

**Government Arts and Science  
College  
Kovilpatti**

**III BCOM V SEMESTER**

**BUSINESS LAW (SMC053)**

**Mrs. M. Sumaiya**

**III B. COM (V SEMESTER) – UNDER CBCS  
PART III – MAJOR CORE -15 BUSINESS LAW**

**Objectives**

1. To understand the definition of business law
2. To study the scope and boundaries of business law.

**Unit I: Indian Contract Act, 1872** – Fundamental essentials of a valid contract – classification of contracts – offer – acceptance – consideration – capacity – free consent – legality of object – contingent contracts. **(13 hours)**

**Unit II: Performance of contract** – discharge of contract - breach of contract – remedies – quasi contracts. **(12 hours)**

**Unit III: Special contracts** – indemnity – guarantee.

**Unit IV: Bailment** – Pledge – contract of agency.

**Unit V: Sale of goods Act** – differences between sale and agreement to sell – sale and hire purchase agreement – classification of goods – documents of title to goods – rights and duties of buyers and sellers – rights of unpaid seller.

**Text Books**

1. N.D . Kapoor, Elements of Mercantile Law, Sultan Chand & Sons.
2. S.M.Sundaram , Business Law / Commercial and Industrial Law, Sree Meenakshi Publication, Karaikudi.

**Reference Books**

1. N.D . Kapoor, Business Law , Sultan Chand & Sons.
2. P.C. Tulsian , Business Law , Tata Mc Graw Hill Companies.
3. R.S.N. Pillai , Bagavathy, Business Law, S.Chand & Co., New Delhi.
4. M.C.Kuchhal, Business Law , Vikas Publishing House, Pvt. Ltd.
5. Dr.H.K. Saharay & N.K.Saha, Elements of Business Law, New Central Book Agency.

# **BUSINESS LAW**

## **UNIT – I**

### **INTRODUCTON**

Law the word spelled in a civilized society, because it makes person to care for others.

**Salmon says that “Law is the body of principles recognized and applied by the state in the administration of justice”.**

From the above statement of salmon, we must understand that

- Law is to maintain justice
- Without justice there can be no civilized society.

(Also we must know that law has many branches)

The above statement and the successful appliance of law, reflects a mind free living in society. Seeing the success of law in society, the business people who are part of society thinks about a separate law for their business transactions.

Such needful thinking's results the formation of business law (such as commercial, Industrial, & company laws in western countries).

In India, the Indian contract act was enacted in the year 1872, Industrial laws from 1923, sale of goods act 1930.

### **LAW OF CONTRACT:**

#### **By Salmon definition**

**A contract is an agreement creating and defining the obligations between parties. By**

#### **Sir Fredrick Pollack**

**Every agreement and promise enforceable at law is a contract.**

From the above definitions, Indian contract act **sec 2(h)** says that

**-The agreements which can be enforceable by law are contracts.**

Speaking the above definitions and sec 2(h) of Indian contract act, we can understand that two (important) words plays important role One is **Agreement** and the other one is **contract**.

The law of contract focuses on describing the relationship and differences between Agreement and contract. If we see the statement “all contracts are agreements but all agreements are not contracts,” it is clear that there is difference between contract and agreement.

In daily life we use to cross many agreements, such as promising our parents to back home in a particular time etc. We must know which of such agreements having the capacity of a contract. Now a question may arise, why the agreements should have the capacity of a contract? If we wish to get a legal remedy in case of breach of an agreement, the agreement must have legal enforceability. Contract is creating obligations between parties with the expectation that it should be performed by both the parties. Under the supervision of law it could be possible. The parties entering into a contract must have the intention that, breaking the contract is breaking the law. It is to safe guard the affected party by a contract

### **Essentials for a valid contract:**

#### **Number of persons:**

The minimum number of persons to make a contract is two; there is no maximum limit to take part in contract. So it is clear that **no one can make a contract with himself.**

#### **Capacity:**

The persons taking part in a contract must have the capacity framed by law. The persons who are major persons with sound mind and having social status are capable persons to enter into a contract.

#### **Case law:**

Moharibibi – vs – Dharmadasghose

In this case, a promissory note was signed by a minor person and the court held that, the contract is invalid. Because one of the party in this contract is being a minor person, at the time of entering into the contract.

#### **Legality:**

The parties involving in a contract must involve with the intention to be bind up legally. The promises between husband and wife, the promises between friends are social agreements; such type of agreements will not create a valid contract.

#### **Case law:**

Balfour – vs – Balfour

In this case, the husband promised his wife to send 30 pounds every month. But failed to send. When the wife sued, the court held that the agreement is a social agreement and not a valid one.

**Consent:**

The parties involving in a contract must agree with a free consent to the contract, if the given consent to the contract by the parties is not a free consent the contract will be voidable

**Case law:**

Renganayagi – vs – Alwarchetti

In this case a widow woman was forced to enter into a contract at the time of death of her husband. There was a violation of section 297 of Indian penal code. Hence the court held that the contract is invalid.

**Object:**

The object of a contract should not be against Indian penal code, if so the contract will be void. So the object of a contract should be legal to be a valid contract.

**Case law:**

Pearce – vs – brooks:

In this case a motor car was hired by a prostitute for prostitution; the court held that the contract is void. Because the car owner knows the purpose for which the car hired is illegal.

**Consideration:**

Every party in a contract must be supported by consideration; otherwise the contract will be void.

**Case law:**

Abdul azeez – vs – masumali:

„A“ promised to give some money to „B“, for the renewal works going to be held in a mosque. But failed to pay the said amount. B sued against A, the court held that there was no consideration to a party in this contract and hence the contract is invalid.

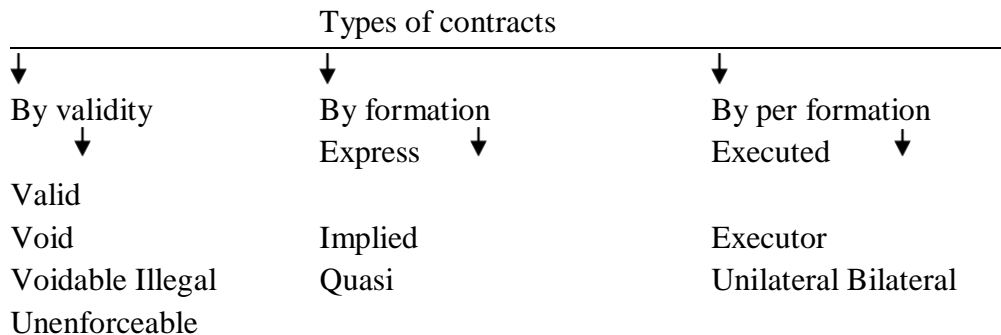
**Consensus ad-idem:**

The parties entering into a contract must enter in a same thing in a same sense about subject matter. Otherwise the contract will be void.

- The agreements which fulfill the above conditions will shine as a contract.

## Classification of contracts:

The contract is classified as below according to the status of it:



Contracts are classified into three types:

- (I) **By validity**
- (II) **By formation**
- (III) **By performance.**

Regarding the fulfillment and non-fulfillment of essentials, **validity** is divided into five types:

- (i) **Valid:** The agreements which can be enforceable by law are declared as valid contract.
- (ii) **Void:** The agreements which cannot be enforceable by law called as void contracts. Such are void abintio and never create any obligations between parties. If we take example of the case Moharibibi-vs-dharmadassghose, one of the party in the contract is a minor at the time of signing the agreement and so the agreement is invalid from the beginning itself, and it cannot be converted into a valid contract.

**Voidable:** where any one of the party in a contract having the capacity to convert a valid contract into invalid one through court, such type of contracts called as voidable contracts. If we take example of the case Renganayagi-vs-Alwarchetty, the agreement seems to be a valid one, until Renganayagi get a court order declaring the agreement as invalid because of no free consent given by Renganayagi.

- (iii) **Illegal:** if the object of an agreement is illegal that is against Indian penal code, such agreements called as illegal agreements and are void. If the illegal part of object can be separable by court, the court may apply the

## **Doctrine of severance and blue pencil rule:**

The court can adopt this rule to help the affected party by removing the illegal part of agreement, if it is able to separate from the remaining agreement. This is called as doctrine of severance and marking the illegal words, terms called as blue pencil rule.

- (iv) **Unenforceable:** Where the object of a contract is impossible to perform, such agreements called as unenforceable agreements and are void. If we take example of Couturier-vs-Haistie case the subject matter of contract raw cotton was destroyed in sea, so without subject matter the execution of contract is impossible, and it declared as unenforceable contract by court.

Regarding **formation** the contract is divided into three types:

- (i) **Express contract:** The terms of a contract if expressly agreed by words or by written format, such type of contracts called as express contracts.
- (ii) **Implied contract:** An implied promise results implied contract, such contract can be inferred by the act or conduct of the parties. For example, when we get into a bus a contract will be activated and by the contract we have the duty to pay and the bus owner has the duty to drop us in destination.
- (iii) **Quasi contract:** Usually the contracts are created by parties, sometimes law itself create obligations between parties, so the contracts which are created by law and not by the parties called as quasi contracts. By mistake if you recharged a mobile phone which belongs to another, then the other person is liable under quasi contract to pay or support to return it. (See below in detail.)

Regarding **Performance** the contract is divided into four types:

- (i) **Executed contract:** where both the parties in a contract have performed their duties in a contract called as Executed contracts.
- (ii) **Executory contract:** where both the parties in a contract have to perform their duties in future called as Executory contracts.
- (iii) **Unilateral contract:** where one party in a contract performed his duties, and the other party has to perform his duty in future called as unilateral contract.
- (iv) **Bilateral contract:** when the obligations of both the parties in a contract are outstanding at the time of formation of the contract called as bilateral contract.

