee can be revoked by the surety any time by giving notice to the creditor. However, the surety will remain liable for those transactions prior to the revocation.
- By death of the surety so far as future transactions are concerned. However, the surety's liability will not be discharged even on his death, in case there is a contract to that effect.
- By Novation – where a new contract substitutes the old contract by which the liability under the old contract stands cancelled.

### By Conduct of the Creditor

- Any variance made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.
- The validity of a contract of guarantee will not be affected in case there is a written contract of guarantee and there is no variance of the same in writing.
- Where the creditor enters into an agreement with the principal debtor releasing him from his liability, the surety stands discharged.

The following illustration aptly discusses this:

'A' gives guarantee to 'C' for goods to be supplied by 'C' to 'B'. 'C' supplies goods to 'B', and afterwards 'B' becomes embarrassed and contracts with his creditors (including C's) to assign to them his property in consideration of their releasing him from their demands. Here, 'B' is released from his debt by the contract with 'C', and 'A' is discharged from his surety ship.

### By Invalidation of Contract

- A guarantee obtained by means of either misrepresentation or concealment of material fact which the creditor was aware of, at the time of entering into the contract, invalidates the guarantee and discharges the surety.
- Where there is no consideration between the creditor and the principal debtor, the surety is discharged.
- Where a person gives guarantee on the condition that the creditor shall not act upon it until another person joins in as co-surety, the guarantee is not valid if that other person does not join.

## 13.4.4 Bank Guarantee

A bank guarantee is a guarantee given by a bank to a third person, usually a creditor, to pay him a certain sum of money on behalf of the bank's customer, when the customer fails to fulfill any contractual or legal obligations towards the third person.

For example, A bank enters into an undertaking on behalf of X, who is the customer of the bank, to pay Y, the seller/creditor from whom X has purchased goods. The bank issues this bank guarantee document to the seller who can produce the same before the bank and receive payment of the goods sold to X, where X has committed a breach of contract.

*Examples of bank guarantee:*

– A bank guarantee may be given by a buyer to a seller as a guarantee for the future payment.
– A bank guarantee may be given by the contractor as a guarantee for any amount advanced.

*Types of bank guarantees:*

– Financial Guarantee.
– Performance Guarantee.

– Deferred Payment Guarantee.
– Statutory Guarantee.

The creditor in whose favor the guarantee is issued can be prevented from invoking the same, by an injunction under the Civil Procedure Code, 1908, or the Specific Relief Act, 1963. The creditor can be restrained from invoking the guarantee by the debtor when he proves:

– Fraud committed by the creditor/beneficiary,
– Irreparable harm or injustice to himself.

## 13.5. Letter of Credit Contracts

Letters of credit are generally used in international transactions to ensure payment. Due to the nature of international dealings that include factors such as distance, differing legal systems of each country and difficulty in knowing each party personally, the use of letters of credit has become a very important aspect of international trade. The device used by the Bankers to effect payment is called the 'Banker's Commercial Credit' or 'Letter of Credit'.

A letter of credit is a document issued by a bank to a customer allowing him to draw up to a predetermined amount of money, from the issuing bank, its branches, or other associated banks or agencies on complying with specific requirements.

Where the Letter of Credit is used, in the sense that credit is given to the bearer of the instrument, and the buyer defaults his payment or is unable to pay, the repayment of such debt is confirmed by the (seller's bank) issuing bank that it will make payment to the seller/exporter/beneficiary. However, the bank will pay only when the seller/ beneficiary presents/submits the documents as mentioned in the Letter of Credit.

It is an assurance to the seller/beneficiary that he will receive payment on time and for the correct amount for any goods which he sells to the buyer/customer.

- It is not a negotiable instrument and hence cannot be transferred or exchanged.
- A bank issues a Letter of Credit on the request of the buyer/customer and on the basis of one's financial position and reputation in the society.
- It is often abbreviated as 'LOC' or 'L/C', and is also referred to as a 'documentary credit'.
- The seller need not worry about the import regulations of the buyer's country nor about the currency fluctuations.
- The buyer or the issuing bank need not pay money in advance to the seller.

### 13.5.1 Parties to a Letter of Credit

**Applicant-Buyer-Importer-Opener:** is a person who intends to purchase goods or avail services for which payment is to be made and hence applies to a bank to open a Letter of Credit.

**Issuing Bank:** The bank which opens a Letter of Credit on the request of the applicant/ Buyer is referred to as an Issuing/operating/Importers Bank.

**Beneficiary-Exporter-Seller:** A person who has the right to receive payment or to draw bills and receive payment as per the terms of the Letter of credit is known as the Beneficiary/Exporter/Seller.

**Advising Bank:** It is a bank which forwards the Letter of Credit to the beneficiary. It is located in the Beneficiary's/Exporter's country. It may also be termed as a Notifying Bank.

**Negotiating Bank:** A bank in the beneficiary/Exporter country which makes payment on the bills drawn by the seller and accepts the documents is called as a Negotiating bank. The name of the Nominated/Paying Bank may be specified in the Letter of Credit.

**Confirming Bank:** Where the advising bank in addition to advising credit to the beneficiary confirms such credit, such an Advising Bank shall be deemed as a Confirming Bank.

**Reimbursing Bank:** It is a bank appointed by the issuing bank to reimburse the Negotiating, Paying or Confirming Bank.

### 13.5.2 Documents under a Letter of Credit

The issuing bank is bound to certify that the documents submitted by the seller/beneficiary are as per the instructions of the applicant/buyer. The documents that generally accompany a Letter of Credit are:

- Bill of Exchange
- Invoice
- Transport Documents
- Bill of lading
- Airway bill
- Post parcel receipts and courier receipts
- Insurance documents
- Other documents.

### UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS – UCPDC 600

The Uniform Customs and Practice for Documentary Credits are the conditions according to which bankers issue or act on commercial credits. Being first formulated in 1933 by the International Chamber of Commerce (ICC), they underwent several revisions with the latest which came into force on January 1st 1994. They are called the UCP 500. The UCP 500 are incorporated in the Letter of Credit as one of the terms of Letter of Credit hence they are contractually binding on all the parties to the Letter of Credit. They generally govern all Letter of Credit transactions. UCP600 came into effect on 1 July 2007. This revision of the Uniform Customs and Practice for Documentary Credits (commonly called "UCP" 600) is the sixth revision of the rules. Refer Exhibit 13.1).

**Exhibit 13.1: Uniform Customs and Practices for Documentary Credit (UCPDC600) : Standard Practice applicable to Letter of Credit**

The cross border trade has increased tremendously over the last decade and is presently around 20 trillion USD. This made the institutions think of more harmonization of the commercial laws at the global level. UCPDC 600 , the upgraded version of UCPDC 500 comprises of set of standardized principles

These principles guide the banks for payment of international transactions based on documentary credits (Letter of Credit) and are commonly known as LC . LC's are used as the basic document and the common mode in international trade. This mode of transaction ensures payment for the seller and quality of goods dispatched to the buyer. The first UCP was framed by international Chamber of Commerce way back in 1933, latest being UCP-600 in 2007. The present UCP has 39 articles and is comprehensive in nature. The Doctrine of Strict Compliance provides seller the assurance that the standards applied by banks in scrutinizing documents will not vary from country to country. The documents provided by the seller or the exporter or the beneficiary must strictly comply the stipulations in the letter of credit.

*Source: https://taxguru.in/finance/ucpdc600-standard-practice-applicable-letter-credit.html Dated 2nd June 2021*

**Self-Assessment Questions – 1**

a. Suresh a surety, in a contract of guarantee requiring three months' notice, revokes guarantee just a day before performance of contract. Is such a revocation illegal?

b. A promises B to compensate the loss caused to B either by him or by another person. What type of contract is this?

