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CENTRE FOR DISTANCE AND ONLINE EDUCATION

(CDOE)

BACHELOR OF COMMERCE

SEMESTER - II

COURSECORE: BUSINESS LAW

(Candidates admitted from 2024 onwards)

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BUSINESS LAW

Elements of Contract
Indian Contract Act 1872: Definition of Contract, Essentials of Valid Contract, Classification of Contract, Offer and Acceptance –Consideration – Capacity to Contract – Free Consent - Legality of Object – Contingent Contracts – Void Contract

Self-Learning Material Development – STAGE – 1

UNIT OBJECTIVES

The objectives of this unit are to provide students with a thorough understanding of contract law principles as outlined in the Indian Contract Act, 1872. By the end of the unit, students should be able to define and identify the essential elements of a valid contract, including offer, acceptance and consideration, capacity to contract, free consent and legality of object, contingent contracts, and void contracts. They should also be able to classify different types of contracts based on enforceability, formation, and performance. Additionally, students should gain insight into the importance of free consent and legality of object in contract formation, understand the implications of void contracts, and be equipped to analyze and evaluate various contract scenarios within the legal framework provided by the Indian Contract Act, 1872.

Unit Module Structuring

- An overview of Indian Contract Law - Meaning and Definition
- Essential Elements of a Contract,
- Essentials of Valid Contract
- Essentials of consideration
- Exceptions to the rule of consideration
- Classification of Contracts
- Types & Acceptance of Offer and Acceptance
- Essentials of free Consent

STAGE – 2 – Modules Sections and Sub-sections structuring

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1.1.1 INTRODUCTION

As a social being, man comes into contact with people in different capacities; He comes into contact for examples, with landlord as a tenant, with government as a tax payer with customer as a seller and with suppliers as a buyer. These contacts or contacts or association are the inevitable consequences of modern civilization. In all these association he is expected to observe a code of conduct or a set of rules.

What is law?

The word law is a general term and has different connotations for different people

1. A citizen may think of law as a set of rules which he must obey.
2. A lawyer who practices law may think of law as a vocation
3. A legislator may look at law as something created by him.
4. A judge may think of law as guiding principles to be applied in making decisions.

1.1.2. DEFINITION OF LAW

Salmond defines “Law is the body of principles recognized and applied by the state in the administration of justice”

1.1.3 OBJECT OF LAW

The object of law is order, and the result of order is that men or enabled to look ahead with some sort of security as to the future. Although human actions cannot be reduced to the uniformities of nature, men have yet endeavored to reproduce by law something approaching to the uniformity.

- In the context of new emerging India, the main object of law is considered to be to establish socio economic, justice and remove the existing imbalance in the socio-economic structure "law in this context, has to play and special role to the task of achieving the various socio-economic goals enshrined in our constitution.
- In a society like ours has to serve as a social change and as a harbinger of social justice. A great part of law is designed principally to bring about all round welfare and improvements of the community and through welfare, welfare, wellbeing of the citizens individually and collectively from material, moral and spiritual stand points.
- With the attainment of freedom the people of India have a far greater need than they had before to know their law in the sense of being acquainted with its content and purpose and with the manner in which it serves their requirements and regulates their activities and their relations with one another. This is because it is now their law and is made not merely for them but by them through their representatives.

- In the pre-independence era, the principal concern of the government was limited to the maintenance of law and order in the country. But the situation has changed now and the fundamental task of broadening the horizons of the welfare state is being pursued by the legislature by enacting social welfare legislation covering the entire gamut of social activity.

1.1.4 SOURCES OF MERCANTILE LAW

The bulk of the Indian mercantile law is based on, and follows the English mercantile law. In the absence of any specific law, usage or custom on a particular point arising before a court, rules of the English law

English mercantile law:

The Indian mercantile law is basically derived from the English Mercantile law which itself is derived from the following sources.

The common law of England:

It is a system of law developed over centuries by the English courts based on English customs and usages. It is unwritten.

Equity:

It overcomes the limitation of the common law. It is based on the concepts of justice developed by the judges whose decisions become precedents. Like the common

law the equity law is also unwritten. Both are now being applied to all cases without any distinction.

English statute law:

It refers to the law enacted by the British parliament. It is superior to the common law and equity.

Law merchant:

It is based on customs and usages prevalent among the merchants and traders over a period of time. Gradually it came to be recognized by the common law courts.

Indian statute law:

The acts passed by the parliament or a state legislature in India are also an important source of the Indian mercantile law. A few examples of such acts are given below.

- The Indian contact act 1872.
- The sale of goods acts 1930.
- The Indian partnership act 1932.

Indian contract act

The law relating to contracts is contained in the Indian contract act 1872. The act deals with the general principles of the law of contract sec(1 to 75) and some special contracts only.

Definition of Contract:

A contract is an agreement made between two or more parties which the law will enforce. Sec 2(h) defines contract as an agreement enforceable by law. The definition is based on Pollock's definition which is as follows: Every agreement and promise enforceable at law is a contract.

Agreement and its enforceability

Elements of A Valid Contract

- If we analyze the definitions of contract we find that a contract essentially consists of two elements. **1) Agreement and**
    - **2) Its enforceability by law**.
- An agreement is defined as " Every promise and every set of promises, forming consideration for each other" sec 2(e) A Promise is defined thus " When the person to whom the proposal is mad signifies is assent thereto, the proposal is said to be accepted. A Proposal, when accepted becomes a promise" This is in other words, means that an agreement is an accepted proposal.
- In order therefore, to form an agreement, there must be a proposal or offer by one party and its acceptance by the other.
- Agreement= offer+ Acceptance

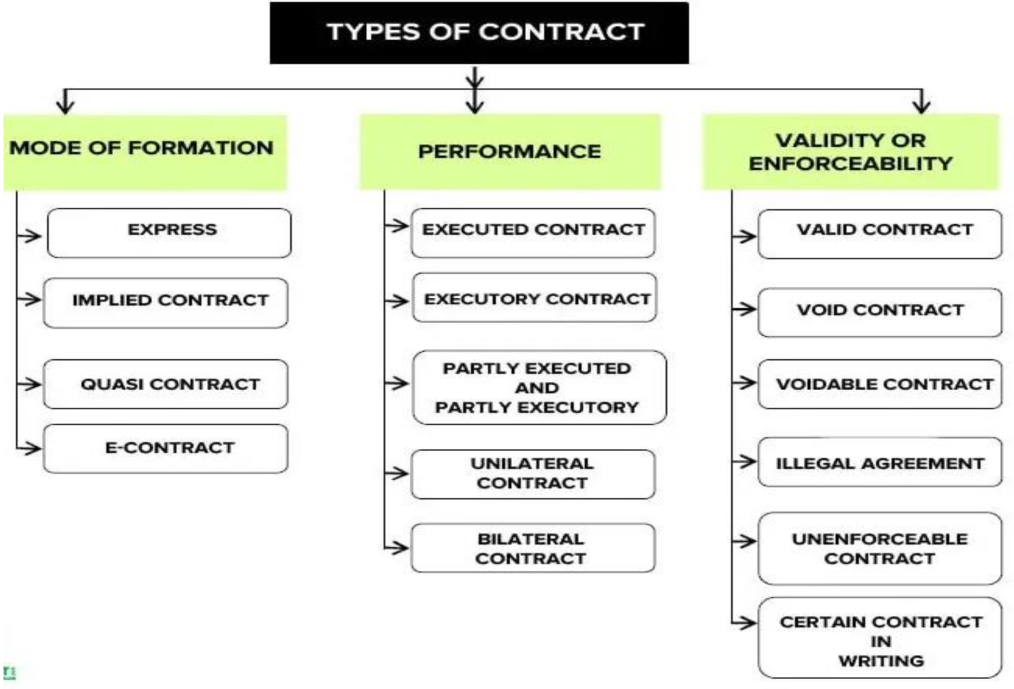
Obligation

An agreement to become a contract, must give rise to a legal obligation or duty. The term obligation is defined as a legal tie which imposes upon a definite person or persons the necessity of doing or abstaining from doing a definite act or acts. It may relate to social or legal matters an agreement which give rise to a social obligation is not a contract. It must give rise to a legal obligation in order to become a contract.