## **AGREEMENT**

According to sec 2(e) “every promise and every set of promises forming the consideration for each oed as agreement”.

So, Agreement starts from promises, and promises starts at offer and ends in acceptance.

Agreements start at the end of acceptance.

Offer + acceptance = agreement,

## **OFFER (OR) PROPOSAL:**

**Section 2(a)** of contract act says that” **when a person signifies his willingness to do or not to do something is called an offer”**.

An offer should be clear and boldy, confused words should not be used in an offer. An offer may be by express or implied mode. An offer must make with the intention to be bind up legally.

An offer may be general or specific, general offer is one which was made to the whole world. Specific offer is one which was made to a particular person.

Anyone can accept general offer and contract begins with the person who accepted firstly. In case of specific offer that particular person to whom the offer made only can accept or reject.

An offer should not be given by the offeror when he is in an emotional condition or in a confused mental status. An offer should not be like an invitation to offer.

### **What is an invitation to offer?**

On roadside we can see “tiffin ready” board at hotels and “price list at departmental stores” such are not an offer but they are placed to induce the other persons to make an offer.

An offer should not be like a quotation of price. Quotation means a mere statement of price and it does not amount to an offer.

An offer should not be as a tender. Tender creates a path to receive offers.

Cross offers and counter offers never constitute a valid contract. Cross offer means without knowing the opponent’s offer, both the parties passing offer is cross offer. Here both are offers. And counter offer means an offer when counterly offered by the offeree.

If there are any special terms in offer it should be noticed to the offeree.

When an offer loaded with the above said conditions it will be treated as a valid offer and such kind of offers when accepted becomes contract

### **Kinds of offer:**

Offer is divided into five types.

- (i) General offer
- (ii) Specific offer
- (iii) Cross offer
- (iv) Counter offer
- (v) Standing (or) continuing offer



**General offer:**

The offer which was made to the whole world called as general offer. Anyone can accept it. The person who accepts it first will enter into the contract.

**Case law:**

Carlil – vs – carbolic smoke ball co

A medical company made an advertisement in newspapers that it has introduced in market a new medicine for influenza. If the medicine used under the instructions given by them it will surely cure the said disease, if anyone not cured, there was a promise by the company to compensate with 100 pounds.

- Carlil used the medicine but not recovered. She filed a case against the company.

- The company countered that it does not know the acceptor and so there is no agreement.

The court held that it is general offer, purchased in shop alone created contract and the company is bound to pay her.

**Specific offer:**

The offer which was made to a particular person called as specific offer. No others can accept it. Only the person, to whom it was made, can accept or reject it.

**Cross offer:**

When the offer made by two persons to each other, containing similar terms crosses each other by post or other way called as cross offer.

Ex: on Nov 12<sup>th</sup> „A“ offers to sell his horse to B for RS 10000/, by post. On the same day without knowing A’s offer B also sends a letter regarding the same purpose for the same price. Here no contract will arise between the parties, because both the offers terminate each other.

**Counter offer:**

When an offer counterly offered by the offeree, then it is called as counter offer. When a counter made it will terminate the prime offer.

**Case law:**

Hyde – vs – wrench:

In this case, A offered to sell his house for 1000 pounds, B offered for 950 pounds, which was rejected by A. later B agreed to buy it for 1000 pounds, but A refused. B sued for performance of contract, the court held that the counter made by B terminated the prime offer made by A.

**Standing or continuing offer:**

When a single offer stands for a series of transactions, such offer is called as standing Offer.

**Can an offer be revoked?**

Yes, possible only before its acceptance. (Please note that, **the acceptance to an offer is like a lighted match to the train of gunpowder**). Once acceptance given, it cannot be revoked. So before an offer accepted, it can be revoked in the following ways.

**Notice:**

By giving a proper notice to the other party an offer can be revoked.

**Lapse of time:**

If time prescribed to give acceptance, within the time the offer should be accepted. Otherwise the offer will be automatically terminated in the prescribed time.

If time not prescribed it should be accepted within a reasonable time, otherwise the given offer will be terminated within a reasonable time.

**Death:**

The death or insanity of offeror will terminate the given offer by the offeror.

**Mode**

If the given mode in offer violated by the offeree, such will terminate the offer.

**Cross/counter offers:**

If cross and counter offers made, such will terminate the original offer.

## ACCEPTANCE

**Section 2(b)** of Indian contract act deals about **acceptance**.

It says that “When a person signifies this willingness to be bound by the terms of an offer called as acceptance”.

An acceptance can be made by the way of express or implied, both will constitute a valid acceptance. Every acceptance should be from the acceptor or from this Representative. (In case of specific offer) Every offer should be accepted with the condition given in the offer, Rejection of condition in offer will not be considered as acceptance.

Every offer should be accepted in a proper way otherwise it will be invalid. Mere silence never constitutes an agreement. The communication of acceptance will be treated as a complete one, when it comes to the knowledge of the person from whom the offer is made. On that time when the acceptance reached the offeror immediately contract will be activated. so that we use to say “**An acceptance to an offer is like a lighted match to the train of gunpowder**”. (An offer can be revoked by giving a notice, lapse of time, omission of conditions, death or insolvent. But an acceptance cannot be revoked. ) An acceptance should not be before offer, if so, it will be invalid.

Every offer should be accepted within a Reasonable time. The lapses of time will not constitute an agreement. Every offer should be accepted before it withdrawn. Acceptance can be made by post that will also make a valid contract.

### **English law:-**

According to English law the date of the acceptance will starts when it puts in post box. From that date the parties will be bind by the terms of contract.

### **Indian law:-**

According to Indian law when the other party received the acceptance letter will be treated as the agreement date. From that date the parties will be bind by the terms of contract.

The above said rules make an acceptance valid one.

After learning the rules regarding offer and acceptance, we know how to make an agreement. And after we got the knowledge of agreement, we are in a position to go to the next stage.

That is

**Agreement + legal enforceability = contract.** This is nothing but section 2(h). In this statement we are going to learn which legal enforceable things convert an agreement into a valid contract. The topics under legal enforceability are:

**1) Consideration**

**2) Capacity**

**3) Consent**

**4) Object**

### **Topic 1.Consideration**

In general words consideration means something in return by a contract to parties taking part in contract. In the words of Pollock, “Consideration is the price for which the promise of the other is bought, and the promise thus given for value is enforceable.”

Indian contract act **section 2(d)** defines consideration. It says that at the desire of promisor, the promisee or any other person has act or omit from doing something, such act or omission called as consideration.

Also Indian contract act **section 10** says that consideration is **essential** for a valid contract. Indian contract act **section 25** says that without consideration a contract is **void**. Consideration may be from a third person. Stranger to consideration is accepted .But stranger to contract is not accepted.

Consideration must move at the desire of promisor. Consideration may move from promisee or any other person. Consideration must be real not illusory.

#### **Exceptions to section 25:**

There are some exceptions to the above said rule that is to section 25.

**Section 25(1)** where an agreement made under love and affection it need not to be supported by consideration where the parties

- (i) Blood related
- (ii) Made with love & affection
- (iii) Written and registered one This section does not apply to gifts.

**Section 25 (2)** where a promise to compensate another who has voluntarily done something for the promisor, such agreements even though without consideration will be valid.

**Section 25 (3)** where a promise to pay time-barred debt, is enforceable by law under this section. The agreement must be in writing and signed by promisor.

So please note that every agreement must be supported consideration and the consideration must fulfill the above said conditions to create a valid contract.

## Topic 2. Capacity of persons

We must note that law curtails in various ways the contractual capacity of individuals.

**Section 11** of Indian contract act says that „**Every person is competent to contract who is age of**

**majority, sound mind and not disqualified by any law**“. Seeing sec (11) it is easy to observe the incapacity of persons to know the capacity of persons.

Incapacity of persons divided into three headings. Those are by

- (i) **Physical status**
- (ii) **Mental status**
- (iii) **Social status**

**In physical status** there is only one incapable person, he is **minor**.

Under **sec 3** of Indian majority 1875 act a minor is a person who has not completed 18 years of age. Under guardian's and ward's act 1890, the minor who is under the supervision of guardian or his properties under supervision of court should attain 21 years of age.

So it is clear that a contract with a minor is **void ab initio**. A minor's agreement cannot be ratified. The principle of estoppel does not apply to minors. Law of misrepresentation also not applies to minor. A minor cannot be adjudged as insolvent. A minor can be an agent and a partner to share only profits. A contract to supply necessaries to minor will bind him.

**In mental status** there are three persons stated as incapable. They are

- (I) **Idiot**
- (II) **Lunatic**
- (III) **Drunken**

Idiot is a person who is mad by birth. (Permanent mental disorder persons)

Lunatics are the mentally deranged persons due to some mental strain or other personal experience. (Such persons having sound mind in some intervals.)

A drunken person means who is so drunk (alcohol) or intoxicated, he suffers from temporary incapacity to contract.

**In social status** there are three persons stated as incapable.

- (I) Foreign ambassadors, leaders
- (II) Alien enemy
- (III) Insolvents and convicts.

Foreign ambassadors and foreign leaders cannot make a contract with people of India. If so it

will be a void contract. They can make a contract with president or with ministers.

If any country declared as alien country by government of India, then the contracts with such country and between the people of such country will be void.

The persons who are declared as insolvents and convicts by court, then such persons are said as incapable persons to enter into a contract.

So the persons who come under the above said seven headings are incapacity of persons to enter into a contract.

Make note that rest of all persons who will not come under the seven headings are said to be the persons who are having capacity to enter into a contract.