## Check Your Progress - 2

6. Banks issue various types of guarantee on behalf of its client. Identify one such guarantee which cannot be issued by the bank?

   a. Financial Guarantee for execution of contract

   b. Performance Guarantee of the contract

c. Guarantee after completion of the contract

d. Deferred Payment Guarantee for repayment of future dues

e. Statutory Guarantee in favour of government or statutory authorities

7. Identify the circumstance in which the creditor can be restrained from invoking the guarantee?

a. Fraud committed by the Debtor / Applicant

b. Fraud committed by the debtor / beneficiary.

c. Fraud committed by the creditor / Applicant

d. Fraud committed by the creditor / beneficiary.

e. None of the above

8. The main characteristic of Letter of credit (LC) is that, it is an assurance to the seller/beneficiary that he will receive payment on time and for the correct amount for any goods which he sells to the buyer/customer. Identify one of the following sentence which is not the characteristic of a LC<

a. It is not a negotiable instrument and hence cannot be transferred or exchanged.

b. A bank issues a Letter of Credit on the request of the buyer/customer

c. It is also referred to as a 'documentary credit'

d. The seller may incur loss due to currency fluctuations after issuing the LC from his bank.

e. The buyer or the issuing bank need not pay money in advance to the seller

## 13.6. Contracts of Bailment

Bailment is the act of transferring goods to a person for a definite purpose, without transferring its ownership. On accomplishment of purpose, the goods are required to be returned in the accomplished form, to the person from whom the goods are originally received or deliver the same as directed by him. There are three terms involved in this transaction – bailor, bailee and contract of bailment.

- The person delivering the goods is 'Bailor'.
- The person who took the delivery of goods is 'Bailee'.
- The contract between the bailor and bailee is 'Contract of Bailment'.

Contract of Bailment concludes when bailee delivers the accomplished goods either to the bailor or to anyone as directed by him. Chapter IX of the Indian Contract Act, 1872 deals with the Contract of Bailment. (Section 148)

### 13.6.1 Requisites for Bailment Contract

- Bailor delivering the goods to the bailee
- The delivery must be for a definite purpose.
- The delivery done without transferring its ownership.
- On fulfillment of purpose, bailee needs to deliver the goods to bailor or to any person as directed by him.

*Illustration:* In the case of Kavita Trehan and Others vs. Balsara Hygiene Products Limited[5], the court held that to constitute a bailment, change of possession is essential.

### 13.6.2 Duties/Liabilities of Bailor

**Rights of Bailee**

- It is the duty of the bailor to deliver the goods to the bailee in a manner that gives an impact that the goods are placed in the possession of the intended bailee or any person authorized to hold the same on his behalf. (Section 149).
- It is the duty of the bailor to disclose any material defects in the goods bailed to the bailee. Such disclosure is important to the extent bailor is aware of such default, interfere while working on such goods, unnecessarily expose the bailee to extraordinary risk. In case of non-disclosure, bailor is held responsible for any loss incurred by bailee owing directly to such non-disclosure. (Section 150)

  Illustration: Siva hires Swaraz Mazda bus of Srinivas. The bus doors are loosely fixed which Siva hides from Srinivas. Srinivas is injured. Owing to non-disclosure, Siva is held responsible for the injury caused to Srinivas.
- It is the duty of the bailor to reimburse the necessary expenditure incurred by the bailee for the work done on the bailed goods in terms of the contract of bailment. This duty arises only when no remuneration is paid by bailor for the services rendered by bailee. (Section 158)

  In case the bailor fails to reimburse then the bailee possesses right of particular lien on such goods till he receives such reimbursement. This is applicable when there is no contract contrary to it. (Section 170)

  Illustration: Gayatri delivers raw gold to Ritika for making a necklace. It is done accordingly. Ritika got a special lien on such jewellery till she receives her service amount from Gayatri.

  Illustration: Srikarthi gives gold biscuit to Ritika for making a bracelet. It is agreed that one month credit will be given for payment. The ornament made. Ritika needs to deliver the ornament on completion and wait for a month to receive the payment.
- It is the duty of the bailor to reimburse the loss, if any, incurred by the bailee on the goods bailed to him gratuitously, if delivery is compelled prior to the predetermined period or purpose. (Section 159). Gratuitous bailment gets

[5] AIR 1992 Delhi 92, 1991 RLR 544

automatically terminated either on the death of the bailee or the bailor. (Section 162)

- It is the duty of the bailor to reimburse any loss or damage that may occur to bailee, when the bailor fails to take the bailed goods within the specified period or fails to honor the bailment or giving directions respecting the contract of bailment. (Section 164)
- It is the duty of the bailor to bail the goods having title. Otherwise, the bailee cannot be held responsible for any mishap happens in course of such delivery. (Section 166)

### 13.6.3 Duties / Liabilities of Bailee

**Rights of Bailor**

- It is the duty of the bailee to take utmost care of the goods bailed, as a person of ordinary prudence. (Section 151). In spite of taking such utmost care, if there is any loss, damage, destruction or deterioration incurred to the bailed goods, then for such happening bailee shall not be held responsible. This holds goods only when there exists no special contract between the bailor and bailee for the same.(Section 152)
- It is the duty of bailee to use the bailed goods for the purpose it is bailed and not for any other purpose. In case he makes any misuse then he is held liable for any damage that incurs during or at the time of such misuse. (Section 154)

  Illustration: Murali lends a laptop to Vasu, for his own use. Vasu allows Aditya, his small brother, to use the laptop. Before giving, he spells all instructions for good application of laptop. However, in spite of utmost care, laptop accidentally falls on the ground and stops working. Vasu is held liable for the damage caused to laptop irrespective of care taken by him and his brother.
- It is the duty of the bailee, not to mix the bailed goods with his other goods, without the consent of the bailor. In case he does then he should bear the repercussions of the same. That means,
  - ✓ In case the bailee mixes the bailed goods with his other goods and unable to separates them at the time of delivery then he is liable for the loss caused to such goods to the bailor. (Section 157)

    *Illustration:* Karthikeya bails a ton of sunflower oil to Rithvik. Rithvik, without Karthikeya's consent, combines the oil with refined oil. Sunflower oil is costlier than refined oil. In this situation,
    - Rithvik is bound to deliver the bailed oil to Karthikeya.
    - He is bound to bear the expenditure incurred for such delivery.
  - ✓ In case the bailee mixes the bailed goods with his other goods and able to separate them for delivery then he is liable to bear expenses/costs, if any, incurred for such separation. (Section 156)

*Illustration:* Aditya bails 300 bales of wool marked with a distinct mark to Rama. Rama, without Aditya's consent, mixes the same with his other bales of wool possessing a different mark. In this situation,

- Rama is responsible for delivery of Aditya's wool to him.
- Rama is held responsible for any expenditure incurred by him in the course of separation and for any damage occurred to the bailed wool.

- It is the duty of the bailee to handover the predetermined share to the bailor, when the bailee mixes the bailed goods with the consent of the bailor and for a predetermined share. (Section 155)
- It is the duty of the bailee to return the bailed goods on expiry of bailed period or on accomplishment of purpose for which such goods are bailed. (Section 160)
- It is the duty of the bailee to bear the consequences in all respects, when he fails to deliver the bailed goods to the bailor in the manner predetermined by both the parties. (Section 161)
- It is the duty of the bailee to handover profit or increase in value, if any, happens on the bailed goods during the bailed period, to the bailor.(Section 163)
- It is the duty of the bailee to deliver the goods in the manner stated by the bailor. Where the bailment consists of more than one bailor then the delivery shall be made to them unless otherwise stated. (Section 165)
- It is the duty of the bailee to hold the bailed goods honoring the contract of bailment. Or else, the bailor got every right to repudiate the contract. Thus, contract of bailment is a voidable at the option of the bailor. (Section 153)

  Illustration: A hires a tailor for stitching a blouse. Tailor stitches a frock. A got every right to invalidate the contract and claim damages from the tailor.

### 13.6.4 Third Person's Right in Bailment

When a dispute arises by a third party in respect of title of goods bailed by bailor, then the third party can knock the doors of the court to

- Restrain the bailee from delivery of bailed goods to bailor, and
- Decide the title of the bailed goods. (Section 167)

### 13.6.5 Right of Finder of Goods

- The finder of goods cannot sue for compensation from the owner for the trouble and expenditure incurred in protecting the goods and finding the owner. But he can retain the goods till the owner pays him such compensation.
- The finder of the goods can sue for compensation when the owner declares the same for the return of such goods. Here also, he can retain the same till he receives the compensation. (Section 168)

- The finder to goods can sell such goods when
  - ✓ The subject matter of such goods is bound to loose, or
  - ✓ Unable to find the owner even searched with reasonable diligence, or
  - ✓ The owner fails to pay the lawful charges incurred by him, even on demand.