Examples

- A agrees to sell his car to B for RS. 50,000. The agreement gives rise to an obligation on the part of B to pay Rs.50, 000 to A. This agreement is a contract.

1.1.5 KINDS OF CONTRACT



CLASSIFICATION ACCORDING TO ENFORCEABILITY

Void Agreement:

According to section 2(g), "An agreement not enforceable by law is said to be void". At no stage can such agreement be enforced.

Example:

An agreement with a minor (person whose age is below 18 years)

Voidable Contract:

Section 2(i) defines a voidable contract as "an agreement which is enforceable by law at the option of the other or others".

Example

A patient, who finds that the doctor attending on him is charging unreasonable fee, can apply to the court for relief, as there is scope to use undue influence in such a contract.

Void Contract:

A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable"- section 2(j). A contract may be valid at the time when it is entered into. But due to certain subsequent happenings it may become void.

Examples:

P agrees to marry Q‟s daughter. But before marriage P dies. A valid contract, thus, has become void.

Unlawful Agreement:

An unlawful agreement is one that is not approved by law on some ground of public policy. Such an agreement is void from the very beginning and, therefore, is not enforceable in a court of law.

Example:

An agreement in restraint of trade, i.e., an agreement that restricts a person‟s right to choose his/her profession or occupation. An agreement between P and Q that P‟s son will work in Q‟s concern is a void agreement.

Illegal Agreement:

An agreement is illegal if the activities of the parties to it:

- involve the commission of a crime; or
- violate basic public policy; or
- Are immoral in nature.

Such an agreement is void, i.e., cannot be enforced in a court of law.

Unenforceable Contract:

Sometimes a contract may become unenforceable owing to certain technical defects in it.

Example: Where a party to a written contact has not given his/her signature.

CLASSIFICATION ACCORDING TO FORMATION

Based on the mode of formation, contract may be classified as follows:

Express Contract:

An express contact is one that is entered into by the parties by words- spoken or written. Usually it will be in a written form.

Example:

X offers to sell his house to Y for Rs.15 Lakes. Y accepts X‟s offer and they both sign the sale agreement prepared on a stamp paper of the appropriate value and is duty signed by the witnesses. This results in a contract between X and Y.

Implied Contract:

An implied contract does not arise out of express promise by the parties but is inferred from their acts or from the circumstances of a particular case.

Example:

The offer by a cinema theatre and its acceptance by a movie-goer (by buying the ticket) is always the result of an implied contract.

Quasi Contract:

A quasi- contract is not actually entered into by the parties but is something imposed on a party by law. It is based on the principle that a person shall not be allowed to enjoy certain benefits unreasonably at the cost of another.

Example:

A pays B‟s electricity bill when the latter is not in station to avoid disconnection.

B is under a quasi-contractual obligation return the money to A.

CLASSIFICATION ACCORDING TO PERFORMANCE

Based on the extent of performance, contract may be classified as follows:

Executed Contract:

A contract is said to be executed when both the parties to it fulfill their respective obligations.

Example:

X, a carpenter, agrees to make a table for Y for a sum of Rs.2000. the contract becomes executed the moment X makes the tables and Y pays the agreed sum.

Executory Contract:

An executory contract is one in which both the parties are yet to fulfill their respective obligations.

Example:

L agrees to sell his wristwatch to M for Rs.500. the contract is a executory contract until L hands over the watch to M and M pays the agreed amount.

Partly Executed Contract:

It is a contract in which one party has already fulfilled his obligation and the other is yet to fulfill his obligation.

Example:

A department store supplies goods to a customer who pays by credit card. Thus, although the department store has fulfilled its obligation, the customer’s obligation is fulfilled only upon the realization of his payment.

1.1.6 ELEMENTS OF A VALID CONTRACT

According to section 10 of the act lay down the essentials of a valid contract.

Offer and Acceptance

There must be two parties in an agreement i.e., one party making the offer and the other party accepting it.

Examples:

A says to B “will you buy my cart for Rs.100, 000? This is offer. If B says “yes” that is acceptance.

Intention to create legal relation:

The intention of the parties to a valid contract must be to create legal relationship between them. In a social or domestic agreement, the intention of the parties is not to it legally binding on them.

Examples:

A agrees to attend B‟s birthday party but is unable to attend due to personal work.

B cannot sue A, as the obligation is not a legal one.

Lawful consideration:

For a contract to be valid, the agreement between the parties must be backed by consideration. Consideration means „something in return‟. Both the parties to the agreement must give and get something in return.

Examples:

P agrees to sell his bike to Q for Rs.25000. Q‟s promise to pay is the consideration for P‟s promise to sell the bike and P‟s promise to sell is the consideration for Q‟s promise to pay.

Capacity of parties:

The parties must be competent to contract, i.e., capable of entering into a valid contract. A person is capable of entering into a valid contract if he has attained the age of majority, is of sound mind and is not disqualified from contracting by any Law to which he is subject.

Examples:

A lends Rs.1000 to B a minor. A cannot take legal action against B for repayment, as an agreement with a minor is void.

Free consent:

Consent means willingness. The consent of the parties to a valid contract must come freely. It must not be obtained by force. Consent is said to be not free when it is obtained by coercion, undue influence, fraud etc.

Examples:

X deliberately sells certain indigenously made dress materials as imported ones to
Y. Y has no means to discover the truth. The consent of Y, thus, is obtained by fraud. The sale is voidable at the option of Y.

Legality of object:

The object of the agreement must not be illegal, immoral or opposed to public policy.

Examples:

A enters into an agreement with B to supply certain prohibited goods. Such an agreement is void, as its void, as its object is illegal.

Agreement not declared void:

The agreement between the parties must not have been declared void expressly by any law in force in the country. For example, under the Indian contract act, an agreement in restraint of trade is void.

The term of the agreement must be certain:

The term of the agreement must be clear, precise and certain. If the terms are vague or ambiguous, the agreement cannot be enforced.

Example:

There is an agreement between R, a supplier of milk products, and S, a trader, by which the former would supply to the latter milk products worth Rs.200 daily. What is not clear in this agreement is the type of milk products to be supplied by R, i.e., milk, buttermilk, curd, butter etc. and the quantity in respect of each. The agreement, therefore, is not enforceable.

Possibility of performance:

What is undertaken by the parties to an agreement must be such that it can be performed. An agreement t do an impossible act cannot be enforced.

Example:

G agrees to turn iron into gold if H pays him Rs.1lakh. An agreement such as this cannot be enforced in a court of law.

Legal formalities:

For a contract to be enforceable in a court of law, it must comply with the necessary legal formalities as to writing, stamp duty, registration, certification, witness etc. A contract will be a valid contract only when all the essential elements mentioned above are present in it.