### **Topic 3.Consent**

**Section 13** to **section 20** deals about consent.

Under this heading the consent given by the parties to a contract should be a free consent.

**Section 13** says that where two or more persons said to be consent if they agree“ the same thing in the same sense“.

**Section 14** says that consent is said to be a free consent, only if it is not affected by coercion, undue influence, fraud, misrepresentation and mistake.

So under the heading consent we have to learn five topics.

- (i) **Coercion**
- (ii) **Undue influence**
- (iii) **Fraud**
- (iv) **Misrepresentation**
- (v) **Mistake**

### **COERCION**

**Section 15** deals about coercion. If any consent to a contract obtained by (an offence) violating Indian penal code called as coercion. (Coercion in India is called as duress in England.)

**Coercion is divided into four types.**

- (i) **Committed**
- (ii) **Attempt to commit**
- (iii) **Detain**
- (iv) **Attempt to detain.**

Any consent to a contract obtained by committing or a threat to commit any act forbidden by Indian penal code.

The persons who are declared as insolvents and convicts by court, then such persons are said as incapable persons to enter into a contract.

So the persons who come under the above said seven headings are incapacity of persons to enter into a contract.

Make note that rest of all persons who will not come under the seven headings are said to be the persons who are having capacity to enter into a contract.

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- (vi) **Coercion**
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- (viii) **Fraud**
- (ix) **Misrepresentation**
- (x) **Mistake**

#### **Case law:**

Renganayagi – vs – Alwarchetti.

„A“ was forced to enter into a contract at the time of death of her husband; there was a threat to prevent being removed for cremation.

Any consent to a contract obtained by unlawful detaining or a threat to detain any property.

#### **Case law:**

Chikhamamiraju – vs – Seshamma.

„A“ entered into a contract, because of the threat of her husband to commit suicide. The court held that the threat of suicide amounted to coercion, therefore voidable.

The burden of proof is at plaintiff.

The contract becomes voidable, at the option of the party who is affected by coercion. Any benefit received by the other party must return it to the affected party. A third person can do an offence for the party in a contract.

## **UNDUE INFLUENCE**

**Section 16** deals about undue influence.

Sometimes a person is compelled to enter into an agreement against his willingness as a result of unfair persuasion by the other person. By giving a mental torture the consent may be obtained called as undue influence.

The relationship between the parties plays a major role to prove undue influence.

One party in a position to dominate the other person, such domination must use to obtain an unfair advantage.

Some example relationship,

- (i) **Teacher and student**
- (ii) **Doctor and patient**
- (iii) **Advocate and client**

There may be mental torture. One party shall met loss because of undue influence. Third person's influence shall not be treated as undue influence. In undue influence the burden of proof lies on the plaintiff. At the option of the party who is unduly influenced the contract becomes voidable. Any benefit received by either party must be restored as the court thinks just and equitable.

## **FRAUD**

**Section 17** deals about fraud.

Fraud means any one of the following acts committed by a party during the formation of a contract.

Before entering into a contract the parties to the contract use to give some statements about subject matter to induce the other party.

Such statements are called as representations. If such representations not true, will be called as false representation.

- (i) A false representation in relation to the subject matter of a contract, made with the knowledge of falsehood.
- (ii) The party knows such representation is not true.
- (iii) A promise made without any intention to perform.
- (iv) A promise made with the intention to deceive the other party.
- (v) Because of such fraudulent act the other party been induced to enter into the contract.
- (vi) Because of such fraudulent act the other party should met loss.
- (vii) Fraud itself is a tort.

Mere keeping silence never amount to fraud, but keeping silence amount to fraud, when there is a duty to convey about related facts.



**Case law:**

**Peek –vs – gurney.**

The prospectus of a company did not disclose with the liabilities of the company to impress shareholders as a prosperous company. If the liabilities disclosed there would be a negative thought among the shareholders. The court held that keeping silence in a view to deceive the other party also amounts to fraud.

The affected party has the right to rescind the contract.

The affected party has the right to claim damages or to insist performance.

**MISREPRESENTATION**

**Section 18** deals about misrepresentation.

Before entering into a contract the parties to the contract use to give some statements about subject matter to induce the other party.

Such statements are called as representations.

When such representations become false, called as misrepresentation.

While giving such statements, the parties gave with the belief that the fact is true. Without their knowledge the given statement might be false.

It is an innocent statement given by the party. There will not be any intention to deceive.

There will not be any dishonest intention.

The false representation may be because of suppressing knowledge of subject matter. Misrepresentation itself is not a tort.

Affected party can avoid the contract but cannot claim damages.

Affected party can accept the contract, he can insist, he should place in the position in which he would have been if the representation made had been true.

**Case law:**

**Derry – vs – Peek:**

In the prospectus of a company it has been stated that they have been authorized to run tramways with stream power. But the government refuses to run tramways with stream power. In this case the court held that there was a mere misrepresentation but not fraud. In the following circumstances,

- (i) **Contractual duties**
- (ii) **Fiduciary relationship**
- (iii) **Warranty of authority**
- (iv) **Estoppel**
- (v) **Issue of prospectus to directors**

Honesty is not a defence and will amount to fraud.

**Section 20** deals about mistakes. Mistake is defined as an “erroneous belief about something”. This section also pointed that mutual mistake is a good ground for avoiding a contract.

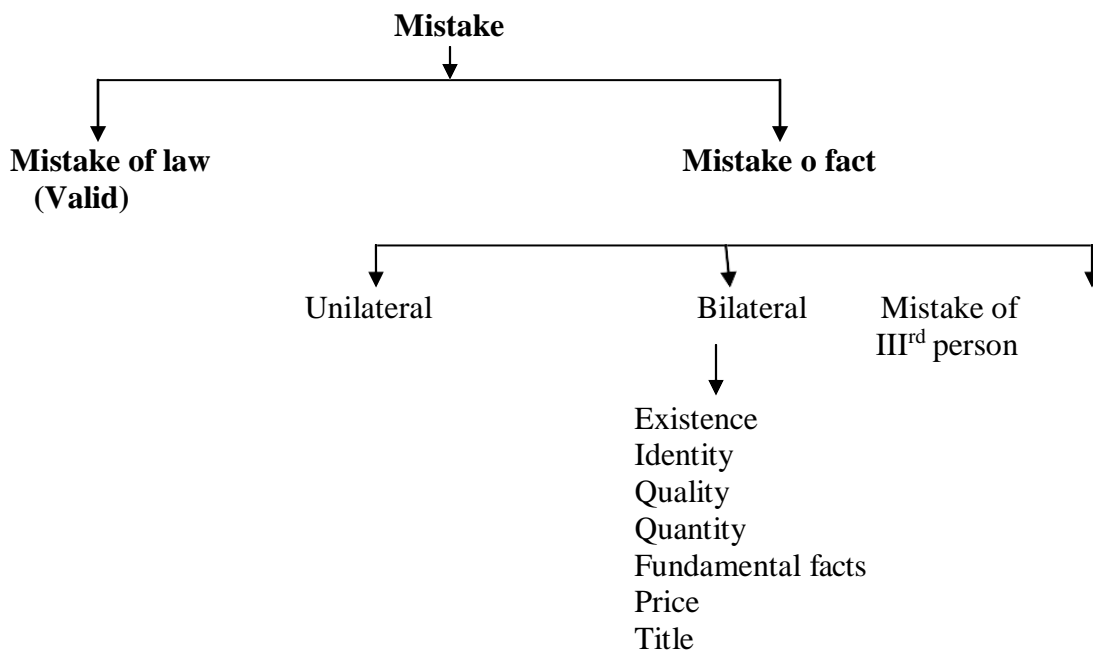
Mistake is divided into two types:-

- (i) **Mistake of law**

Mistake of law is based on the legal maxim “**ignorantia juris non excusat**”. It says that mistake of law is not an excuse. So a party cannot get any exemption from the act done in ignorance of law.

Mistake of law does not affect the validity of contract, unless it relates to foreign law.

### MISTAKE



**(ii) Mistake of fact**

Mistake of fact is based on the legal maxim “**ignorantia facti excusat**”. It says that when a mistake is to a matter of fact essential to agreement then it is called as mistake of fact.

Mistake of fact is divided into three types.

**(i) Unilateral**

**(ii) Bilateral**

**(iii) Mistake of third person Unilateral mistake:**

A party in a contract is mistaken as to the subject matter, called as unilateral mistake.

Unilateral mistake will not affect the validity of contract.

If there is a unilateral mistake in identity of person and in nature of contract will affect the validity of contract.

**Bilateral mistake:**

Both the parties to a contract are under mistake as to the subject matter, called as bilateral mistake.

A bilateral mistake under

**(i) The existence of subject matter**

**(ii) Identity of subject matter**

**(iii) Quantity of subject matter**

**(iv) Quality of subject matter**

**(v) Title of subject matter**

**(vi) Fundamental fact of subject matter**

**(vii) Price of subject matter,**

-Will be void.

**Mistake of third person:**

Mistake exists on a third person who is not a party in a contract. The negligence act a third person will make the contract void.

**Case law: Henkel- vs – Pape,**

In a telegraph office mistakenly typed the sentence in a contract without the number of quantity. The court held that because of the mistake of a third person the contract said to be void.

An agreement which is not affected by the above said five headings (coercion, undue influence, fraud, misrepresentation and mistake) only constitute a valid contract.

**Section 19:** if any agreement affected by the above said five headings (coercion, undue influence, fraud, misrepresentation and mistake) will be a void one.

#### **Topic 4.Object**

The next topic is object. There are three headings under this topic.

- (i) Agreements against public policy
- (ii) Restraint of trade agreements
- (iii) Uncertain agreements.