    The circumstances under which the finder is free to sell the goods are
    - The goods tend to lose greater part of its value, or
    - The lawful charges amounts to two-third value of goods subject. (Section 169)

### 13.6.6 General Lien on Bailed Goods

General lien is the other side of the particular lien. Bankers, factor, wharfingers, attorneys of a High Court and Policy brokers are qualified for retention of bailed goods as a security for a general balance of account. This can be done unless contract to the contrary is made.

Except those qualified above, for all others, an express contract must be available for retention of bailed goods. (Section 171)

### 13.6.7 Suit Against Wrong-Doer

When a third person wrongfully deprives the bailee for using the bailed goods or does any injury to them, then the bailee got all the options that are available to the bailor for filing a suit against him and to claim compensation for such injury or deprivation. He is entitled to act as if he is the actual owner of such bailed goods. (Section 180)

Such compensation shall be divided between bailor and bailee in proportionate to their interest in such bailed goods. (Section 181)

## 13.7. Contracts of Pledge

The delivery of goods to a person as a security for repayment of a debt or for performance of an act. The delivery is for temporary possession of goods until the purpose gets fulfilled. The ownership in goods is not transferred. These are typically used in securing loans, pawning property for cash and as a guarantee for accomplishment of assigned work. Here,

- The person who delivered the goods is called as ‘Pledgor/Pawnor’,
- The person who receives the delivery of goods is called as ‘Pledgee/Pawnee’,
- The goods delivered are called as ‘Pledged Goods’,
- The contract between pawnor and pawnee is ‘Contract of Pledge’.

### 13.7.1 Bailment and Pledge

Prima facie, there exists a bailment in the pledge transaction.

- The bailment of goods delivered as security for repayment of a debt or for performance of a promise is called ‘Pledge’.

- The bailor is termed as ‘Pawnor’.
- The bailee is termed as ‘Pawnee’.
- The contract of bailment is termed as ‘Contract of Bailment’.
- The bailed goods is termed as ‘Pledged Goods’. (Section 172)

### 13.7.2 Difference between Bailment and Pledge

| Sl. No. | Subject | Bailment | Pledge |
|---|---|---|---|
| 1. | **Chapter IX of the Contract Act, 1872** | Section 148 to Section 171 provisions of the Act. | Section 172 to Section 181 provisions of the Act. |
| 2. | **Nature of Transaction** | It is the act of transferring goods for a definite purpose, without transferring the ownership. Here, the purpose is either crafting the goods or for transportation. | It is the act of transferring goods to create a security for repayment of debt or for performance of a promise, without transferring the ownership. |
| 3 | **Creation of Contract** | It is termed as Contract of Bailment. | It is termed as Contract of Pledge. |
| | **Parties to a Contract** | Bailor – Person who delivers the goods.<br>Bailee – Person who takes the temporary possession of goods. | Pawnor – Person who delivers the goods.<br>Pawnee – Person who takes the temporary possession of goods. |
| 4 | **Delivery of Goods** | Goods delivered are ‘Bailed Goods’. | Goods delivered are ‘Pledged Goods’. |
| 5. | **Conclusion of the Contract** | Contract concludes when<br>1. Baliee accomplishes the assigned purpose and<br>2. Delivers the bailed goods to the bailor. | Contract concludes when<br>1. Pawnor repays the debt or performs the promise made, and<br>2. Pawnee handovers the pledged goods to the pawnor. |
| 6. | **Usage of Goods** | Bailee can use the bailed goods, if the terms of contract provide so. | Pawnee is not allowed to use the pledged goods. |
| 7. | **Applicability** | Bailment is a ‘Genus’. | Pledge is ‘Specie’. It is a special kind of bailment. |

| Sl. No. | Subject | Bailment | Pledge |
|---|---|---|---|
| 8. | **Illustration** | Raj went to a five star hotel for the purpose of having dinner. When he entered the room, the waiter took his coat and placed it on a hook behind it.<br>Keeping and protecting the coat till he finishes the dinneris bailment. | Raja went to a bank and delivered gold jewellery for a loan.<br>The bank gave the loan pledging the jewellery with it.<br>Lending loan on pledging the jewellery, handing over the jewellery on repayment of loan amount is pledge. |

### 13.7.3 Duties/Liabilities of Pawnor

**Rights of Pawnee**

- It is the duty of the pawnor to perform the promise, repay the debt along with interests if any and to reimburse all the necessary expenditure incurred by him towards possession or for the preservation of the pledged goods (Section 172). In case of any default, pawnee is entitled for retention of pledged goods till the aforesaid duty is accomplished (Section173).
- It is the duty of the pawnor to reimburse any extraordinary expenditure incurred by pawnee towards preservation of the goods pledged by the pawnor. (Section 175)
- It is the duty of the pawnor to repay the debt or perform the promise and to repay any other expenses incurred in course of pledge to the pawnee within the stipulated time. In case of default, the pawnee is left with two remedies: (Section 176)
    1. He is entitled to file a suit against pawnor for such repayment or performance.
    2. He is entitled to sell the pledged goods and recover his debt from the sale proceeds of it. However, this can be done only after giving reasonable notice to the pawnor. In case the proceeds are less than the pledged amount then he can recover the balance amount from the pawnor. If the proceeds are surplus then the amount in excess of pledged amount shall be paid to the pawnor.

       Illustration: C availed loan from D. E and F pledged their shares worth 200% of the loan amount as security. C became default in repaying the loan instalments. D issued a recall notice wherein it clearly specified the default details and the time period within which the defaulted amount shall be paid. Notice also clearly indicated that in case the defaulted amount was not paid within the time stipulated then the pledged shares shall be sold or transferred. Notice period was not honored and D ultimately sold the pledged shares at different dates. C and others questioned the reasonableness of the notice. According to them, process of sale was uninformed thereby causing great loss to

them. They alleged that D shall be held liable for the shares misappropriated. On filing a suit, the court held that the recall notice was reasonable enough to take suitable action by the alleged parties and hence the action of C cannot be held unlawful. (M/s Indiabulls Housing Finance vs. Green Gardens Private Limited (2013).

### 13.7.4 Duties/Liabilities of Pawnee

**Rights of Pawnor**

- It is the duty of the pawnee to retain only the pledged goods and not any other goods of the pawnor. However, he can retain other goods also when a contract to that extent is made. (Section 174)

### 13.7.5 Mercantile Agent's Pledge

- Owner pledges the goods with the Mercantile Agent for a loan. This being the ordinary course of business of the mercantile agent, the pledge holds goods in the eyes of law. However, this is subject to certain exceptions. Mercantile Agent should have acted in good faith and with strong belief that the pawnor was authorized for pledging such goods. (Section 178)

### 13.7.6 Pledged Goods under Voidable Contract

- Pawnor pledges the goods with pawnee under a contract of voidable nature.
- Pawnee accepts the goods not rescinding the contract.
- Pawnee acquires good title of goods only when he acts in good faith and without notice of pawnor's defect of title. (Section 178A)

In case the pawnor pledges the goods having limited interest with the pawnee. The pawnee knows of this limited interest. In this situation the pledge holds good to the extent of interest the pawnor is entitled to. (Section 179)

## 13.8. Contracts of Agency

Modern business is growing and becoming competitive day by day. To keep pace with this development it is not possible for a businessman to carry on all his business transactions on his own. This impossibility necessitates him to allow another person to work on his behalf. This means he is delegating some of his powers to another person to carry on some of his business transactions on his behalf. Here, the other person is an agent and the person who delegated the powers is the principal. The contract which binds the principal and agent is called an agency.

*Illustration:* X Co. engages the services of Y firm to sell its products. Here X is the principal, Y is the agent and the contract between them is the contract of agency.

The provisions of Sections 183 to Section 238 of the Indian Contract Act, 1872 regulates the contract of agency.

Section 182 of the Indian Contract Act, 1872 defines agent and principal as:

"Agent" means a person employed to do any act for another or to represent another in dealing with the third persons and the "Principal" means a person for whom such act is done or who is so represented.