Let’s Sum Up

The Indian Contract Act of 1872 serves as the primary legislation governing contracts in India. It defines a contract as an agreement enforceable by law, emphasizing key elements for validity. Essential components of a valid contract include offer and acceptance, consideration, intention to create legal relations, capacity to contract, free consent, legality of object, and certainty of terms. Contracts can be classified into various types based on their enforceability and nature, such as valid, void, voidable, unenforceable, express, implied, bilateral, and unilateral contracts. Contingent contracts are those in which performance depends on the occurrence or non-occurrence of a future uncertain event.

Section 1.1.Understanding Contracts: Essentials and Classification

Check Your Progress – Quiz – 1

1. What is a contract?
   A) A legal document
   B) An agreement enforceable by law
   C) A verbal promise
   D) A written agreement

   Answer: B) An agreement enforceable by law

2. Which of the following is NOT an essential element of a valid contract?
   A) Free consent
   B) Consideration
   C) Witness signature
   D) Legality of object

   Answer: C) Witness signature

3. What is a contingent contract?
   A) A contract signed by two parties
   B) A contract dependent on the occurrence of a future uncertain event
   C) A contract with unclear terms
   D) A contract that cannot be enforced

   Answer: B) A contract dependent on the occurrence of a future uncertain event

4. Which type of contract involves both parties exchanging promises?
   A) Express contract
   B) Implied contract
   C) Bilateral contract
   D) Unilateral contract

   Answer: C) Bilateral contract

5. What is a void contract?
    A) A contract lacking clear terms
    B) A contract with illegal object
    C) A contract that can be enforced
    D) A contract with no consideration

   Answer: B) A contract with illegal object

1.2.1 MEANING OF OFFER

An "offer" is also known as a "proposal. According to section 2(a), "when one person signifies to another his willingness to do from doing anything with a view to obtaining the assent of that other to such act or he is said to make a proposal".

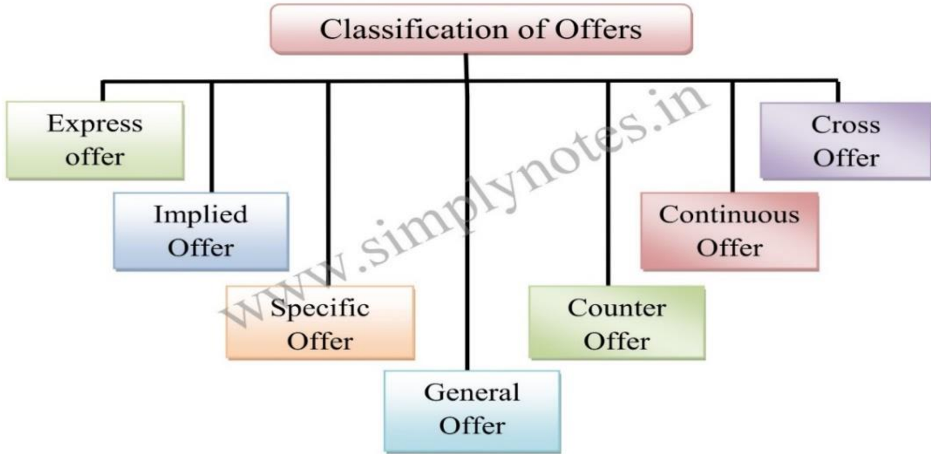
The following points emerge out of the above definition of offer;

1. There is an offer only when a person conveys his willingness to another and not to himself.
2. The willingness may be to do or not to do a thing.

Example:

E wants to sell his scooter to F for Rs.20000. the willingness of E to sell becomes an offer.

1.2.2 TYPES OF OFFER



1. Express offer

An express offer made by express words spoken or written is known as express offer

Examples:

P tells Q "will you buy my cycle for Rs.700?"

2. Implied offer:

An offer that is to be inferred or understood from the conduct of the parties or the circumstances of each particular case is known as implied offer.

Examples:

The offer by a cinema theatre to screen films is always an implied offer.

3. Specific Offer:

An offer made to a specific group is known as a specific offer.

4. General offer:

When an offer is made to the world at large, it is known as a general offer. Any member of the public who is aware of such an offer may accept it.

Example:

X offers a reward of Rs.50000 to anyone who traces out his missing son. Y who is aware of the offer, finds the boy. He can claim the reward

5. Cross offer:

Cross offers take place when two persons make identical offers to each other with respect to the same subject.

Example:

A by a letter to sell his car to B. without knowing B‟s intention to sell and before receiving his letter, B too writes to A expressing his to buy B‟s car. Thus, both A and B have only made an identical offer and neither of them has given acceptance. It is therefore, clear that there is no binding contract between them.

6. Counter offer:

Counter offer takes place when the person to whom the offer is made, instead of accepting the terms of the offeror, desires modification of the some.

Example:

X offers his motorcycle to Y for Rs.30000 and wants Y to pay the full amount within two days. Y wants the motorcycle for Rs.20000 and also two weeks time to pay. There is no acceptance of the offer by Y and it only amounts to a counter offer.

7. Standing offer:

A standing offer is of a continuous nature. It is not restricted to a single transaction. It applies to a series of future transaction.

Examples:

X edible oils merchant, offers to supply edible oils to a hotel as and when required for the next two years. The offer by X is a standing offer.

1.2.3 ACCEPTANCE MEANING AND DEFINITION

Acceptance means giving consent the offer. It is an expression by the offeree of his willingness to be bound by the terms of the offer. In other word's an acceptance is the consent given to offer.

MEANING OF ACCEPTANCE

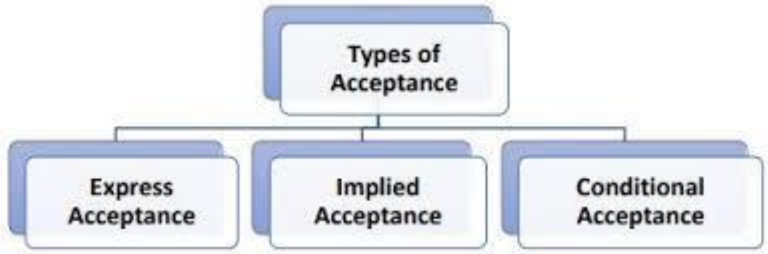
An offer is said to be accepted when the person to whom it is made gives his consent to it.

DEFINITION

According to section 2(b) "when the person to whom the proposal is made signifies his assent therefore, the proposal is said to be accepted. A proposal when becomes a promise."

1.2.4 Types of Acceptance

There are three main types of acceptance when it comes to contracts:



1. Express acceptance

Express acceptance occurs when someone explicitly agrees, either verbally or in writing, to accept the offer you've made them.

Example:

If someone offers to buy your house for $500,000 and you send them an email saying "yes, you can buy my house for $500,000", you've expressly accepted their offer.

Conditional acceptance

Sometimes called "qualified acceptance", conditional acceptance is when you say you're willing to agree to the original offer but only with some changes. This is also called a counteroffer.

Example:

To move into the flat with rain still coming into that window) no longer exists. This is called the mirror image rule.

3. Implied acceptance

Implied acceptance is when you don't directly say "yes" to an offer verbally or in writing, but you do something which implies you will. Implied acceptance can create an implied contract. If your actions clearly indicate that you have accepted their offer, but you haven't vocalized this acceptance, it still counts.