#### **1. Agreements against public policy:**

**Section 23**, of this act deals about agreements against public policy. The word public policy has not been defined in this act. In general an agreement which is harmful to public welfare called as agreements against public policy. The agreement which is made to trade with enemy is an agreement against public policy.

The agreement which is made to interfere with administration of justice is an agreement against public policy. The agreement which is made for stifling prosecution is an agreement against public policy. The agreement which is made for champerty and maintenance is an agreement against public policy.

The agreement which is made to interfere in matrimonial duties is an agreement against public policy.

#### **Case law: lowe –vs – pears**

In this case „A“ agreed with „B“ not to marry anyone else except “B”. The court declared the agreement is against public policy, and void.

The agreement which is made to trafficking in public office is an agreement against public policy.

The agreement which is made to marriage brokerage is an agreement against public policy.

The agreement which is made to interfere in parental rights is an agreement against public policy.

The agreement which is made to interfering in personal liabilities is an agreement against public policy.

The agreement which is made a restraint to take bid in auction is an agreement against public policy.

The above said agreements are agreements against public policy, and are **void**.

## **1. Restraint of trade agreements:**

**Section 27** says that every agreement by which any one is restrained from exercising any lawful business, trade or profession, is to that extent void.

Freedom of trade and profession is a right protected by constitution of India.

**Constitution act art 19(1)g** is giving right to freedom of trade and profession to the people of India. Based on this, section 27 of contract act declared that the agreements which are against art 19(1)g of constitution act are void.

### **Restraint of trade agreements is divided into two types.**

- (i) Absolute restraint
- (ii) Partial restraint.

#### **Absolute restraint:**

If a person is totally deprived of engaging himself in any trade or profession, such agreements called as absolute restraint of trade agreements, and are void.

#### **Case law:**

**Oakes –vs – Jackson:** a person agreed not to work anywhere within 800 miles of present work spot. The court declared that the agreement is absolute restraint of trade and is void.

Partial restraint: if any restraint of trade agreements are partially restraint and made for the welfare of public, such are called as partial restraint of trade agreements.

#### **Case law:**

#### **Nordenfelt – vs – masiumnordenfelt gun company.**

Nordenfelt sold his gun manufacturing company with an agreement not to carry similar manufacturing business for 25 years. He sold it for a huge sum than actual worth for that purpose. The court held that the agreement is valid one.

The partial restraint of trade agreements if made to protect any trade secret will be valid.

The partial restraint of trade agreements if made to regulate the selling price among shopkeepers will be valid.

The partial restraint of trade agreements if made to restrict the output of products among

manufacturers will be valid.

The partial restraint of trade agreements if made, because of sufficient compensation given will be valid.

The partial restraint of trade agreements if made with a leaving partner not to carry similar business within an area or certain period will be valid.

The partial restraint of trade agreements if made for selling goodwill and agreeing not to carry similar business will be valid.

The partial restraint of trade agreements if made for service agreements will be valid. ( for example: the government servants are prevented from doing any business).

## **UNCERTAIN AGREEMENTS**

Section 29 deals about uncertain agreements. The agreements which are not certain, or capable of being made certain are void.

The uncertain agreements are divided into two headings.

- Wagering contract
- Contingent contract

### **Wagering contracts:**

Section (30) of Indian contract act deals about wagering contract. Wager means to „bet “about an uncertain event.

Wagering contract depends on a future event.

The happening of such event does not be in the hands of the parties.

There is a promise to pay money in the happening or non-happening of an event. In wagering contract always a party stands gain and the other party met loss.

In wagering contract there will not be consideration to a party. Wagering contracts are speculative in nature.

Lottery is an example for wagering contract.

Collateral agreements are valid one generally wagering contracts are void.

### **Contingent contracts:**

Section (31) of Indian contract act deals about contingent contract.

A contract may be

- An absolute one or
- A contingent one

Absolute contracts means where the promisor binds himself to performance in any event without any condition

Contingent contract means that which is dependent on something else. Contingent contract deals about something related events in the possible future.

Contingent contract is a contract to do or not do something if some collateral event happed or happened.

There are two parties involving in this contract.

The performance of this contract depends on the happening are non-happening of the contract. Such event should be a future event and the parties should not have control on the event.

The obligation is one sided

Insurance is an example for contingent contract. There are two kinds of contingent contract.

That is happening of the event.

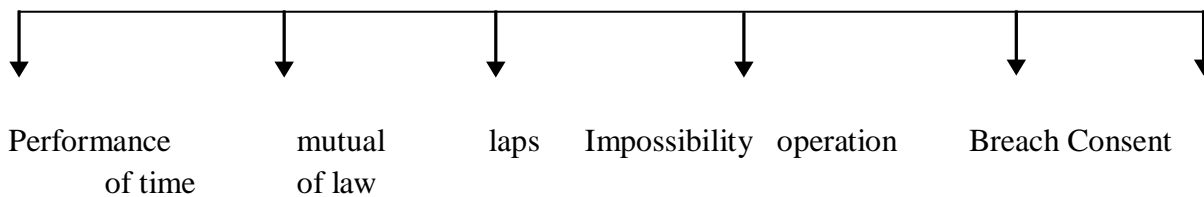
- In a fixed time.
- Not happening of the event.
- Not in a fixed time

## Unit –II

### DISCHARGE OF CONTRACT

Contract is creating obligations between parties. The parties are tied up with contractual relationship. such contractual relationship should be temporary. So that the parties have the duty to fulfill the contractual obligations of each other. Here, we are saying the end of contractual relationship as discharge of contract.

Discharge of contract



Novation Alteration Remission Recession

A contract can be discharged in six ways, they are:

- (i) **By performance**
- (ii) **By mutual consent**
- (iii) **By lapse of time**
- (iv) **By impossibility**
- (v) **By operation of law**
- (vi) **By breach. Performance:**

When both the parties performed their duties under a contract will be called as discharge of contract by performance.

#### **Mutual consent:**

When both the parties in a contract mutually agreed to relive from the contract, called as discharge of contract by mutual consent.

- **Novation:** novation means placing a new contract in the place of original contract. This will discharge the original contract.
- **Rescission:** rescission means cancelling all are some of the terms of contract. This will discharge the original contract.
- **Remission:** remission means accepting a lesser consideration than agreed. This will discharge the original contract.
- **Alteration:** when some terms of contract has been changed with the consent of both parties. This will discharge the original contract.
- **Waiver:** waiver means both parties agreed that they shall no longer be bound



by the terms of contract. This will discharge the original contract.

### **Lapse of time:**

The limitation act lays down that every contract should be performed within a reasonable time, or if time specified in certain contracts if such time limit is over, will discharge the contract.

### **Impossibility:**

If the object of the contract becomes impossible to perform, that will terminate the contract.

### **Case law:**

Couturier – vs – Haistie: There was an agreement to buy raw cotton which is coming by ship. Unfortunately, the cotton was missed in transit. The court held that the contract is discharged.

### **Operation of law:**

Sometimes law alone discharged the contractual relationship between the parties. Such circumstances are:

- **Death:** if any of the parties in a contract dead, then the contract will be discharged
- **Merger:** if both parties in a contract merged by their rights will discharge the prior contracts.
- **Insolvency:** when a party to a contract declared as insolvent by court, then the contract will be discharged.

**Breach:** The party in a contract has the duty to perform their obligations. Any one of the party refuses to perform his duty under a contract will be called as breach of contract. If a contract has been breached, that will discharge the contract.

### **Remedies for breach**

In discharging a contract first five ways that are performance, mutual consent, laps of time, operation of law, and impossibility, are made by the parties with consent. The last one breach where one party is willing to perform the other party only refuses to perform so that the law imposes remedies for breach of contract.

Remedies available are:

- (i) **Rescission**
- (ii) **Damages**
- (iii) **Quantum Merit**
- (iv) **Specific performance**
- (v) **Injunction Rescission:**

When a contract is breached by one party, the other party may sue to treat the contract as rescinded and may refuse further performance. He is free from his entire obligation under the contract.

### **Damages:**

The object of awarding damages for the breach of contract is to put the injured party in the same position as before breach under Doctrine of restitution.

Case – Hadley –vs- Baxendale

The plaintiff's mill was closed down by the breakdown of a shaft. The defendant was the fleet owner. The plaintiff engaged the defendant to carry the broken shaft to the workshop. The defendant delayed to transporting. The plaintiff sued the defendant for breach of contract for the delay and requested the court to award damages.

The court held that the defendant was not liable for special damages because the plaintiff did not inform the importance of the shaft that is without the shaft the mill could not be run.

Section 73 – When a contract has been broken, the affected party can claim compensation for loss. Such compensation is not to be given any reasons remote or indirectly.

### **Kinds of Damages**

1. **Ordinary damages:** The damage which is awarded by the court to the affected party for the loss what he actually met.
2. **Special damages:** At the time of entering into the contract, if the parties disclosed the consequences in case of breach. If such representation made at the time of contract, the affected party can avail special damage in case of breach.

### **Special damages are,**

- (i) **Nominal damages:** Such kind of damages awarded by court for the sake of negligence, and not determines the actual loss.
- (ii) **Vindictive damages:** Such kind of heavy damages awarded by court in a view to threaten the party who breached the contract.
- (iii) **Discomfort damages:** Such kind of damages awarded by court for the physical inconvenience what the affected party suffered.
- (iv) **Mitigation damages:** Such kind of damages awarded by court for the loss of reputation.

### **3. Quantum Meruit**

**Section 65** deals about quantum Meruit which means “As much as earned” where one party performed his duty partly, the other party breached the contract the party who has performed, can sue for the reasonable remuneration for the work done.