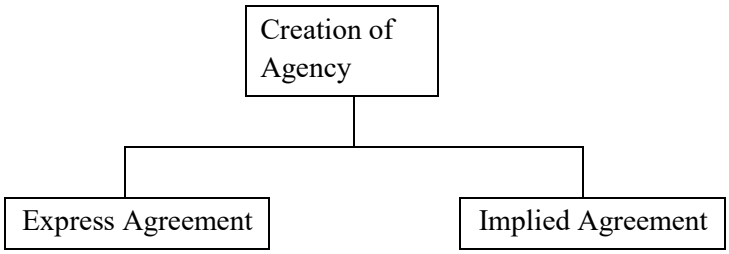
In a contract of agency, it is the agent who brings about a legal relationship between two persons. It should be noted that an agent is not merely a connecting link between the principal and a third person. The agent is also capable of binding the principal by acts done within the scope of his authority.

An agent does not act on his own behalf but acts on behalf of his principal. He either represents his principal in transactions with third parties or performs an act for the principal. The question as to whether a particular person is an agent can be verified by finding out if his acts bind the principal or not.

### 13.8.1 Creation of Agency

- Any person who is of the age of majority and is of sound mind may employ an agent. [Section 183]
- Between the principal and the third persons, any person may become an agent. But no person who is a minor and of unsound mind can become an agent. [Section 184]
- No consideration is necessary to create an agency. [Section 185]
- It is not essential that a contract of agency be entered into. It is sufficient if a person acts on behalf of another and is accepted by the latter.
- An agency can be created either in writing or orally. An oral appointment is a valid appointment even though the contract of agency by which the agent is authorized has to be in writing.

**Figure 13.1**




**Express Agreement**

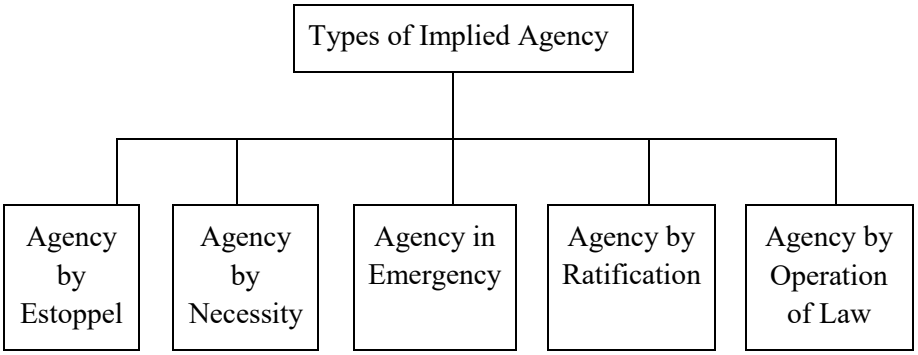
An agency may be created either by express agreement, i.e., an agreement is said to be express when it is given by words spoken or written. (Section 187)

**Implied agreement**

Implied agreement is, by inference from the circumstances of the case and things spoken or written, or the ordinary course of dealing. (Section 187)

*Illustration:* X who, resides in Ahmedabad, owns a shop in Hyderabad. He visits his shop occasionally. The shop is managed by Y who orders goods from Z in the name of X for and pays the amount out of X's funds with X's knowledge. This means Y has an implied authority from X to order goods from Z in the name of X.

**Figure 13.2**




Implied Agency includes the following:

**Agency by Estoppel or Holding Out:** When a person, by his conduct or by statement, leads willfully another person to believe that a certain person is his agent, he is estopped from denying subsequently that such person is not his agent.

**Agency by Necessity:** Where there is no opportunity of communicating to the concerned parties about any urgency and a person in such a situation acts as the agent for the benefit of the other, agency by necessity is said to have arisen.

**Agency in Emergency:**

As per Section 189 of the Indian Contract Act, 1872, an agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

*Illustration:* 'A' consigns provision to 'B' at Kolkata, with directions to send them immediately to 'C', at Cuttack. 'B' may sell the provisions at Kolkata, if they cannot bear the journey to Cuttack without spoiling.

**Agency by Ratification:** Where acts are done by one person on behalf of another but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority. The ratification may be express or implied.

**Agency by Operation of Law:** Promoters forming a company or partners of a firm are considered to be agents of the principal company/firm by operation of law.

**Types of Mercantile Agents**

As per Section 2(9) of the Sale of Goods Act, 1930 explains Mercantile Agent as one who has authority either to sell goods or to buy goods or to raise money on the security of goods. They are of four kinds based on the nature of work they perform:

**Factor:** He is a mercantile agent to whom goods are entrusted for sale with wide discretionary powers. He may sell such goods on his own name and may pledge the goods as well on such terms as he thinks fit. Further, he has a general lien on the goods of his principal for the general balance of account between him and the principal.

**Commission Agent:** He is the mercantile agent who buys or sells goods for his principal on terms as he thinks fits and receives commission for such work done. It is immaterial whether he possess such goods or not.

**Del credere Agent:** The term del credere means 'of entrusting'.

Del credere agent is a mercantile agent, who for additional consideration or extra commission from his principal, undertakes to perform the financial obligations of such third person in case such third person fails to fufill the same. Thus, he occupies the position of surety as well as of an agent.

**Broker:** He is the mercantile agent who is employed to negotiate and make contracts for the purchase and sale of goods. He has neither control nor possession of goods. In case the deal materializes then he receives the commission called brokerage.

**Auctioneer:** He is an agent entrusted with the possession of goods for sale to the highest bidder in public competition and authorized only to deliver the goods on receipt of the price. Further he has implied authority to sign a contract or memorandum of sale on behalf of the vendor and the purchaser.

A sub-agent is a person appointed by an agent to work for the business of agency. He acts under the control and supervision of an agent. That means the agent acts as a principal for the sub-agent (Section 191).

### 13.8.2 Rights and Duties of Parties

**Duties of Agent**

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

'A', was instructed to warehouse some drapery goods for P, at a particular place. He warehoused a portion of them at another place where they were destroyed by fire without any negligence on the part of 'A'. Held, 'A' was liable to 'P' for the value of the goods destroyed.

If the agent adheres to the instructions given by the principal he cannot be made liable if consequences turn out to be different from those contemplated by the principal.

An agent is under no obligation to follow instructions which are unlawful.

An agent is bound to render proper accounts to his principal and has duty, irrespective of any contract to that effect, to produce vouchers by which items of disbursement are supported as part of the obligation to render proper accounts to the principal on demand. (Section 213)

His duty also consists in explaining them wherever necessary.

It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal and seeking to obtain his instructions (Section 214).

In an emergency situation, the agent should exercise reasonable diligence and sound discretion and adopt a course which appears best to him under the said circumstances. He will be justified in this and shall have discharged his duties, though subsequent events may demonstrate that some other course would have been a better option.

An agent is duty bound to pay sums received to the principal on his account.

However, the agent can deduct his lawful charges i.e., expenses properly incurred by the agent and the remuneration if any.

The principal cannot recover money received by the agent on behalf of the principal in cases where,

– The contract of agency itself is illegal.
– The agent has lawfully repaid the money to the third person from whom he received it.

An agent should protect and preserve the interests of the principal in case of his death or insolvency.

The agent must not make secret profit from the extract agency. He must disclose any extra profit that he may make.

An agent must not allow his interest to conflict with his duty. For example, he must not compete with his principal.

An agent must not delegate his authority to a sub-agent. This rule is based on the principle *Delegatus non-protest delegare* – A delegate cannot further delegate (Section 190). The exception to this rule is when delegation is allowed by the principal or the trade custom or usage sanctions delegation or when delegation is essential for proper performance or where emergency renders it imperative or where nature of the work is purely ministerial and where the principal knows that the agent intends to delegate.

**Rights of Agent**

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

The agent has a right to receive remuneration.

**Right of Lien:** In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether movable or immovable, of the principal received by him until the amounts due to himself from commission, disbursements, and services in respect of the same has been paid or accounted for to him.

The lien exercised by an agent can be either a particular lien or a general lien.

The right of lien is lost if:

– The agent parts with the goods voluntarily;

– He waives or abandons his lien or takes another security;

– The principal repays the amount due; or

– The agent enters into an agreement which is inconsistent with the lien.

The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him. The following cases discuss this in detail:

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

ii. Right of stoppage of goods in transit: This right is available to the agent in the following two cases:

   – Where he has bought goods for his principal by incurring a personal liability, he has a right of stoppage in transit against the principal, in respect of the money which he has paid or is liable to pay;

   – Where he is personally liable to the principal for the price of the goods sold, he stands in the position of an unpaid seller towards the buyer and can stop the goods in transit on the insolvency of the buyer.