Example:

If you buy a cake from a supermarket, paying for it implies you're happy to accept the price (i.e. the offer) that the supermarket's charging for that chocolate gateau. You don't necessarily have to voice to the cashier that you accept the offer, picking it up, taking it to the till, and then paying for it makes this acceptance clear enough.

1.2.5 LEGAL RULES RELATING TO ACCEPTANCE

1. Acceptance must be absolute and unqualified:

It means that the terms of offer must be fully acceptable to the offeree. If the offeree, while responding to the offer wants of offer varied or modified or imposes certain condition, which is no valid acceptance.

Example:

P offers to sell his bike to Q for Rs.25000.Q is prepared to pay Rs.20000.There is no valid acceptance by Q and if only amounts to a counter offer.

2. It must not be mental acceptance:

According to Section 2(b), for an acceptance to be binding, it must be communicated. An intention to accept or even a mental decision to accept a proposal does not give rise to a contract. There must be some external expression of speech, writing, or other act.

3. It must be given according to the prescribed mode:

Where the offeror has not specified the manner in which acceptance must be given, according to some usual mode.

Example:

A writes to B offering to sell his flat for Rs.10 lakhs and asks B to send a letter if heis accepting the offer. B accepts A‟s offer but conveys his acceptance by a letter.

4. It must be given within the specified time:

If no time limit is specified acceptance must be given within a reasonable time.

5. It must be given only by the person to whom the offer is made:

The offeror cannot act on the basis of unofficial information.

6. Acceptance must be conveyed to the offeror:

Acceptance must be conveyed only to the offeror or a person authorized by him.

Example:

X offers to sell his dog to Y Rs.1000 and asks Y to convey his willingnessdirectly to him(X). Y conveys his acceptance to Z, a friend of X. If Z fails to inform X, Y will have no remedy. If Z informs X, it is for X to decide.

7. It cannot normally be implied by silence:

Under the normal circumstances acceptance cannot be implied from the silence of the offeree or his failure to reply.

8. It can be made on the presumption of an offer:

An acceptance based on the presumption of an offer is not valid further, acceptance cannot proceed, i.e., come before an offer.

Example:

The shop call can you buy my product but buyer need low cost. So B has no obligation to buy.

9. **It must be given before the offer lapses:**

Acceptance must be given before the offer lapses or is withdraw.

Example:

A two-wheeler dealer offers free insurance and road-tax for all those who bookwithin a week.

1.2.6REVOCATION OF OFFER AND ACCEPTANCE

MEANING

Revocation means "withdraws". An offer or its acceptance may be revoked subject to the following rules contained in section

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

1.2.7 When will an offer lapses:

An offer will lapse or come to an end under the following circumstances::

1. **By a notice of revocation:** The proposal may by sending a notice of revocation to the offeree, withdraw the proposal. But the notice of revocation must reach the offeree before he conveys his acceptance.
2. **By the lapse of time:** The proposal stands revoked if it is not accepted within the time specified. If no time is specified, the offer shall lapse on the expiry of a reasonable time.
3. **By the failure of the acceptor to fulfill a condition precedent to acceptance:**

   Example: S agrees to sell his bicycle to B for Rs.400 upon the condition that B makes full payment within a day. B fails to pay the amount. The offer stands revoked.

4. **By the death of the proposer:** The offer stands revoked if the fact of death of the proposer comes to the knowledge of the acceptor before acceptance.
5. **By a counter offer:** If the acceptor, instead of accepting the terms of the offer or in full, seeks certain modification and amendments in the terms, it amount to a counter- offer. The original offer, in such a case, will lapse.
6. **By offeree not giving his acceptance as per the prescribed mode:** When the offeree fails to accept the proposal as per the prescribed mode, the offer or can revoke the offer not by keeping quiet but by informing the offeree about the same.

7. **By change of law or destruction of the subject- matter:**

Example: An offer to make a bulk purchase of lottery tickets comes to an end the moment the government imposes a ban on lotteries.

8. **By the rejection of the offer by the offeree:**

An offer comes to an end once it is rejected by the offeree. Rejection of offer may be „express‟ or „implied‟. Express rejection is in the form of words spoken or written. Making a counter – offer by the offeree results in an implied rejection of the original offer.

1.2.8 MEANING OF THE CONSIDERATION

Consideration means "Something in return" A party to an agreement who promise to something must gain, something in return.

DEFINITION OF THE CONSIDERATION:

In the famous English case CURRIE Vs MISA, a consideration was defined as follows: "A valuable consideration in the sense of the law may consist either in the same rights, Interest, profit accruing to one party (or) same for bearance detriment responsibility given. Suffered or undertaken by the offer".

1.2.9 LEGAL RULES REGARDING CONSIDERATIONS:-

- It must be provided at the desire of the promisor
- It may be provided by the promise
- It may be an act
- It may be past present (or) Future
    - A promise does not given anything and not enforceable
    - Consideration must be real and Lawful
    - Consideration must not be Illegal to public policy.

IT MUST BE PROVIDE AT THE DESIRE OF THE PROMISOR

In case it is given without the desire of the promisor it will not be a valid consideration.

Example:

During at fire accident "A" says certain belonging of "B" voluntarily. He cannot claim payment for such a voluntary service. If "A" does it at the request of "B" then hecan claim payment.

IT MAY BE PROVIDED BY THE PROMISE

According to the section 2(t), consideration may be providing at the desire of the promisor or any other person such a person becomes a stranger to consideration. It can sue if he is a party of the contract.

IT MAY BE AN ACT

What is provide way of consideration may be either to do or not do to something.

IT MAY BE PAST PRESENT (OR) FUTURE

The usage in section 2(d) "Has done (or) obtained from doing something" Indicates that the consideration may be past, present or future.

PAST CONSIDERATION

It refers to consideration provided already in the past by a party for a present promise.

Example: Two weeks ago there was a fire accident when "X" saved certain goods belonging to "Y" at the letter request. "Y" promised to pay Rs.500.00 for his service.

PRESENT CONSIDERATION

It refers to consideration provided simultaneously with the promise. In any case & carry business consideration "Simultaneously with the promise."

Example:

A Departmental store sells provisions worth Rs.11,000 to R for which R pays & cash Immediately.

FUTURE CONSIDERATION

It refers to consideration to be provided In future by the profits i.e. often one formation of the contract.

Example:

There is a contact between P & Q by which P agrees to sell & deliver his bicycle after two days and Q agrees to pay the price of Rs.500/- within a week after taking delivery.

A PROMISE DOES NOT GAIN ANYTHING

The promise will not succeed in his suit where he doesn't suffer way detriment due to the promises to fulfill this promise.

CONSIDERATION NOT BE ADEQUATE

But transit be of some value in the eye of law what is received need must be equal to what is given.

Example:

Who need urgent can sell his gold wing worth Rs.1000 for Rs.700. “Y” get a valid title (i.e.) ownership right.

CONSIDERATION MUST BE REAL AND LAWFUL AND NOT ILLUSORY

Illusory mean imaginary or unread consideration & Illusory when it is wrongly believed to exercise.

A CONSIDERATION MUST BE ILLEGAL

The cost constitution consideration must not be illegal immoral (or) opposed to public policy.

Example:

“P” promises to supply huge quantify of arms and ammunitions to “Q” in consideration for “Q” promise to pay his Rs.10 Lakhs. The act constituting consideration is illegal.