#### **4. Specific performance**

The court can pass an order to carry out the actual performance where damages are not an adequate remedy to the affected party.

#### **5. Injunction**

The court can pass an order directing the defendant to do some positive act or restrain some act.

### **PERFORMANCE OF CONTRACT**

Performance of a contract takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed.

#### **Offer to perform:**

Sometimes it so happens that the promisor offers to perform his obligation under the contract at the proper time and place but the promisee does not accept the performance. This is known as “attempted performance” tender”. Thus, a tender of performance is equivalent to actual performance.

#### **Essentials of A valid tender:**

- 1.It must be unconditional. It becomes conditional when it is not in accordance with the terms of the contract.
- 2.It must be of the whole quantity contracted for or of the whole obligation tender of an installment when the contract stipulates payment in full is not a valid tender.
- 3.It must be by a person who is in a position, and is willing, to perform the promise.
- 4.It must be made at the proper time and place. A tender of goods after the business hours or of goods or money before the due date is not a valid tender.
- 5.It must be made to proper person, i.e. the promisee or his duly authorized agent. It must also be in proper form.
- 6.It may be made to one of the several joint promises. In such a case it has the same effect as a tender to all of them.
- 7.In case of tender of goods, it must give a reasonable opportunity to the promisee for inspection of goods.
- 8.In case of tender of money, the debtor must make a valid tender in the legal tender money.

#### **Contracts which need not be performed:**

A contract need not be performed

- When its performance becomes impossible.
- When the parties to it agree to substitute a new contract for it or to rescind or alter it.
- When the promisee dispenses with or remits, wholly or in part, the performance of the promise made to him or extends the time for such performance or accepts any satisfaction for it.

- When the person at whose option it is voidable, rescinds it.
- When the promisee neglects or refuses to afford the promisor reasonable the facilities for the performance of his promisee.
- When it is illegal.

### **Reciprocal promises:**

Promises which form the consideration for each other called reciprocal promises.

#### **(i) Mutual and independent**

Where each party must perform his promise independently and irrespective of the fact whether the other party has performed or is willing to perform his promise or not.

Ex: „A“ promises to pay the price of goods on 10<sup>th</sup> August. „B“ promises supply on 20<sup>th</sup> August  
Reciprocal promises.

#### **(ii) Conditional and dependent**

Where the performance of promise depends on a prior performance by other party called conditional and dependent.

#### **(iii) Mutual & concurrent**

Where the promises of both the parties to be performed simultaneously, called as mutual and concurrent.

Time is the essence of contract when one party promises to perform within the specified time.

## **APPROPRIATION OF PAYMENT**

### **Appropriation of payment (Section 59-61)**

Where a debtor owes several debt to a creditor, when makes a payment insufficient to the whole them the payment may be appropriate to the debts by parties, called appropriation of payment.

#### **(i) Intimation by debtor – expressly intimation**

Ex: A has several debts by promissory note which expires on June 1 for the amount 1000 – A pay Rs.1000 on June 1 the payment only to discharge the promissory note.

#### **(ii) No Intimation –**

If no intimation give to the creditor may apply it as in his discretion to any lawful debt due.

The payment should first apply to interest and after the interest fully paid off, to the principal.

#### **(iii) Creditor fails – if failure to make any appropriation; the payment shall be applied in discharge of debts in chronological order by time.**

The debtor has the right to appropriate.

In case of default the option goes to creditor.

In default of either the law will allow appropriation in order of time.

## **ASSIGNMENT OF CONTRACTS**

To assignment means “to **transfer**”

Transfer of contractual rights and liabilities under the contract to a third party with or will out consent of the other parts.

### **By act of parties**

- (i) Personal skill – If any contract depends on contractual obligation of personal skill of a person cannot be assigned ( Section 40)
- (ii) Contractual rights which is not involving in personal skill may be assigned.
- (iii) An auction able claim can be assigned always.

### **Operation of law:**

Death of a party's rights & Liabilities can be assign to legal heirs or responsibility.

In case of insolvency the right & Liability previous to adjudication shall pass to the official receiver.

## **JOINT PROMISES**

**Section 42 to 45** deals about joint promises.

When two or more persons jointly have made a promise all of them are jointly and severally liable to perform. The persons are called Joint promises.

When two or more persons make a joint promise, the promisee may compel any of such joint promisor to perform the whole promises.

If any one of them died his legal heirs must join to perform.

The promises can compel to enforce the promise against one or more leaving the other.

Where one promissory performed the promise, has the right to claim proportionate contribution.

If anyone of the promisor makes default, then his part to be performed by the other promisor.

If the promisee releases any one of the promisor never discharge the other. In England the liabilities are jointly not several.

### **Quasi contracts:**

**Section 68 of Indian contract act** explains quasi contract it is derived from the maxim, “**oblicatio quasi ex contractu**”. Generally the contract is created from the agreements between the parties. Whereas in quasi contract without agreement a contract has been created between parties by law Quasi contract is created by law.

- It creates a right in personam not a right in rem.

- The person who incurs expenses has the right to receive it back.
- If any necessities supplied to the incapable person like minor, lunatic will come under quasi contract and such incapable persons or their representatives, will be bound to repay it.
- If any person lawfully do something for another person, not with the intention to act gratuitously and the other person enjoyed the benefits of it should repay it.
- It rests upon equity, justice and good conscience. Law alone imposes obligations between the parties regarding their prior lawful activities.

**Case law:**

Nash – vs – Inman: in this case some dresses were stretched by a tailor to a minor. When the tailor claimed money under quasi contract, the court held that this will not come under quasi contract because the minor already have sufficient dress, and hence the act of tailor will not come under necessary supply.

## UNIT –III

### **CONTRACT OF INDEMNITY:**

**Section 124** deals about contract of indemnity.

A contract by which one party promises to save the other from loss called as contract of indemnity. Two parties taking part in this contract,

- (i) Indemnifier
- (ii) Indemnity holder.

The person who is giving promise to save the other from loss called as indemnifier. The person to whom, such promise given is called as indemnity holder.

The contract of indemnity may be express or implied. From the circumstances or from the relationship of parties contract of indemnity can be identified.

A person interested to the money and therefore pays it, is entitled to be reimbursed by the other party who is bound to pay.

Indemnity is a species of general contract, so it must possess all the essentials of a valid contract.

### **Case law:**

#### **Adams- vs – Jarvis,**

Some cattle sold in auction, later it was found stolen cattle and was recovered by police.

The auctioneer sued under indemnity, the court held the wrong owner is liable.

### **Rights of indemnity holder:**

- The indemnity holder is entitled to recover all the losses from the promisor, all the damages which he was compelled to pay.
- The indemnity holder is entitled to receive all the expenses which he may be compelled to pay in suit.
- The indemnity holder is entitled to receive any amount which he may have paid for compromise.
- Insurance is an example for indemnity contract. (Not life insurance).

### **CONTRACT OF GUARANTEE:**

**Section 126** of contract act explains about contract of guarantee.

A contract of guarantee is a contract to perform the promise by a third person, in case of the default of the promisee.

**Three persons** taking part in contract of guarantee,

- (i) **Creditor**
- (ii) **Principal debtor**
- (iii) **Surety.**

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**“.

The person to whom the guarantee is given is called the „**creditor**“. The contract of guarantee may be oral or written, express or implied.

### **Relationship in a Contract of Guarantee:**

A contract of guarantee is a tripartite agreement between the principal debtor, the creditor and the surety.

### **There are three collateral contracts with a triangular relationship:**

1. A guaranteed debt arises by a contract between the creditor and the principal Debtor.
2. There is a contract by which the surety guarantees to pay the principal debtor in case of default.
3. There is a contract that the principal debtor shall indemnify the surety in case the surety pays in the event of a default of Principal debtor this contract, though not expressed is always inferred.

### **Essential for a Contract of Guarantee:**

The contract of guarantee must have all the essential elements of a valid contract.

All the three parties must be capable of entering into a valid contract. The principal debtor may be an incompetent person. In such a case, the Surety is regarded as the principal debtor and is liable to pay personally.

Consideration received by the principal debtor is sufficient to the surety too and the surety need not get any benefit for himself.

A person cannot become a surety without the consent of the principal debtor.

There must be a primary liability in some person other than the surety i.e., principal debtor

The liability of surety is secondary



It arises only in case of default by the principal debtor. Except in case of guarantee given for a minor

Contract of guarantee is based on good faith. .

- a. The principal debtor or creditor need not disclose all material facts, before the contract is entered into.
- b. The contract can be set aside for fraud committed by the principal debtor, only if the principal debtor or his agent knew of the fraud and was a party to the fraud

**c. Rights of surety:**

**Rights against the creditor:**

- When the surety has paid the debt to the creditor, he gets all the rights of the creditor.
- The surety has the right to sue the principal debtor for the money.
- The surety has the right to compel the creditor to give all the securities of the principal debtor under subrogation
- Subrogation means transferring securities from creditor to the surety..
- The surety can use all the defence of the principal debtor against the creditor for the repayment of debt.
- The surety can compel the creditor to sue against the principal debtor.
- The surety can discharge himself from his guarantee, showing the principal debtor's dishonesty.
- In a fidelity guarantee, the surety can ask the employer to dismiss the employee if he is dishonest.

**Rights against the principal debtor:**

When the debt is repaid by the surety he is entitled to sue the principal debtor and recover the money lawfully paid to the creditor. This is known as subrogation. The surety can compel the principal debtor to repay the creditor and discharge him. He has the right to be relieved from liability.

**Rights against the Co-Sureties:**

Each co-surety has equal burden as the other sureties.

The liabilities of co-sureties are joint and several. So after the payment of the whole debt, the surety can compel the other co-sureties to contribute their share of the liability.