## RIGHTS OF PRINCIPAL

### Right to Repudiate the Transaction

An agent in a fiduciary position, is duty bound to transact the agency work in the interest of his principal business and not otherwise. That means he is not entitled to do anything for his personal benefit out of his principal business.

The principal may repudiate such agent's transaction if he can prove that:

- A material fact has been dishonestly concealed from him; or
- The dealing of the agent has been disadvantageous to him.

*Illustration:* X appoints Y to sell her estate at Ahmedabad. Subsequently, Y discovered a mine in her principal's estate. Without disclosing this fact to her she buys the estate for herself. The principal may repudiate the transaction.

### To Claim any Resulted Benefit from Agency

If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction. (Section 216)

Thus, the principal has every right to obtain an account of secret profits and recover them and resist a claim for remuneration.

### Right to Recover Damages

If the principal suffers any loss due to disregard by the agent of the directions by the principal, or by not following the custom of trade in the absence of

directions by the principal, or where the principal suffers due to lack of requisite skill, care, or diligence on the part of the agent, he can recover damages accruing as a result from the agent.

**To Resist Agent's Claim for Indemnity**

Where the principal can show that the agent has acted on his own behalf and not on the behalf of the principal, he can resist the agent's claim for indemnity against liability incurred.

**Duties of Principal**

**To indemnify against consequences of all lawful acts of agent:** The principal is bound to indemnify the agent against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him. (Section 222)

*Illustration*: X employs Y to enter into contract with Z for purchase of 100 rice bags for her. Subsequent to the contract entered with Z by Y, X refuses to take the delivery of such rice bags from him. Z sues Y against such refusal. Y is made liable to pay.

Z and X is made liable to pay Y towards damages, costs and expenses incurred on such refusal.

**To indemnify the agent against consequences of acts done in good faith:** The principal is required to indemnify the agent against the consequences of acts done in good faith. According to Section 223 of the Contract Act, where one person employs another to do an act and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act though it causes an injury to the rights of third persons.

**To pay compensation against agent's injury:** The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill. (Section 225)

**To pay the agent the commission or other remuneration agreed.**

### 13.8.3 Termination of Agency

According to Section 201, an agency is terminated by:

- By an agreement between the parties, or
- By the principal revoking his authority; or
- By the agent renouncing the business of agency; or
- By the business of agency being completed; or
- By either the principal or the agent dying or becoming of unsound mind; or
- By the principal being adjudicated an insolvent under the provisions of any act for the time being in force for relief of insolvent debtors.

Thus an agency may be terminated by Agreement, Revocation of authority by the Principal and by operation of Law.

**EXCEPTIONS**

**Irrevocable Agency**

When an agency cannot be put an end to, it is said to be irrevocable agency. An agency is irrevocable where the agent himself has an interest in the property which forms the subject-matter of the agency. Such an agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

*Illustration:* 'A' gives authority to 'B', to sell 'A's land and to pay himself, out of the proceeds, the debts due to him from 'A'. 'A' cannot revoke this authority, nor can it be terminated by his insanity or death.

When agent has incurred a personal liability the agency becomes irrevocable.

The principal cannot revoke the authority given to his agent after the authority has been partly exercised, as far as such acts and obligations arise from acts already done in the agency. (Section 204)

**Time when Termination takes Effect**

The termination of the authority of an agent does not, take effect before it becomes known to him. As regards third persons, it terminates when it comes to their notice.

| Self-Assessment Questions – 2 | |
|---|---|
| a. | Amit, a duly appointed agent of Bharat, insures the goods of Bharat without his authority. Later on, Bharat satisfied with the act of Amit, pays the premium. Examine the type of agency created. |
| b. | Mr. Mukarjee employs Pravin as his agent in selling his used car. Pravin is instructed to sell the car for a price not less than Rs.50,000. Pravin buys the car himself and hands over Rs.50,000 to Mukarjee, who is quite satisfied with the price and does not ask for the name of the buyer. A few days later Pravin sold the car for Rs.1,00,000 to After knowing the fact Mukarjee wants to recover the excess profit of Rs.50,000 from Pravin. Can Mukerjee succeed in recovering the excess profit? |

## 13.9. Employment Contracts

Employer-employee relationship has acquired a new meaning and significance with the phenomenal rise of globalization, market economy and free trade. Employers can no longer dictate terms to employees. Employees have become

the equal partners and players in the economic sector. In fact, the positive role being played by both the employer and the employee in all sectors of activity public and private, is immensely contributing towards achieving peace, prosperity and happiness of the humankind. Efficient corporate governance is recognized as the key to progress.

### 13.9.1 The Employer-Employee Relationship

- The employer-employee relationship is primarily determined by the terms of the employment contract, which can be either oral or written.
- The contract should specify a job description, wages, employee rights and duties and other specific terms and conditions of employment.
- A contract for employment is generally presumed to be "at will" unless otherwise specified.
- An employer or employee can terminate an "at will" employment relationship at any time and for any reason, unless the law provides a specific exception to this general rule.
- The employer-employee relationship is contractual and gives rise to reciprocal obligations of rights and duties:

**Duties of Employee:** There are two types of duties of employees –

Those that arise from tort law or agency law; and

Those that arise from contract law.

**CONDITIONS IN CONTRACTS**

**Employment at Will**

The doctrine of "employment at will" gives free hand to both as the employee can quit, and the employer can fire an employee at his will, at any time and for any reason and without any prior notice.

**Express Contract**

An express contract can be either in writing or in oral. An employer might want to have in an express contract a statement that:

The employee can be fired or otherwise disciplined only for "just cause" or "reasonable cause" or some such general language.

Further, an employer might include in an express contract the following conditions:

– An agreement not to compete (non-competition agreement).

– An agreement not to use the employer's trade secrets, customer lists, and so on.

– An agreement to arbitrate disputes rather than taking them to court.

**Termination**

Before the employee is discharged or action for discipline is taken, he has to be given an opportunity to explain or have some kind of hearing.

### Liquidated Damages

An agreement for liquidated damages can only be when there is an engagement for the performance of certain acts that if not done would injure one of the parties or to guard against the performance of acts that would be injurious if done.

Generally the sum fixed upon will be considered either liquidated damages or a penalty or forfeiture according to the intent of the parties.

### Data Privacy

Data privacy refers to the evolving relationship between technology and the legal right to, or public expectation of privacy in the collection and sharing of data. Privacy problems exist wherever uniquely identifiable data relating to a person or persons are collected and stored, in digital form or otherwise. Improper or non-existent disclosure control can be the root cause for privacy issues.

### Confidentiality Agreements

Two restrictions are non-use and non-disclosure and an agreement should have both. An example of confidentiality breach might be disclosing the identity of the former employer's customers to the new employer. There are three levels of confidentiality. The lowest level is public domain information, followed by confidential information, and finally by trade secrets, the highest of the three.

The law of employment establishes minimum statutory requirement for compensation for individual terminations:

- For periods of employment greater than 3 months, the employer must pay severance to the employee, or satisfy that obligation by giving a written notice of termination.
- Group terminations (those of 50 or more) have additional requirement under the law. First, the employer must give written notice to the minister, to the employee being terminated and to the Union. This notice must specify the number of employees being terminated and dates of terminations and the reason for termination.

### INDEMNIFICATION

Indemnity is a legal exemption from the penalties or liabilities incurred by any course of action.

Corporate officers, board members and public officials often require an indemnity clause in their contracts before they perform any work. In addition, indemnification provisions are common in intellectual property licenses in which the licensor does not want to be liable for misdeeds of the licensee. Such a license would protect the licensor against product liability and patent infringement.

## 13.9.2 Checklist of Standard Clauses

Commencement of employment,

- Job title,
- Salary,

- Place of posting,
- Hours of work,
- Leave/Holidays,
- Nature of duties,
- Company property,
- Borrowings/accepting gifts,
- Termination,
- Confidential information,
- Notices,
- Applicability of company policy,
- Governing Law/Jurisdiction,
- Acceptance of offer.