1.2.10 MEANING OF CONTRACT

A contract may be

- An absolute contract (or)
- An contingent contract

ABSOLUTE CONTRACT

An "absolute contract" is one in which the promise or bind himself to performance in any event without any condition.

CONTINGENT CONTRACT

A "Contingent "mean that which is depend on something else

1.2.11 MEANING OF CONTINGENT CONTRACT

A contract may be

An absolute contract (or)

An contingent contract

ABSOLUTE CONTRACT

An “absolute contract” is one in which the promise or bind himself to performance in any event without any condition.

CONTINGENT CONTRACT

A “Contingent “mean that which is depend on something else

ESSENTIAL CHARACTERISTICS OF A CONTINGENT CONTRACT

- It perform depend upon the happening (or) non-happening in future of some events.
- The event must be uncertain
- The events must be Collateral

RULES REGARDING CONTINGENT CONTRACT

- The happening of future uncertain events.
- The non-happening of future uncertain events.
- When event to be deemed impossible
- The happening of an event within fired time.
- The Non-happening of an event within fired time
- Impossible Events

THE HAPPENING OF FUTURE UNCERTAIN EVENTS

According to sec (32).Contingent contract to do (or) not to do anything. If an uncertain future events happens cannot be enforced by law unless and until that event has happened. The event becomes impossible such contacts become void.

Example:

"A" makes a contract with "B" to buy. "B" horse if "A" survive "C". This contract cannot be enforced by law unless and until "C" diet in "A" life time.

THE NON HAPPENING UNCERTAIN EVENTS

According to Sec (33) contingent contract means to do (or) not to do anything. If any uncertain event does not happened can be enforced by law and the happening of that event becomes impossible,

Example:

"A" agrees to pay "B" some money. If a certain ship does not return. The ship is sunk. The contract can be enforced when the ship is sink.

WHEN EVENT TO BE DEEMED IMPOSSIBLE

According to Sec (34). If the uncertain events is the future contract of a third party,. Such event shall be considered. Impossible if the person does any act due to which the contract cannot be enforced.

THE HAPPENING OF AN EVENT WITH IN TIME

According to Sec (35), contingent contract to do (or) not to anything if a specified uncertain event happen within a fixed time become void. If at the expired at the time fixed, such event becomes impossible.

Example: "A" promised to "B" a sum of money if a certain ship returns within a year. The contract may be enforced if the ship return within a year and become void. If the sup burned within a year.

THE NON-HAPPENING OF AN EVENT WITHIN FIXED TIME

According to sec(35), contingent contract to do (or) not to do anything of a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such events has not happened (or) before the time fixed has expired such event will had happened.

Example:

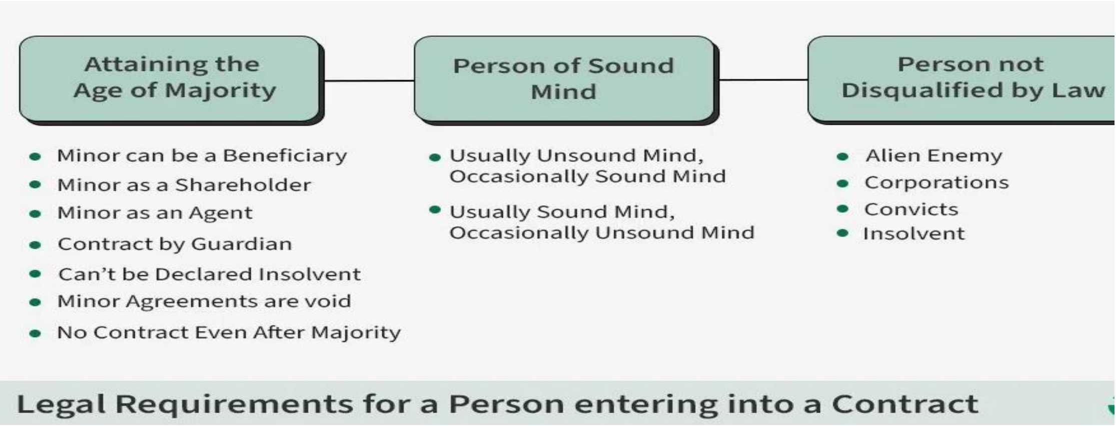
"A" promises to pay "B" sum of money if a certain ship does not return within a year the contract may be enforced if the ship does not return within the year(or) is but within a year.

IMPOSSIBLE EVENTS

According to Sec(36) contingent agreement to do (or) not to do anything if an impossible events happens are void whether the impossibility of the event if known are not to the parties to the agreement at the time when it is made .

1.2.12 What is Capacity of Parties?

Indian Contract Act, 1872 is a central law, and it validates the Contracts or Agreements between various parties. Contract Act regulates and oversees all the business in case of any deal or an agreement. The Indian Contract Act, 1872 defines the term "Contract" under its Section 2(h) as "An agreement enforceable by law". Hence, a Contract is anything that is an agreement and enforceable by the law of the land.



1.2.13 What Agreements are Contracts?

According to the provisions of Section 10 of the Indian Contract Act, 1872, an Agreement must satisfy the following conditions to be a valid contract:

- The parties in a contract must be Competent.
- The contract must be made by the Free Consent of the parties to the contract.
- The contract must be made for a Lawful Consideration, and there should be a Lawful Object.
- The contract should not have been expressly declared as a Void Contract.

1.2.14 Capacity to Contract

According to Section 11 of the Indian Contract Act, 1872 "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."

So the three major points which are established under Section 11 are:

- Attaining the age of Majority (As per Indian Majority Act, 1875).
- Being a Person of Sound Mind.
- Not Disqualified from entering into a Contract by any Law.

1.2.15 Legal Requirements for a Person Entering into a Contract

Capacity of Minors: In India, every person attains majority at the age of 18. The Indian Majority Act, 1875 governs this. Contracts with minors are void from the beginning, and even upon reaching majority, a minor cannot ratify a contract made during minority. However, a minor can accept benefits from a contract, and guardians can enter into contracts on behalf of minors in certain circumstances.

Person of Sound Mind: According to Section 12 of the Indian Contract Act, a person must be capable of understanding the contract and forming a rational judgment

to be considered of sound mind. Contracts made by persons of unsound mind are void, and such persons cannot avail themselves of benefits from the contract.

Person Not Disqualified by Law: Certain individuals are disqualified from entering into contracts wholly or partially. This includes:

- Alien Enemies: Citizens of countries with strained relations with India.
- Corporations: Contracts must be within their specified powers.
- Convicts: Those serving imprisonment cannot enter contracts until the sentence is served.
- Insolvents: Their capacity to contract is limited until discharged by the court.

In essence, the capacity to contract ensures that parties are legally competent to enter into agreements, protecting their rights and preventing exploitation or unfair advantage.

1.2.16 What is the Legality of an Object?

The legality of an object refers to the requirement that the purpose or objective of a contract must be lawful for the contract to be considered valid and enforceable. In other words, the object of a contract should not be contrary to any law, public policy, or morality.

For example, let's examine a scenario involving a contract between two parties, A and B. In this contract, A hires B to carry out the illegal act of causing harm or death to individual X, with a payment of 1,00,000 rupees as consideration.

Definition of the Legality of an Object

Section 23 of the Indian Contract Act specifically addresses unlawful agreements. According to Section 23, a consideration or object of an agreement is deemed lawful unless it is forbidden by law or if it would contradict any existing law, be fraudulent, cause harm to another person or their property, or be considered immoral or against public policy.