If the guarantee is for different sums, then each co-surety has to give proportionate contribution as per English law. In Indian law, they are equally liable, subject to the maximum amount guaranteed. In case of co-sureties, a release of one co-surety does not release the others.

## UNIT – IV

### BAILMENT

According to section -148 of the Indian Contract Act, a bailment is the delivery of goods by one person to another for some purpose; it may be returned (or) disposed as per the terms of the contract, after the completion of the purpose.

- The person delivering the goods is called the Bailor.
- The Person to whom goods are delivered is called the Bailee.
- The transaction is called Bailment.

### ESSENTIALS OF BAILMENT

A. There should be a contract. The agreement may be express or implied.

B. There should be delivery of goods,

- The delivery of goods may be actual or constructive.
- Actual delivery means hand over the possession of goods.
- Constructive or Symbolic delivery - does not involve handing over the physical possession.

One who has custody without Possession, like a servant or a guest, he is not bailee –

### Ultzen vs Nicols.

An actor, who left his clothes in his dressing room, did not constitute the theatre owner as bailee of the clothes –**Deyong vs Shenburn.**

C. Delivery of goods must be for some specific purpose.

D. After the accomplishment of the purpose, the goods should be returned or follow the terms of the contract.

### Duties of Bailor:

It is the duty of bailor to disclose the known facts of the goods bailed. Reed - vs - Dean.

A motor boat took on hire to go for a holiday by A. the boat caught fire and A unable to cease because fire extinguishing machine is out of order. The court held that the owner of boat is liable.

It is the duty of bailor to bare extraordinary expenses.

**Great northern railway – vs – Swafield:** A horse was sent in train, after it arrived the destination no one took its delivery. The absence of owner made the railway company to feed the horse. Here the court awarded compensation to Railway Company under contract of agency by necessity.

It is the duty of bailor to indemnify the loss due to defective title. It is the duty of bailor to take back the goods bailed.

It is the duty of bailor to pay back for the goods bailed.

### Rights of Bailor:

- The bailor has the right to take back the goods.
- The bailor has the right in proportionate share in mixed goods.
- The bailor has the right to sue against wrong doer.
- The bailor has the right to claim increase profits.

- The bailor has the right to recover expenses.
- The bailor has the right to be compensated.

**Rights of Bailee:**

- The bailee has the right to claim necessary expenses occurred in bailed goods.
- The bailee has the right to get compensation if he met any loss.
- The bailee has the right of immunity. If the bailee has returned the goods to the bailor or any other person under direction given by the bailor, then the bailee is not liable for any defective title or lack of title.
- The bailee has the right to sue the wrong doers.
- The bailee has the right of lien (a legal claim to hold a property as security for a demand) on bailed goods.

Lien is of two kinds,

- (i) **Particular lien, sec 170**
- (ii) **General lien, sec 171**

**(i) Particular lien, Sec 170**

It means that the right to retain the particular goods, until receives the remuneration for the services.

**Particular lien is available under the following Conditions**

- The goods must be in the possession.
- The bailee must have rendered some services.
- The Services must have been performed in full.
- There should not be any terms in the contract to contrary.
- The bailee retains only such goods –**SkinneVsJager**.

Plaintiff delivered an organ for repair to the defendant and the defendant promised to repair it for Rs.100/-. Then the defendant refused to repair it for Rs. 100/- and retain the organ for the work done on it. It was held that the defendant could not retain the organ.

**(ii) General Lien**

It means that the right to retain possession of any goods belonging to another for any amount due. Bankers, factors, wharfingers, policy brokers may retain as security for a general balance of amount. But no other person has a right to retain as a security for such balance

**Termination of Lien by the following ways**

- By the death.
- As soon as the purpose is accomplished.
- On the expiry of the specified period.
- By Surrender of Possession of goods.
- When the debt is satisfied

**Duties of Bailee:**

- It is the duty of bailee to take reasonable care on bailed goods.

- It is the duty of bailee not to use the bailed goods unauthorized.
- It is the duty of bailee to act by the terms of contract.
- It is the duty of bailee not to mix the bailed goods with other goods.
- It is the duty of bailee to return increase profits to the bailor.
- It is the duty of bailee not to set up jus tertii. Jus tertii means not to set an adverse title.
- It is the duty of bailee to return the goods.

### **Classification of Bailment:**

#### **On the basis of reward:**

Gratuitous bailment means, where the bailor and bailee are not entitled to receive any remuneration under bailment.

**Ex:** as a friend „A“ lends his books to „B“.

Non-gratuitous bailment means, the bailor and bailee has exchanged some consideration under bailment.

**Ex:** hiring cycle from a person.

#### **On the basis of benefit:**

For the benefit of bailor - the bailment“s which are only for the benefits of bailor.

**Ex:** delivery of things to another person for safe custody.

For the benefit of bailee - the bailment“s which are only for the benefits of bailee.

**Ex:** lending a cycle for the use of a friend.

For the benefit of both bailor and bailee - the bailment“s which are for the benefits for both parties.

### **FINDER OF LOST GOODS**

Sec. 71 of the Indian Contract Act clearly states that A Person who finds goods belonging to another and takes them into custody is called a finder of lost goods.

#### **Duties of finder of lost goods**

- He must take reasonable care of the goods found.
- He must try to find out the true owner of the goods.
- He must not mix up the goods with his own goods.
- He should not use the goods found for his own purpose.

#### **Rights of the finder of lost goods**

- The right of lien over the goods for his expenses.
- But he has no right to sue the owner for any compensation.
- If owner offered the reward, he may retain the goods until such reward is paid.
- The right to retain possession of the goods against the whole world, except the true owner.
- According to sec 169 of the contract Act the finder of goods may sell it,
  - If owner not takes reasonable diligence to find.
  - If refuses to pay the lawful charges.
  - If the things are in danger of perishing.

- The lawful charges of the finder are two - thirds (2/3) of its value.

## **PLEDGE (OR) PAWN**

According to section 172 of contract Act, The bailment of goods as security for payment of a debt or for the performance of a promise

### **Pawnor or pledger means**

The person who delivers the goods

### **Pawnee or pledgee means**

The person to whom the Has to compensate for any extraordinary expenses.

- Default or risk should be known to pawnee.

## **RIGHTS OF PAWNEE**

- Right to retain the goods pledged for Interest on the debt and expenses incurred by him.
- Retain for subsequent Advances.
- Entitled to receive extra ordinary expenses.
- Can file a suit against the pawnor for the debt.
- Can retain for collateral security.
- May sue for the sale of goods.
- Can sell the goods after giving reasonable notice to the pawnor.
- Can recover any deficiency arising on the sale, but surplus shall be given to the Pawnor.
- If obtained possession of the goods under voidable contract which has not been rescinded at the time of the pledge, acquires a good title.

## **RIGHTS OF PAWNOR**

- Right to take back the goods.
- Can enforce by suit all the duties of the pawnee.
- If the pawnor makes default payment of the debt, he may redeem the goods before actual sale is made.

## **DUTIES OF PAWNEE**

- Has to take reasonable care of the goods pledged.
- Has to return the pledged goods on the payment of debt.
- Should not do any act in violation of the terms of the contract.
- Should not mix the goods with his own goods.

## **PLEDGE BY NON – OWNERS**

In the following cases, a non-owner can make a valid pledge.

- Pledge by mercantile agent.
- Pledge by seller or buyer in possession after sale.

- Pledge by a person in possession under voidable contract.
- If pledged by a person having limited interest is valid to the extent of that contract.
- Pledge by co - owners in possession.

## **CONTRACT OF AGENCY**

### **Essentials of contract of agency:**

The person who is having contractual capacity to enter into a contract can enter into the contract in two ways that are –

- (I) Directly by him
- (ii) Through a third person

If a person enters into the contract through a third person, such contracts called as contract of agency.

In contract of agency there are two parties taking part.

- (I) Principal
- (ii) Agent

An agent is a person who employed to do an act for another person.

A principal is a person who employed a person to do his work under contract. The contract of agency is to regulate the relationship between principal and agent. The contract of agency based on agreement.

Here the principal must have the contractual capacity, the agent need not be with contractual capacity.

The above statement laid under the Latin maxim “**actioperpersonalismoritium cum persona**” the maxim says that the act of an agent is considered as the done by the principal.

The contract of agency may be either orally or in writing.

The contract of agency may be either expressly or by implied way.

### **Different ways of creating an agency:**

An agency can be created by express or implied way. In implied way there are six types.

#### **Agency by necessity:**

In some circumstances a person has to act as an agent for another person without the consent of principal. In such circumstances law bind the persons into contract of agency.

**Great northern railway – vs – Swafield:** A horse was sent by train, after it arrived destination no one took its delivery. The absence of owner made the railway company to feed the horse. Here the court awarded compensation to Railway Company under contract of agency by necessity.

#### **Agency by holding out:**

Where a principal usually sends his servant to pledge his credit for certain purposes, he is bound

by the acts of agent for similar purposes though done without consent of principal.

**Agency by estoppel:**

Where a person by conduct or words spoken or written, willfully makes another person to believe that person is his agent, then he is prevented from denying the fact of agency.

**Agency by ratification:**

**Section 196** deals about ratification.

When a person acts for another without the knowledge of that person, later another person may accept or reject the act. If he accepts the earlier act, that will create agency by ratification.

Ratify means to make valid. It is based on the legal maxim “**ratihabitio priori mandatoaequiparatur**” which means a subsequent ratification of an act is equivalent to a prior authority to do such act.

Ratification may be expressed or implied. Ratification should be within a reasonable time. Partly ratification is not a valid one.

The principal should know all the facts of prior act.