## Check Your Progress – 3

11. Bailment is the act of transferring goods to a person for a definite purpose, without transferring its ownership and should satisfy certain prerequisites. Which one of the following cannot be a prerequisite in a bailment contract?

    a. Bailor delivering the goods to the bailee
    b. The delivery must be for a definite purpose.
    c. The delivery done without transferring its ownership.
    d On fulfilment of purpose, bailee needs to deliver the goods to bailor
    e. The delivery of the goods can be for general purpose

12. Under _____ section of Indian Contract Act, the bailed goods is termed as 'Pledged Goods

    a. Section 171
    b. Section 168
    c. Section 172
    d. Section 181
    e. None of the above

13. An agency may be created either by express agreement or implied agreement. implied agreement can be classified into by many ways. Which one of the following sentence denotes an agency by Estoppel?

    a. Where there is no opportunity of communicating to the concerned parties about any urgency and a person in such a situation acts as the agent
    b. When a person, by his conduct or by statement, leads wilfully another person to believe that a certain person is his agent.
    c. Where acts are done by one person on behalf of another but without his knowledge or authority and his acts are ratified

d. Promoters forming a company or partners of a firm are considered to be agents of the principal company/firm by operation of law.
e. None of the above

14. As per Section 2(9) of the Sale of Goods Act, 1930 explains Mercantile Agent as one who has authority either to sell goods or to buy goods or to raise money. What is the appropriate term for a mercantile agent to whom goods are entrusted for sale with wide discretionary powers?

    a. Factor
    b. Commission agent
    c. Del Credere agent
    d. Broker
    e. Auctioneer

15. The _____ gives free hand to both as the employee can quit, and the employer can fire an employee at any time and for any reason and without any prior notice.

| Self-Assessment Questions – 3 |
|---|
| a. Seenu is an office boy in a corporate office. At the time of appointment there was an agreement between him and the employer that Seenu can be terminated at any time without mentioning any cause. In the light of the given situation, can Seenu be fired at any time? |
| b. Safin owes certain amount to Robin. Mary promises Safin to save him from indebtedness. Robin wants Safin to repay the debt with interest. On the failure of Safin to repay, Robin filed a suit against Safin. What kind of contract has Mary and Safin entered into? |

## 13.10. Special Rights in Contracts

### Lien

Lien is the right of a person (usually the creditor) to retain the possession of the goods and securities belonging to another person (the debtor) till the amounts due to him from such owner are fully realized. The lien can be defined as "the right to retain the lawful possession of the property of another until the owner fulfills a legal duty to the person holding the property, such as the payment of lawful charges for work done on the property. A mortgage is a common lien."

*Illustration:* The transporter of goods retains the possession of the goods that he has carried to the destination till the amount of freight is paid to him.

The right of exercising Lien may arise in three ways:

- By express contract in between the parties;
- From implied contract in accordance with the general or particular usage of trade; and
- By legal relation between the parties.

In order to create a valid lien, the following factors are essential:

- The party who acquired the property should have the absolute title of ownership over that property;
- That the party claiming the lien should have an actual or constructive possession of property or goods with the assent of the party against whom the claim is made; and
- The lien should arise upon an agreement, express or implied and not be for a limited or specific purpose inconsistent with the express terms or the clear, intent of the contract; e.g., when goods are deposited to be delivered to a third person or to be transported to another place.

There are two kinds of lien; particular lien, and general lien.

**Particular Lien**

A person claims the right to retain property in respect of money or labor expended on such particular property. This right is known as particular lien. In Indian law, particular lien is available to all the classes of people other than those mentioned in Section 171 of the Indian Contract Act, 1872.

The creditor with a particular lien can retain the possession of the goods only till the dues from the debtor for a particular debt for which the securities were handed over have been satisfied.

*Example:* A, the goldsmith is given the gold by B, the owner to convert it in the form of golden ornaments. He can retain the possession of the ornaments only till the service charges for making those ornaments are paid by the owner, but not for any other liability to be discharged by the owner of the golden ornaments.

**General Lien**

"A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property."

A general lien is a lien in respect of all monies owed to the licensee. A particular lien is limited to monies owed to the licensee in respect of the goods over which the lien is sought to be exercised.

*Illustration:* 'X' has borrowed from the bank in the form of two types of loans, one is the agricultural loan for cultivation of crop and the other is a personal

loan against the security of his gold ornaments to meet his personal expenditure The agricultural loan has become due for repayment. If there is no specific agreement in between the bank and the borrower in consistent with the lien, when the personal loans is repaid, the bank can exercise the right of general lien by retaining the possession of golden ornaments after the borrower repays the entire liability in his personal loan till the dues accrued in the agricultural loan are repaid. But, the bank cannot exercise the right of lien when the agricultural loan is not due for repayment at the time when the personal loan is closed.

**Banker's Lien**

- Section 171 of the Indian Contract Act, 1872 authorizes bankers, in the absence of a contract to the contrary, to retain, as a security any goods bailed to them. However, this does not entitle third persons to retain goods as security bailed to them unless they have entered into an express contract to that effect.
- It is a right of the banker to retain in custody the securities or properties in order to get the debts discharged.
- No agreement or contract is required for its creation.
- It can be exercised over securities or properties (all bills, cheques, and money paid or entrusted) which he has received as a banker.

**Set-off – Banker's Right**

The banker's right of set-off is also known as the right to combine accounts. A banker is authorized to set-off a debt which he owes to a customer against a debt which the customer has to pay the bank. For example, a customer has two accounts. He borrows a sum of money from the bank and the bank also owes him some amount. In such a case the bank can set-off its due towards the customer by combining the funds of one of his accounts into the other. It is a type of a security, a remedy, a right for the banker. It is an attractive security because its realization does not involve the sale of an asset to a third party.

## 13.11 Drafting of Contracts

### 13.11.1 Important Clauses in Contracts

Agreements representing the various conditions agreed to by the parties and mentioned in the form of certain 'clauses' form the foundation of rights and liabilities of the parties. The significance of these clauses is explained below:

**Description of Parties**

Any format of an agreement opens with the usual heading of description of the deed clearly describing the name of the transaction which they evidence, such as, "THIS DEED OF SALE" or "THIS DEED OF LEASE" etc. The description is followed by the date on which the said DEED is executed. After these two, the names and description of the parties to the deed are mentioned.

**The Parties:** The description of the parties to an agreement names the individuals and the full details thereof.

**Party – A Juridical Person:** One of the parties or both the parties happen to be juridical person(s), such as, a company, or an association or body of individuals (Section 5 of the Transfer of Property Act, 1882), or an idol or a corporation sole or aggregate, or, in fact, any juridical person capable of holding property and entering into contracts. A court is not a juridical person capable of holding property or entering into contracts, and security bonds, which are given to courts, must, therefore, be made in favor of a named officer of the court and not in favor of the court. Care should be taken that companies, associations and corporations are described by their correct names. It is better also to refer to the act under which they are registered or incorporated thus:

"… … (name), a company within the meaning of the Companies Act, 1956, and having its registered office at … …"

**Party – An Idol:** In the case of an idol, as it has to act through some natural person, the name of the latter should be disclosed, thus:

"the idol of ……(name) installed in the temple at ……(place), acting through its……(name), son of ……..(name) of ……"

**Persons under Disability:** As persons under disability namely, minors, persons of unsound mind and persons disqualified from contracting by any law to which they are subject, cannot enter into a contract. In such cases, the representatives on their behalf could enter into agreements, as per the law in that regard.

**Recitals of Subject**

A recital means the account of the subject-matter of a deed of agreement. Recitals are of two types:

- Narrative recitals, which relate the background history of the subject-matter and set out facts and other related particulars to show the relation of the parties to the subject-matter of the deed; and
- Introductory recitals, which explain the motive for the preparation and execution of the deed.

**Precautions:** Recitals should be inserted with abundant caution because they may control the operative part of the deed if the same is ambiguous, and may operate as estoppel by preventing the parties and their representatives from showing the existence of a different state of things from that stated in the recitals. Hence, persons drafting should, therefore, exercise utmost care and caution to avoid unnecessary recitals and to ensure that all recitals are both correct and judicious.

**Order of Recitals:** In case there are numerous and lengthy recitals, they should be mentioned in a chronological order. Facts and events contained in the introductory recitals also should be inserted in the sequence in which they have occurred.