In any of these cases, the consideration or object is considered unlawful, and any agreement with an unlawful consideration or object is void.

1.2.17 When is the Object of the Contract Not Legal?

Agreements lack legality of the object in the following cases:

Forbidden by Law: If the object of an agreement is forbidden by law, the agreement is considered unlawful. For example, if a person borrows money to arrange a marriage for their minor daughter, violating the Child Marriage Restraint Act, the agreement becomes void due to its illegal object.

Violation of Licenses and Permits: Contracts may lack legality if they violate licenses or permits granted for the protection or promotion of public interest. For instance, agreements that contravene licenses or permits issued for environmental protection or public safety purposes would lack legality of the obje

For example, if a person holds a license to operate a liquor shop under an excise act that prohibits the sale, transfer, or creation of partnerships to run such shops, any agreement that involves creating a partnership in violation of the law would be considered void. This is because allowing unauthorized individuals into liquor shops would undermine the purpose and intent of the law.

Agreements lack legality of the object in several cases:

Defeats Provisions of Law: Agreements that defeat the provisions of any law, even if not explicitly prohibited, render the object of the agreement void and unlawful. Such agreements are considered void because they contravene legal provisions and principles.

Fraudulent: Agreements made for fraudulent purposes, such as intending to defraud others or divide ill-gotten gains, are deemed void. Fraudulent agreements undermine honesty and fair dealing, making them unlawful and unenforceable.

Injuries to Person or Property: Agreements designed to cause harm to the person or property of others are illegal and void. Any contract aiming to inflict harm or damage is against the law and lacks legality of the object.

Immoral: Contracts involving immoral activities, such as interfering with marital relations, engaging in prostitution, or exchanging money for sexual immorality, are considered void. Such agreements violate societal standards of morality and decency, rendering them unlawful.

Against Public Policy: Agreements contrary to public policy, which undermine public interest or welfare, are void. Examples include trading with the enemy during wartime, stifling prosecution, or engaging in maintenance and champerty. These agreements go against the principles and interests that serve the welfare of the general public.

In essence, agreements lacking legality of the object are void because they violate legal provisions, moral standards, or public policy, emphasizing the importance of upholding lawful and ethical conduct in contractual agreements.

1.2.18 What is void contract

A void contract is one that is not legally binding and cannot be enforced. It means that neither party can sue the other for violating the contract. Void contracts can arise due to various reasons, such as coercion, illegal activities, or lack of legal capacity. Here are the key points regarding void contracts:

CONTRACT
VOID

1.2.19 Elements of a Void Contract:

Lack of Mutual Agreement: Both parties must mutually agree to the terms and conditions of the contract for it to be valid. This includes an offer by one party and acceptance by the other.

Absence of Consideration: Consideration, which is something of value exchanged between parties, is necessary for a contract to be valid. Without consideration, the contract is void.

Incomplete or Ambiguous Terms: If the terms and conditions of the contract are incomplete, vague, or ambiguous, the contract may be considered void.

Incompetent Parties: If one or both parties lack the legal capacity to enter into contracts, such as being a minor or having an unsound mind, the contract may be void.

Mistake Regarding Essential Facts: If both parties are mistaken about essential facts or subject matter of the contract, the contract may be deemed void.

Types of Void Contracts:

Ab Initio: Contracts that are void from the beginning, often due to fraud or duress.

Unenforceable: Contracts with terms that cannot be legally enforced, usually because of invalid clauses.

Voidable: Contracts that can be cancelled by either party, typically due to misunderstanding or misinterpretation.

Initially Voidable: Contracts where one party is coerced or deceived but chooses to proceed with the contract.

Reasons for Void Contracts:

Uncertainty: Contracts may be void if they contain uncertain terms or arrangements.

Mistake or Misunderstanding: Mutual mistakes or misunderstandings regarding essential facts can render a contract void.

Lack of Capacity: Contracts may be void if one party is incapable of entering into a contract, such as minors or individuals with unsound minds.

Against Public Policy: Contracts contrary to public policy, such as those restricting trade or restraining marriage, may be void.

Unlawful Object: Contracts involving illegal activities or forbidden by law are void.

Avoiding Void Contracts: To avoid drafting or entering into void contracts, it is important to abide by legal implications, clearly specify terms and conditions, avoid illegal substances and activities, include essential elements, mention contingencies, and seek professional advice.

Section 2(g) of the Indian Contract Act defines a void contract as one not enforceable by law, while Section 2(j) states that a contract becomes void when it ceases to be enforceable by law. Sections 20, 24-30, and 56 of the Act also deal with void agreements.

To ensure the enforceability and validity of contracts, parties should seek professional guidance, understand legal requirements, and clearly define terms and conditions.

Let's Sum up

In the realm of contract law, several key principles govern the validity and enforceability of agreements. Offer and acceptance signify the mutual assent of parties to contract terms, while consideration denotes the exchange of something of value, essential for a valid contract. Capacity to contract ensures that parties are legally

competent to enter into agreements, while free consent underscores the necessity of voluntary and uncoerced agreement. Legality of object mandates that contracts must not violate laws or public policy, and contingent contracts are dependent on future events. Void contracts lack enforceability due to legal deficiencies, such as lacking mutual agreement, consideration, complete terms, or involving incompetent parties.

Section 1.2 Foundations of Contract Law

Check your progress – Quiz – 2

1. Which principle denotes the exchange of something of value in a contract?
   A) Offer and acceptance
   B) Capacity to contract
   C) Consideration
   D) Free consent

   Answer: C) Consideration
2. What ensures that parties are legally competent to enter into contracts?
   A) Free consent
   B) Capacity to contract
   C) Offer and acceptance
   D) Contingent contracts

   Answer: B) Capacity to contract
3. Void contracts lack enforceability due to which of the following?
   A) Lack of mutual agreement
   B) Illegal object
   C) Incomplete terms
   D) All of the above

   Answer: D) All of the above
4. Which principle underscores the necessity of voluntary and uncoerced agreement?
   A) Legality of object
   B) Free consent

C) Consideration

D) Contingent contracts

Answer: B) Free consent

5. What denotes agreements dependent on future events?

A) Void contracts

B) Capacity to contract

C) Contingent contracts

D) Offer and acceptance

Answer: C) Contingent contracts

1.3 UNIT SUMMARY

The Indian Contract Act of 1872 outlines the rules for forming and enforcing contracts in India. It defines a contract as a legally binding agreement between parties and sets out the essential elements needed for a valid contract, such as mutual agreement, lawful consideration, capacity to contract, free consent, and a lawful object. Contracts can vary in types based on how they're formed or executed. For a contract to be valid, both parties must agree to its terms, exchange something of value, be legally competent, and consent without coercion or fraud. Contracts must also have a legal purpose and not violate public policy. Contingent contracts depend on certain events happening in the future, while void contracts lack legal enforceability due to various reasons. Understanding these principles is crucial for anyone involved in business or legal transactions in India.