The principal and agent must be competent persons to enter into a contract. Such prior act should not be illegal.

**Agency by co-habitation:**

Where a man and women live as husband and wife, the necessities bought on credit by the wife will bind husband. This type of agency called as agency by co-habitation.

**Agency by law:**

Sometimes law creates the relationship of agency in certain circumstances. The promoters are deemed to be an agent for the company. Every partner is an agent in the firm.

**Kinds of agents:**

**Public agent:**

The agent who is appointed to perform the duties of government called as public agent.

**Private agent:**

The agent who is appointed to perform the duties of individuals called as private agent.

**General agent:**

The agent who is appointed to perform all the duties of another person called as general agent.

**Special agent:**

The agent who is appointed to perform some particular duties of another person called as special agent.

**Foreign agent:**

The agent who is appointed to perform the duties of another person in a foreign country called as foreign agent.

**Commercial agent:**

The agent who is appointed to perform all the commercial duties of another person called as commercial agent.



**Non-commercial agent:**

The agent who is appointed to perform all the noncommercial duties of another person called as noncommercial agent. (Like brokerage, etc.)

**Co-agent:**

The agent who is appointed to perform all the duties with another agent called as co-agent.

**Sub-agent:**

The agent who is appointed to perform all the duties under an agent called as sub-agent. Sub-agent is appointed by an agent with the consent of principal. Sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud and tort.

**Substituted agent:**

The agent who is appointed to perform all the duties of another agent called as Substituted agent.

**Delcredre agent:**

An agent who is acting as a surety called as Delcredre agent. (Agent + surety = Delcredre agent.)

**Rights and duties of an agent:****Duties of an agent:**

It is the duty of an agent to **execute mandate**.

It is the duty of an agent to **follow the instructions** given by the principal.

**Case law:**

**Lilly – vs – double day:** In this case the principal gave instructions to his agent to put some goods in room number 1. but the agent put them in another room, where the goods lost in fire. The court held that the agent is liable.

It is the duty of an agent to **take reasonable care** during his employment.

It is the duty of an agent to **avoid conflict** of interest during his employment. It is the duty of an agent **not to make secret profits** during his employment.

It is the duty of an agent **to remit sums** to the principal, during his employment. It is the duty of an agent **to maintain accounts properly**, during his employment. It is the duty of an agent **to avoid conflict** of interest during his employment.

It is the duty of an agent **to communicate and consult** with the principal, in case of difficulty during his employment.

It is the duty of an agent **not to delegate** further his authority, during his employment.

It is based on the legal maxim “**delegatus non potest delegare**”. Which means a delegated authority cannot be delegated further. This maxim comes out from the maxim “**qui per alium facit per seipsum facere videtur**”. He, who does an act through an agent, is deemed in to do it himself. This maxim explains the liabilities of principal in a broad view.

If there is a trade custom, or during emergency, or according to the nature of work, or during ministerial works, with the consent of principal an agent can delegate his authority.

## **Rights of an agent:**

The agent has the **right to get remuneration** for the work done by him to the principal. The agent has the **right to retain** the goods of principal, till his claims been settled.

The agent has the **right of lien**, till his claims been settled. An agent has the right to retain the goods of principal, whether movable or immovable, till his claims been settled.

- Lien is divided into two types one is general lien and the other one is particular lien.
- General lien means where a person has the right to hold any property of another person for any claim to be settled from that person.
- Particular lien means where a person has the right to hold a particular property from which he have to receive any claim.

Generally the agent has particular lien on the property of his principal.

The agent has the **right to indemnity**, the agent has the right to recover from all the losses and expenses incurred to him in the contract of business.

The agent has the **right to be compensated**; the agent has the right to get compensation from the principal in respect of injury caused to him.

Generally, if there is a right it will be the duty of another. Here we saw the rights and duties of an agent. Kindly note that,

The rights of an agent will be the duty of the principal, and the duties of an agent will be the right of principal.

## **Lapse of time Impossibility By Principal By Agent Dissolution Death Insolvency**

**Section 201 to 210** explains the various ways to terminate a contract of guarantee.

An agency can be terminated in two ways:

- (ii) By parties
- (iii) By operation of law.

### **By parties:**

An agency can be terminated by a mutual agreement between principal and agent. As the relationship between principal and agent is created by agreement, it can be terminated at any time or stage bmutual agreement between them.

The principal by giving a proper notice, can terminate the agency. The agent also by giving a proper notice, can terminate the agency.

### **By operation of law:**

**Performance :** If the performance of a contract of agency has been completed, the agency will automatically comes to an end.

**Death :**The death of a party in a contract of agency will terminate the contract.

**Lapse of time:** If any contract of agency made for a particular period, it comes to an end as soon as the time limit is over.

**Destruction** : If the subject matter of any contract of agency has been destroyed, it puts an end to the contract of agency.

**Dissolution** : If any contract of agency related with a company, the dissolution of the company will put an end to the contract.

**Insolvent** : If the principal is declared as insolvent by court, the contract of agency will be terminated.

**Alien enemy** : Any one of the parties becomes a citizen of an alien enemy country, the contract of agency will be terminated.

**Termination of sub agent:** If the relationship between principal and agent has been terminated, that will terminate the sub agent too.

In the above said ways an agency shall be terminated.

## UNIT - V

### THE SALE OF GOODS ACT, 1930

#### OBJECTS, REASONS AND NATURE

- For distinction between a sale and an agreement to sell which was not clear in chapter VII of Indian Contract Act? This distinction is very necessary to determine the rights and liabilities of the parties to the contract.
- It is made clear that a contract of sale can be made by mere offer and acceptance. Neither payment nor delivery is necessary for the purpose.
- In the Indian Contract Act the word 'warranty' has been used in a very vague sense. In this Act this ambiguity has been removed.
- This act tries to remove the obscurity in clauses 27 to 30 of the Act to simplify the law on the subject regarding sales by ostensible owners.
- Made rules relating to delivery to carriers, stoppage in transit and auction sale.
- The question of the retention of the illustrations appearing in chapter VII of Indian Contract Act.
- This Act does not prevent the parties from making any bargain they please.

#### Definitions (Sec 2)

- "buyer" - a person who buys or agrees to buy goods,
- "delivery" - voluntary transfer of possession from one person to another,
- "goods" - every kind of movable property other than actionable claims and money, includes stock, shares, growing crops, grass, and things attached to or forming part of the land,
- "price" - the money consideration for a sale of goods,
- "Seller" - person who sells or agrees to sell goods.

#### SALE AND AGREEMENT TO SELL (SEC 4)

- A contract of sale of goods - whereby the seller transfers (or) Agrees to transfer the goods to the buyer for a price.
- It may be absolute or conditional.
- Under a contract of sale goods transferred from the seller to the buyer, the contract is called a sale.
- But the goods are to take place at a future time (or) subject to some Condition, is called an agreement to sell.
- An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled.

#### DIFFERENCES BETWEEN SALE AND AGREEMENT TO SELL

Sale Sec 4 (3)

Under a Contract of sale, goods transferred from the seller to the buyer, the contract is called a sale.

Sec. 4 (4)

An Agreement to sell becomes a sale when the time has been elapsed or the conditions are fulfilled.

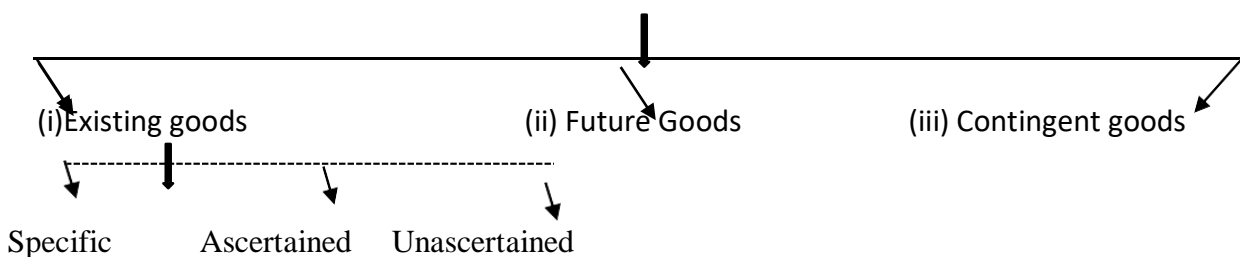
Agreement to sell: - Sec 4(3)

Under the Contract, the goods are to be taken place at a future time (or) Subject to some Condition, is called an agreement to sell.

Sr	Sale	Agreement to Sell
1	It is an executed agreement.	It is an executor Contract.
2	Title of the goods is transferred in present.	Title of the goods is to be transferred at a future time or after some conditions fulfilled.
3	The buyer gets right against goods If the seller refuses to transfer the goods the buyer can file suit for specific performance.	The Buyer gets right against seller. If the seller refuses to transfer the goods the buyer can file suit for damages.
4	If the buyer refuses to give the Price to the seller, He can sue for the Price and damages.	If the buyer refuses to give the Price or receive the goods, the seller can sue for damages and not for price.
5	The Seller has no right to sell the goods to 3rd Party. If he did the same the buyer can sue to return the Property and for damages.	The Seller has right to re-sell the goods. But the buyer has only right to sue for breach of contract.
6	If the buyer becomes insolvent before giving Price, the seller can give the goods with the receiver.	If the Person agree to buy insolvent before becoming paying price, the seller need to Surrender the goods with anyone.
7	If the seller becomes insolvent, the buyer can claim the goods from the receiver.	Though the buyer paid the full amount for the goods, he can only get the appropriation share.
8	If the goods perished when retain with seller the damage depends on the buyer.	If the goods perished after delivery to the buyer the damage depend on the seller.
9	Inclusive for tax	Not Inclusive.