**Form of Recitals:** Generally, recitals begin with the word 'Whereas', but where there are several recitals, one can either repeat the word before every one of them by beginning the second and subsequent ones with the words "And

Whereas", or divide the recitals into numbered paragraphs with the word "Whereas" at the top.

### Consideration

As agreements are necessarily for some consideration (Section 10 of the Indian Contract Act, 1872), it is mandatory to express the consideration, except where it is not required by the Act. (for example, in the case of a gift).

### Covenants and Undertaking

In some cases, where the parties to the agreement enter into covenants, it is necessary that such covenants should be entered as such. While drafting covenants, regard should be had to the statutorily implied covenants, which operate subject to any contract to the contrary. For instance, Section 55 (Sale), Sections 65 and 67 (Mortgage), Section 108 (Lease) of the Transfer of Property Act should be kept in mind.

Where several covenants follow each other, they may run on as one sentence, each being introduced with the words "and also" or by the words "First", "Secondly", etc. or they may be sent out in paragraph form with the heading:

"The vendor hereby covenants with the purchase as follows": … …"

It is desirable to place the covenants of the respective parties separately, including those covenants entered into mutually. Care should be taken to see that they are not mentioned wrongly under those of the other party.

Sometimes, where the terms and conditions of a transfer cannot be conveniently separated into the respective parties, it would be better to include all the covenants under one heading as those of the parties thus: "The parties aforesaid hereto hereby mutually agree with each other as follows:"

### Signatures and Attestation

After all the important clauses of a deed of agreement have been duly incorporated in the order of their precedence, the important part of the deed that concludes it is the "testimonium", which sets forth the fact of the parties having signed the deed. Usually, it concludes thus:

"In witness whereof, the parties hereto have signed this deed on the date first above written."

This is followed by the signatures of the parties, being the executants of the deed and those of the attesting witnesses, who testify as to the fact of such execution by the former.

Where the executants is not competent to contract or is a juristic person, the deed must be signed by the person competent to contract on his or its behalf.

**Affixing Signature:** The word 'sign' means "to write one's name on, as in acknowledging authorship." Section 3(56) of the General Clauses Act, 1897, extends its meaning, with reference to a person who is unable to write his name, to include 'mark'. The document must be signed by a person in such a way as

to acknowledge that he is the party contracting and it is not very material in what part of the document the signature appears.

**Attestation:** Attestation should be by at least two witnesses, who should have seen the executant sign the deed or should have received from the executant personal acknowledgement of his signature but it is not necessary that both the witnesses should have been present at the same time (see definition of 'attested' in Section 3 of the Transfer of Property Act and also in Section 63 of the Indian Succession Act).

There are no particular forms of attestation but it should appear clearly that a witness intended to sign as an attesting witness.

Illiterate person not able to sign may either put his pen mark or thumb mark. The modern practice allows the thumb mark only as the recognized form of signing a deed. For instance, a thumb mark is more satisfactory for identification purposes.

**Endorsement and Supplemental Deeds**

Where a deed or agreement becomes necessary in pursuance of, or in relation to a prior deed, it is effected either by endorsement on the prior deed when a short writing would be sufficient, or by a separate deed described as "supplemental" or "intended to be read as annexed to the prior deed", in which case, detailed recitals of the prior deed are unnecessary.

**Stamp Duty**

The law on affixing stamps to various documents is governed by the Indian Stamp Act, 1899 as amended in its application to various states by local amendment Acts. The Stamp Act extends to the whole of India except the state of Jammu and Kashmir. The main purpose of the Stamp Act is to raise revenue by means of stamp duty on certain documents.

**Requirements of Valid Stamping**

**Time of Stamping:** Stamp duty is leviable on the instrument at the time of execution of the instrument, unless the document comes within the charging section it is not liable to duty.

**Types of stamps used for documents**

**Revenue Stamps:** Documents like demand promissory notes, cash receipts, acknowledgement of debt should be stamped with adhesive revenue stamps of appropriate value before execution.

**Special Adhesive Stamps:** Printed agreements/xerox copies of printed blank documents should be affixed with special adhesive stamps. These stamps are cancelled by appropriate authority before execution of documents.

**Other Documents:** Share transfers, notarial acts, bills of exchange made out of India.

- **Embossed/Engraved Stamps:** Stamps can also be embossed or engraved by the stamp authorities on banks' standard forms.
- **Non-judicial Stamp Paper:** Non-judicial stamp paper carries the stamp duty embossed on the paper itself and as such stamped paper of requisite value may be purchased from local stamp vendors.

Only one instrument is made on a stamp paper (Section 14).

Section 29 of the Stamp Act provides which party, in the absence of and agreement to the contrary, will bear the stamp duty payable on an instrument. This may be kept in view while drafting a deed.

**Stamp Duty on Endorsements and Supplemental Deeds**

- All endorsements or supplemental deeds should be stamped according to the nature of the transaction, which they evidence, e.g., if it is for receipt of money, it should be stamped as a receipt; if it is an agreement, it should be stamped as an agreement.
- Some documents if endorsed on prior deeds are exempt from stamp duty, e.g., receipt of mortgage money endorsed on mortgage deed, or transfer of a bill of exchange or policy of insurance or securities of Government of India endorsed on those papers.

**Registration**

The preliminary note to each deed shows whether a deed is required to be compulsorily registered (Section 17, Registration Act):

Some documents though do not require registration may be voluntarily got registered (Section 18).

Section 49 provides that an unregistered document of the nature requiring compulsory registration may be used in evidence for certain collateral purposes, though not as evidence of the transaction itself.

Section 60(2) provides that the Sub-Registrar's endorsement while registering a document is admissible in evidence for proving the facts mentioned therein.

**Applicable Law**

- The interpretation of a written contract involves the ascertainment of the words employed by the parties and the determination, subject to any rule of law, of the legal effect of those words.
- The object sought to be achieved in construing any contract is to ascertain what the mutual intentions of the parties were as to the legal obligations, each assumed by the contractual words in which they sought to express them.
- There is no intention independent of the meaning of the words they have used. The proper construction of contract is a question of law.
- However, the ascertainment of the meaning of a particular word is a question of fact. The general presumption is against implying terms into written contracts. The more detracted and apparently completed the contract, the stronger the presumption.
- The contract must be construed as a whole and no clause should be taken in isolation.
- The court will not for the purpose of construction correct a mistake as to the legal effect of a written contract. However, such a mistake can be corrected by rectification.
- The materials available to the courts for the purpose of construing a contract are documents to be construed, consideration of deleted words to construe

the words that remain, antecedent agreements, drafts and preparatory negotiations along with expressly incorporated terms.

**Lex Fori**

It means the "law of the forum." It signifies that the proper law applicable in enforcing contracts is deemed to be the law of the country according to whose laws the contracting parties wish to be governed. If such intention does not exist the applicable law is objectively determined as the law of the country with which the contract is primarily concerned.

**Force Majeure**

It is a common clause in contracts, which decides the rights and liabilities of the contracting parties and relieves them of their duties accordingly on the happening of certain events during the course of executing the terms of a contract.

*Force majeure* (French for "greater force") is a common clause in contracts, which essentially frees one or both parties from liability or obligation when an extraordinary event beyond the control of the parties, such as war, strike, riot, crime, and act of God (e.g., flood, earthquake, volcano) prevails on one or both parties from fulfilling their obligations under the contract.

**Notice**

It may be described as an official communication of a legal action or one's intent to take an action. In a contract, notice has some legal implications. The parties to the agreement, by mutual consent, agree to incorporate the clause of 'Notice', whereby, either party could issue a notice to the other party, in case of breach or as to any change in the subject-matter of the contract.

For example, a notice to quit is a written notification given either by the tenant to the landlord, or vice-versa, indicating that either the tenant intends to surrender possession of the premises on a certain day or that the landlord intends to regain possession of the premises on a certain day. Many kinds of contracts require that similar notice be given to either renew or end the contractual relationship.

**Arbitration Clause**

The advantages for including arbitration clauses in commercial agreements are that it is prompt and therefore, inexpensive, way of resolving business disputes and suitable for present day commercial transactions.