1.4 Glossary

Contract:	A legally binding agreement between parties that is enforceable by law.
Offer and Acceptance:	The mutual assent of parties to contract terms, where

	one party proposes terms (offer) and the other party agrees to those terms (acceptance).
Consideration:	Something of value exchanged between parties, essential for the validity of a contract.
Capacity to Contract:	The legal competence of parties to enter into contracts, ensuring they are of sound mind, of legal age, and not disqualified by law.
Free Consent:	Voluntary and uncoerced agreement of parties to contract terms, without fraud, misrepresentation, or undue influence.
Legality of Object	: Requirement that contracts must have a lawful purpose and not be against public policy to be enforceable.
Contingent Contracts:	Contracts dependent on the occurrence of future events, where the contract's performance is contingent upon the happening or non-happening of an event.
Void Contract	A contract lacking legal enforceability due to legal deficiencies, such as lacking mutual consent, consideration, complete terms, or involving incompetent parties.
Mutual Consent	Both parties must freely agree to the terms of the contract without any coercion or undue influence.

Lawful Consideration	Something of value (money, goods, services) must be exchanged between the parties as part of the contract.
Lawful Object	The purpose of the contract must not be illegal or against public policy.
Capacity to Contract	Parties must have the legal capacity to enter into a contract, meaning they are of sound mind and legal age.
Based on Formation	Contracts may be written or oral, express or implied.
Based on Performance	Contracts may be executed (fully performed) or executory (partially performed or yet to be performed).
Based on Enforceability	Contracts may be valid, void, voidable, or unenforceable.
Offer and Acceptance	Offer refers to a proposal made by one party to another indicating a willingness to enter into a contract under certain terms. Acceptance is the unequivocal agreement to the terms of the offer, creating a binding contract once communicated.
Consideration	Consideration is something of value exchanged between parties to a contract. It can be a promise to perform an act, money, goods, services, or forbearance.

Capacity to Contract	This refers to the legal ability of parties to enter into contracts. Individuals must be of sound mind and legal age to have the capacity to contract. Certain persons, such as minors or individuals of unsound mind, may lack capacity and thus be unable to enter into contracts.
Free Consent	Consent is said to be free when it is not obtained through coercion, fraud, misrepresentation, or undue influence. Parties must enter into contracts willingly and with a clear understanding of the terms.
Legality of Object	Contracts must have a lawful object, meaning they must not involve illegal activities or be against public policy. Contracts with unlawful objects are void and unenforceable.
Contingent Contracts	These are contracts in which the performance of one or both parties is contingent upon the occurrence or non-occurrence of a specific event in the future. The contract's enforceability depends on the happening or non-happening of the specified event.
void contract	A void contract is one that lacks legal enforceability from the outset due to defects such as illegality, incapacity, or uncertainty. It is as if the contract never existed and cannot be enforced by either party.

1.5 Self – Assessment

1. Define a contract according to the Indian Contract Act, 1872, and explain its significance in legal terms.
2. List and discuss the essentials required for a contract to be valid under the Indian Contract Act, 1872.
3. Classify contracts based on their nature and provide examples for each classification as per the Indian Contract Act, 1872.
4. Explain what constitutes a valid offer and acceptance under the Indian Contract Act, 1872. Provide examples to illustrate your points.
5. Describe the concept of consideration in a contract as defined by the Indian Contract Act, 1872. How does it differ from a gift?
6. Discuss the capacity required by parties to enter into a contract under the Indian Contract Act, 1872. What are the implications if a party lacks capacity?
7. Explain the significance of free consent in a contract according to the Indian Contract Act, 1872. Provide examples of situations where consent might be deemed invalid.
8. Discuss the legality of object requirement in a contract as per the Indian Contract Act, 1872. What are the consequences of an illegal object?
9. Define contingent contracts and explain their significance in contractual agreements under the Indian Contract Act, 1872. Provide examples to illustrate.
10. Describe what constitutes a void contract under the Indian Contract Act, 1872, and discuss the implications of such contracts on the parties involved.

1.6 Case Study

Famous Case Law: The case of Mohori Bibi vs. Dharmodas Ghose is a landmark case for establishing the ambit of the Minor Agreement. In this case, Dharmodar Ghose who was a minor, borrowed ₹20,000 from Brahmo Dutt and as a security for the same. Dharmodar Ghose, the minor executed a mortgage deed in his favour. Dharmodar Ghose attained the majority age a few months later, and he filed a suit on the fact that the mortgage executed by him was entered during his minority was void

and shall be cancelled. The court held that a mortgage contract by a minor was void and Brahmo Dutt was not entitled to any repayment of money as Dharmodar Ghose was incompetent to contract, and the contract will be considered as Voidable initio.

In the case of Gherulal Parakh v. Mahadeo Dass there was an agreement among certain individuals to purchase shares in a company. However they engaged in fraudulent and deceitful practices to mislead other individuals into believing there was a genuine market for the shares contrary to the actual situation. The court held this agreement to be void due to its fraudulent nature.

1.7 Task

- ✓ You offer to host a pizza party at your house on Saturday evening.
- ✓ Your friend agrees to come to the party and brings drinks and snacks as their contribution.
- ✓ You provide the venue and pizza, while your friend contributes drinks and snacks.
- ✓ Both you and your friend are old enough to understand and agree to the terms of the party agreement.
- ✓ You both willingly agree to host and attend the party without any pressure or coercion from each other.
- ✓ The purpose of the party is to have fun and enjoy each other's company, which is legal and in line with public policy.

Write down all and discuss with your friend how they relate to the concepts of offer, acceptance, consideration, capacity to contract, free consent, and legality of object as discussed in the Indian Contract Act, 1872.

1.8 E – Content

S.No	Topics	E- Content Link	QR Code
1	**Indian Contract Act 1872**	https://youtu.be/l7MmtspyjPg?si=UeASFsrgYrDp0jXp	
2	**Elements of Indian Contract Act**	https://youtu.be/N2OfiK3PqfQ?si=FEcGw6_5R8ASCac-	
3	**Essential elements of a valid contract**	https://youtu.be/9dHHeAI2h7g?si=JkyItZX3Kl2xO0SQ	
4	**Offer and Acceptance**	https://youtu.be/_C-wlniZNoU?si=Ih8dw9X60BFCRZgd	

1.9 Reference

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https://lawshelf.com/videocoursesmoduleview/elements-of-a-contract-offer-and-acceptance--module-2-of-5-

PERFORMANCE OF CONTRACT& DISCHARGE OF CONTRACT

Performance of Contract
Meaning of Performance, Offer to Perform, Devolution of Joint liabilities & Rights, Time and Place of Performance, Reciprocal Promises, Assignment of Contracts – Remedies for Breach of contract Termination and Discharge of Contract –Quasi Contract

Self-Learning Material Development – STAGE – 1

UNIT OBJECTIVES

In this unit module, learners will explore key concepts of contract law, including performance, offer to perform, devolution of joint liabilities and rights, time and place of performance, reciprocal promises, assignment of contracts, remedies for breach of contract, termination and discharge of contract, and quasi-contracts. By the end of the module, learners should be able to define and differentiate these concepts, analyze their significance in contractual relationships, and apply them to real-world scenarios. Through case studies, discussions, and practical exercises, learners will develop a comprehensive understanding of contract law principles and their application in legal practice.

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2.1.1. Meaning of Performance

Performance of contract means fulfilment of legal obligations created by the contract. When a contract is duly performed by both the parties, the contract comes to a happy ending. Both the promisor and promisee should fulfill their respective legal obligations created under the contract.