### CLASSIFICATION OF GOODS (SEC — 6)

Goods



**(i) Existing Goods**

Goods owned and possessed by the seller at the time of making the Contract of sale Sec. 6(1).It is including the pledged, hire goods or in the possession of an agent or bailee or servant etc.

**Specific goods**

Goods identified and agreed upon at the time of the making of the contract of sale sec 2 (14).

**Ascertained goods**

Ascertained goods have not been defined in the Act. These are the goods which are ascertained subsequent to the formation of contract of sale. The identification takes place at a later date.

**Unascertained goods**

The goods are not identified at the time of contract or sale that is called generic goods.

**(ii) Future Goods**

Future goods mean goods to be manufactured or Produced or acquired by the seller after making the contract of sale sec. 2(6).The Contract regarding the future goods operates as an agreement to sell and not a sale.

**(iii) Contingent goods**

Contingent goods are future goods The Seller depends upon a Contingency which may or may not happen. The Contract is only enforceable depend upon the condition mention in the Contract. If the Condition is not happening the contract becomes void.The contract regarding the Contingent goods operates as an agreement to sell and not sale.

**HIRE PURCHASE AGREEMENT**

It is a development of modern commercial transaction. under hire purchase agreement the owner of the goods agrees to transfer the property to the hire - Purchaser when a certain fixed number of installments of price are paid by the hirer.

If there is a default by the hire purchaser in paying an installment, the owner has a right to resume the possession of the goods immediately without refunding the amount received till then, because the ownership still rests with him.

## Differences between Sale and Hire - Purchase Agreement

Sr	Sale	Hire - Purchase
1	It may be made either orally or in writing.	It must be in writing.
2	The ownership of the goods is transferred from the seller to the buyer as soon as the contract is made.	The ownership is transferred from the seller to the hire only when all the agreed number of Installments is paid.
3	The Position of the buyer is that of the owner.	The Position of the hire - Purchase is that of the bailee.
4	The buyer in a sale can resell the goods.	Cannot resell unless he has paid all the installments of hire.
5	It is governed by the sale of goods Act 1930.	Governed by the Hire Purchase Act 1972.
6	The Seller takes the risk of any loss resulting from the insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay in installment, the owner has the right to take back the goods.

### **DOCUMENT OF TITLE TO GOODS (SEC 2(4))**

It is a Proof of the ownership of the goods. It includes a bill of lading, dock - warrant, warehouse Keeper's certificate, wharfing's Certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as a Proof of the possession or control of goods. The act recognizes the Following as documents of title to goods.

#### **Bill of lading**

It is a receipt given by the ship owner acknowledging the receipt of goods for carriage.

#### **Dock warrant**

It is issued by a dock owner. It contains the detail of the goods. It authorizes the person holding it to receive the possession of the goods.

#### **Warehouse Keeper's Certificate**

Warehouse is a building in which goods are stored. It is issued by the warehouse Keeper.

#### **Railway Receipt**

It is a document which is issued by the railway as the acknowledgement of the receipt of goods.

#### **Delivery order**

It is an order which is given by the owner of goods directing a person who holds the goods on his behalf to deliver them to a person named there in.

## **RIGHTS OF A BUYER**

- Right to have delivery of goods Under Section - 32.
- Right to reject the goods under section - 37.
- Right to Accept Installments Under section - 38.
- Right to examine the goods under section - 41.
- Right to the notice of Insurance Under section - 39(3).
- Suit for non-delivery under section - 57.
- Suit for Specific Performance Under section - 58.
- Suit for breach of warranty under section - 59.

## **DUTIES OF THE BUYER**

- Duty to Pay Price for accepted the goods under section -31.
- Duty to apply for delivery under section - 35.
- Duty to Demand Delivery at a reasonable Hour Under section - 36 (4).
- Duty to Accept Installment Delivery and Pay for it Under Section - 38(2).
- Duty against Deterioration Under section - 40.
- Duty to intimate the seller when reject the goods under section - 43.
- Duty to take delivery under section - 44.
- Duty to pay Price Under section - 55.
- Duty to Pay damages for non-acceptance under section - 56.
- Duty to pay increased Tax under section - 64(A).

## **RIGHT OF A SELLER**

- Right to claim Compensation Under section - 44.
- Right to sue for Price through the goods has not passed, under section - 55(1).
- Right to sue for Price against Contract Under section - 55(2).
- Right to sue for Damages If buyer wrongfully refuses, under section - 56.
- Right to treat the Contract as subsisting under section - 60.
- Right to interest by way of damages under section - 61 (1).

## **DUTIES OF A SELLER**

- Duty to deliver the goods under section - 31.
- Duty to deliver the goods at the agreed place under section - 36(1).
- Duty to supply the goods with in specified time under section - 36(2).
- Duty to send the goods at reasonable hour under section - 36(4).
- Duty to bear the expenses of Putting the goods in Deliverable State Under Section– 36(5).
- Duty to make Contract with Carrier and Wharfing Under section - 39(2).
- Duty to give notice to the buyer under section - 39(3).
- Duty to give reasonable opportunity to examine the goods under section - 41



## **RIGHTS OF UNPAID SELLER**

Rights of unpaid seller against the goods: - (Sec 45)

### **Unpaid Seller**

The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act.

- a. When the whole of the price has not been paid or tendered.
- b. When a bill of exchange (or) other negotiable instrument has been received as conditional payment, and has not been fulfilled by reason of the dishonor of the instrument (or) otherwise.
- c. In this chapter the term "seller" includes any person who is in the position of a seller.

### **Unpaid Seller's rights (Sec 46)**

- A. The unpaid seller has the following rights while the property in the goods has passed to the buyer.
  - a. lien on the goods while he is in possession of them
  - b. If the buyer becomes insolvency, right to stoppage in transit
  - c. Re-sale
- B. The unpaid seller has the following rights while the property in the goods has not passed, to the buyer withholding delivery, lien and stoppage in transit.

### **Seller's lien (Sec 47)**

- A. The unpaid seller of goods is entitled to retain possession of them until payment (or) tender of the price in the following cases.
  - a. Where the goods have been sold without any stipulations as to credit.
  - b. Where the goods have been sold on credit, but the term of credit has expired.
  - c. Where the buyer becomes insolvent.
- B. The seller may exercise his right of lien as agent (or) bailee for the buyer.

### **Part delivery (Sec 48)**

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder.

### **Termination of lien (Sec 49)**

- A. The unpaid seller of goods loses his lien thereon.
  - a. When he delivers the goods without reserving the right of disposal of the goods.
  - b. When the buyer or his agent lawfully obtains possession of the goods.
  - c. By waiver thereof.
- B. The unpaid seller of goods, not lose his lien by reason only that he has obtained a decree for the price of the goods.

### **Right of stoppage in transit (Sec 50)**

When the buyer of goods becomes Insolvent, the unpaid seller has the right of stopping them in transit, and he may resume possession of the goods and may retain them until payment (or) tender of the price.

### **Duration of transit (Sec 51)**

- Goods are deemed to be in course of transit, until the buyer (or) his agent in that behalf takes delivery of them from such carrier (or) other bailee.
- If the buyer (or) his agent obtains delivery of the goods before their arrival at the appointed destination the transit is at an end.
- After the arrival of the goods at the appointed destination acknowledged by the buyer or his agent the transit is at an end.
- If the goods are rejected by the buyer, the transit is not deemed to be at an end.
- When goods are delivered to a ship, it is a question depending on the circumstances, whether they are in the possession of the master as a carrier (or) as agent of the buyer.
- Where the carrier (or) other bailee wrongfully refuses to deliver the goods to the buyer (or) his agent, the transit is deemed to be at an end.
- Where part delivery of the goods has been made, the remainder of the goods may be stopped in transit.

### **How stoppage in transit is effected (Sec 52)**

- The unpaid seller may exercise his right to stoppage in transit either by taking actual possession of the goods, (or) by giving notice.
- Whether notice of stoppage in transit is given by the seller to the carrier (or) other bailee in possession of the goods, he shall re-deliver the goods.

### **Sub-Sale or Pledge by buyer (Sec 53)**

The unpaid seller's right of lien (or) stoppage in transit is not affected by any sale (or) other disposition of the goods by the buyer, unless the seller has assented thereto.

### **Sale not generally rescinded by lien (or) stoppage in transit (Sec.54)**

- A contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien (or) stoppage in transit.
- Where an unpaid seller who has exercised his right of lien (or) stoppage in transit re-sells the goods, the buyer acquires a good title; no notice of the re-sale has been given to the original buyer.
- Where the seller expressly reserves a right of re-sale in case the buyer should make default, and the buyer making default, re-sells the goods.

## **RIGHTS OF UNPAID SELLER AGAINST THE SELLER / SUITS FOR BREACH OF THE CONTRACT**

### **Suit for price (Sec 55)**

- Where the goods have passed to the buyer and the buyer wrongfully neglects (or) refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.
- The price for the goods within stipulated time mentioned in the contract if not given, the seller may sue him for the price although the property in the goods has not passed.

### **Damages for non-acceptance (Sec 56)**

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for, damages for non-acceptance.

### **Repudiation of contract before due date (Sec 60)**

Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting or wait till the date of delivery, (or) he may treat the contract as rescinded and sue for damages for the breach.

### **Interest by way of damages and special damages (Sec 61)**

- A. Nothing in this Act shall affect the right of the seller (or) the buyer to recover interest (or) special damages.
- B. If the interest is not fixed in the contract, the Court may award interest at such rate as it thinks fit.
- C. Interest is payable from the date of the tender of the goods (or) from the date on which the price was payable.

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