**Arbitration agreement**

When parties to a contract, agree to incorporate the arbitration clause as a machinery to redress the grievances, if any, which may arise while fulfilling the contractual obligations, such an agreement is called an arbitration agreement.

| Self-Assessment Questions – 4 |
|---|
| a. A gives a water heater for repair to an electric appliances shop. He says that he will take the water heater only when it is completely repaired. The electric appliances shopkeeper repairs the water heater and refuses to hand over the water heater until he is paid for his services. Can the shopkeeper retain the heater? If yes, under what right can he do so? |
| b. The concluding part in the deed of agreement, "In witness whereof, the parties hereto have signed this deed on the data first above written" followed by signatures of parties, is referred to as _____. |

### 13.11.2 Checklist for Standard Clauses

- Preamble
- Parties
- Definitions
- Offer, Acceptance
- Obligations
- Conditions
- Indemnification and Exoneration
- Environmental Responsibilities
- Security
- Delivery
- Insurance
- Risk of Loss
- Price and Currency Indexes
- *Force Majeure* and Hardship Clause
- Default
- Termination and Expiration
- Assignment
- Options
- Intellectual Property Rights
- Confidentiality and Non-compete

- Penalties and Liquidated Damages
- Delay
- Non-waiver Clause
- Notice Clause
- Publicity Clause
- Language Clause
- Required Activity
- Choice of Law and Venue.

## 13.12 Summary

Agency may be created either by implied or express agreement. An agreement is said to be express when it is given by words spoken or written. Implied agreement is by inference from the circumstances of the case and things spoken or written, or the ordinary course of dealing.

Commercial agreements represent the conditions agreed by the parties and contain certain clauses which form the basis of the rights and liabilities of the parties. The clauses in corporate and commercial agreements include the description of the parties, the subject matter of the agreement, the consideration paid by the promisor, statutorily implied covenants, the signatures of the parties to the agreement, attestation by witnesses and if required, endorsements to the agreements or supplemental deeds.

The employment contract between an employer and employee can be either oral or written specifying the job description, wages, employee rights and duties and other specific terms and conditions of employment.

## 13.13 Glossary

- **Agency** is a contract of a business or service authorized to act for others.
- **Del Credere Agent** is an agent that guarantees his or her principal that the third parties involved in the transaction will pay or perform.
- **Estoppel** is an impediment that prevents a person from asserting or doing something contrary to his own previous assertion or act.
- **Guarantee** by which one person assumes responsibility for paying another's debts or fulfilling another's responsibilities.
- **Indemnity** is a security against loss or damage or injury. It is a contractual agreement made between different parties to compensate for any damages or losses.
- **Lien** is an encumbrance or legal burden upon property.
- **Pledge** is something given or held as security to guarantee the payment of a debt or fulfillment of an obligation.
- **Principal** is a person who empowers another to act as his or her representative.

- **Ratification** means making something valid by formally ratifying or confirming it.
- **Surety** is a security for payment or performance on behalf of another in the event of a default.

## 13.14 Suggested Readings / Reference Material

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7. Company Law by Avtar Singh, Edition: Eastern Book Company Web store, 17th, 2018, reprinted with Supplement 2021
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2. RCEP's Birth Is Oversold As The World's Largest New Free-Trade Area, Forbes, Hary Broadman- Forbes team, https://www.forbes.com/ sites/ harrybroadman/ 2020/ 11/30/rceps-birth-is-oversoldas-the-worlds-largest-new-free-trade-area/? sh=570f05bf2a53, 30th November 2020
3. Cyber security, Emerging challenges and solutions for the boards of F S companies, Mc Kinsey team, https://www.mckinsey.com/business-functions/risk/ ourinsights/ cybersecurity-emerging-challenges-and solutions- for-the-boards-offinancial-services-companies, 2nd October 2020

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## 13.15 Answers to Check Your Progress Questions

**1. Contingent contract**

2. **False-**

   'contract of guarantee' is a contract to perform the promise, or discharge the liability of a third person in case of his default.

3. **(c)** Covers only one transaction, is objective, is limited to a certain sum of money and time period

4. **(a)** A By the surety giving notice oral or in writing to the creditor and in the absence of a contract to the contrary or by the death of the surety as to future transactions

5. **(a)** A continuing guarantee can be revoked by the surety any time by giving notice to the creditor. However, the surety will remain liable for those transactions prior to the revocation

6. **False-**

   A continuing guarantee can be revoked by the surety any time by giving notice to the creditor. However, the surety will remain liable for those transactions prior to the revocation.

7. **(a)** Creditor/ third Person on behalf of his client

8. **(c)** Guarantee after completion of the contract since contract is already executed

9. **(c)** Fraud committed by the creditor / beneficiary

10. **(d)** The seller need not worry about the import regulations of the buyer's country nor about the currency fluctuations.

11. **(e)** The delivery of the goods can be for general purpose- The delivery of goods should be for a definite purpose and not a general one

**12. (c)** section 172 of ICA

13. **(b)** When a person, by his conduct or by statement, leads wilfully another person to believe that a certain person is his agent

**14. (a) Factor**

**15. Doctrine of Employment at will**

### Self-Assessment Questions – 1

a. **Agency by ratification:** Where acts are done by any person on behalf of another but without his knowledge or authority, he may elect to ratify or disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority. The ratification may be express or implied, this is known as agency by ratification. In the given case also Bharat can ratify the act of insuring his goods by Amit.

b. As per the provisions of law of agency, the agent must not make secret profit from the Instrument of agency. He must disclose any extra profit that he makes. In the given case also Pravin (agent) is not allowed to make any secret profit. Mukarjee (principal) can recover the excess profit made by Pravin.

**Self-Assessment Questions – 2**

a. If a contract of guarantee requires three month's notice the surety must give a three month's notice.

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

**Self-Assessment Questions – 3**

a. Seenu is an office boy in a corporate office. At the time of appointment there was an agreement between them that Seenu can be fired at any time without mentioning any cause. Therefore Seenu can be terminated without showing any cause. This kind of agreement is called, as employment at will.

**Employment at Will**

The doctrine of "employment at will" gives free hand to both as the employee can quit, or the employer can fire an employee at his will, at any time and for any reason and without any prior notice.

b. The contract between Mary and Safin is called contract of indemnity, which is defined under section 124 of the Indian Contract Act, 1872.

According to Section 124 of the Indian Contract Act, 1872 a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person, is called a 'contract of indemnity'.

**Self-Assessment Questions – 4**

a. 'A' gives a water heater for repair to an electric appliances shop and says that he will take back the water heater only when it is completely repaired. The electric appliances shopkeeper repairs the water heater and refuses to hand over the water heater until he is paid for the same. This right of shopkeeper is called lien.

b. The concluding part of the deed is referred to as 'testimonium'.

## 13.16 Self-Assessment Questions

### A. Multiple Choice

**1.** Which of the following agents are treated as non-mercantile agents?

a. Factors.

b. Auctioneers.

c. Brokers.

d. Del-Credere agents.

e. Insurance agents.

**2.** In which of the following cases an agency is terminated other than by operation of Law?

a. On performance of the contract.

b. By mutual agreement.

c. On the insolvency of principal.

d. On the destruction of subject matter.

e. On termination of sub-agents authority.

**3.** Among the following parties, who enjoys the right of subrogation in a contract of indemnity?

a. Creditor.

b. Principal debtor.

c. Indemnifier.

d. Indemnified.

e. Both (a) and (b) of the above.

**4.** General Insurance is a

a. Voidable Contract

b. Wager

c. Contract of Guarantee

d. Contract of Indemnity

e. None of the above.

**5.** A continuing guarantee can be revoked by

a. Novation

b. Death of surety

c. Discharge of principal debtor

d. Loss of security

e. All of the above.

**B. Descriptive**

**1.** What is a bank guarantee? Distinguish a bank guarantee from an ordinary guarantee

**2.** What are the features of a letter of credit? How do the parties to a letter of credit use these letters of credit during the conduct of business?

**3.** What is the meaning of the word 'lien'? What are the different kinds of lien?

These questions will help you to understand the unit better. These are for your practice only.

## Business Environment and Law

## Course Components

| | |
|---|---|
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| Unit 1 | Business Environment: An Introduction |
| Unit 2 | Demographic and Social Environment |
| Unit 3 | Cultural Environment |
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| **BLOCK II** | **The Economic and Technological Environment of Business** |
| Unit 5 | Economic Environment |
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