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

2.1.2 Types of Performance

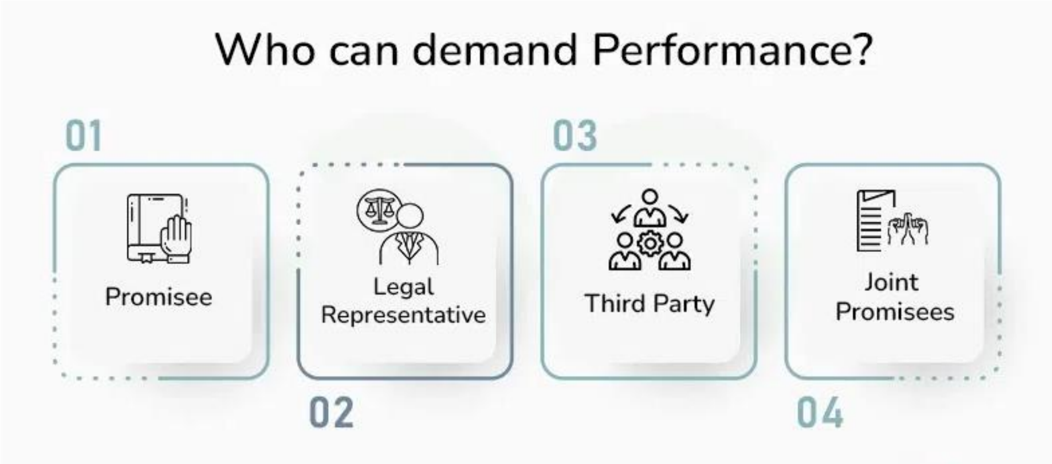
1. **Actual Performance:** When a party to a contract does what he had undertaken to do, he is said to have actually performed his obligation called actual performance. The party to the contract has performed his obligation.
2. **Attempted performance or tender or offer of performance:** Attempted performance is also known as offer of performance or tender. A contract need not be actually performed. The offer has been made by the promisor and it has not been accepted by the promisee.

2.1.3 WHO CAN DEMAND THE PERFORMANCE?

1. It is only the promise who can demand performance of the promise under a construct. It makes no difference whether the promises is for the benefit of the promise or any other person.
2. Under certain cases a stranger to the contract can enforce the contract.
   Example: Trust, assignee etc.,
3. The legal representation can enforce for performance of contract upon the other party or legal representations.

2.1. 4 WHO MUST PERFORM THE CONTRACT?

- The promisor
- The agent
- The legal representative
- The third person
- The joint promisers



1. The promisor:

It means that the promise depending upon the person skill or diligence or person consideration between the parties must be performed by the promise himself otherwise he can appoint any person.

Example: A contract to sing and dance a contract to marry.

A promise to paint a picture for B. A must performance this promise personally, because it involves personal skill of A.

2. The agent:

The agent in other cases the promise or his representative may employee or any other person. If A dies before the time appointment for payment. Has representative must perform the promise or employ some proper person to do so.

3. The legal representative:

The legal representative of a promisor are bound to perform the contract, if the promise dies before performance his legal representative will become liable before the contract.

Example: A promise to deliver goods to B on a particular date on payment of Rs.1000. A dies before that date. A representative are bound to pay Rs.1000 to A's representative.

4. The third person:

When a promise accepts the same performs of the promise from the third persons. They cannot after words enforce it against the promisor.

5. The joint promisors:

A promise may compel two or more persons have made a joint promise then all of them, during their life time must jointly fulfill the promise.

2.1.5 DEVOLUTION OF JOINT LIABILITIES:

1. When one or more persons have made a joint promise, will such persons must fulfill the promise unless a contrary indention appears by the contract (sec 42).
2. At the death of any one of them his legal representative must jointly with serving promises fulfill the promise on the death of all the promises, the representative all of them must jointly fulfill the promises (sec 42).
3. When two or more persons make a joint promise, the promise is entitled in the absents of express agreement contrary to compel to perform the whole of the promise.
4. In case of death of original debtor, if the debts falls open a number of heirs, promise must bring the suit against all heir collectively because the liabilities is only joint and not several in case of co-heirs are nit joint promise.
5. Each promise may compel contribution each is two or more joint promise t contribute equally with him to the performance of promise.
6. If any one of the joint promise makes a default in making the contribution, if any the remaining joint promise must bear the loss arranging from such default in equal rights.

2.1.6 DEVOLUTION OF JOINT RIGHT: (SEC 45)

1. When a person has made a promise to several person, then unless a contrary intention appears

2. From the contract, the rights to claim performances needs between him and during their life time.
3. When one of the promise is ideas, the right to client performances rest, with legal representatives jointly with serving promises.
4. When all promise die, the right to claim performance rests with their legal representatives jointly.

Example:

'A' in consideration of Rs.5000 lend by him by 'B' and 'C' promises 'B' and 'C' jointly to repay them. That sum with interest on a day specified 'B' dies. The right to claim performances rest with 'B' respective, jointly with 'C' during the 'C' life time and other the death of 'C' with the representative of 'B' and 'C' jointly.

2.1.7 PERFORMANCE OF JOINT PROMISES:

When two or more persons enter into an agreement with one or more person, two fold problems arises.

Who is liable to perform the promise under such a contract, who can demand such performance?

Joint promise means two or more persons may enter into a joint agreement with one or more persons.

Example:

Suppose A and **B** jointly promise to pay Rs.1000 to X and Y in such case the question arises, who is liable to perform the contract and who can demand performance. The rules regarding devolution of joint liabilities and joint rights of promises are contained in (sec 42 to 45) of the Indian Contract Act.

1. Non – fixation of time
2. No application by promissee
3. Compulsory application
4. Non – specification of place and no compulsory applied by promissee.
5. Manner and time for performance.

2.1.8 TIMES AND PLACE FOR PERFORMANCES: (SEC 46-50)

Time and place for performances of a contract depend upon agreement between the parties. In the absence of any such agreement the rules mention in sec 46- 50.

1. Performances with a reasonable time
2. Performances of a promise where the time is specified
3. Application for performance to be at proper time and place
4. To appoint a reasonable place for performance
5. Performance has prescribed by the promise.

2.1.9 TYPES OF RECIPROCAL PROMISES:

1. Mutual and Concurrent: (Sec 51)

When a contract consists of two reciprocal promises to be simultaneously performed, no promise need perform his promise unless the promise is ready and willing to perform his reciprocal promises.

Example:

All cash sales are examples of simultaneously or concurrent promise as delivery of goods and payment of price take place simultaneously.

2. Mutual and Independent: (Sec 52)

Where the order which reciprocal promises are to be performed is expressly fixed by the contract shall be performed in that order.

Example:

A and B contract that A shall build house for B at a fixed price. A promise to build the house must be performed before B promised to pay for it.

3. Conditional and Dependent:

When a contract consists of reciprocal promises such that one of them cannot be claimed till other has been performed.

Example:

A promise to construct B house, provide that B supplies cement and bricks. This will be a conditional and dependent promise, if B fails to supply cent and bricks

Let's Sum Up

In contract law, performance refers to the fulfillment of obligations outlined in a contract, where parties involved carry out their agreed-upon duties. An offer to perform signifies a party's readiness to fulfill their contractual obligations, often subject to specified terms or conditions. Devolution of joint liabilities and rights occurs when responsibilities and entitlements are transferred among multiple parties involved in a contract, typically through assignment or other legal mechanisms. Time and place of performance are crucial elements specifying when and where contractual obligations must be met, ensuring clarity and accountability. Reciprocal promises denote mutual commitments exchanged between parties, with each promise serving as consideration for the other, reinforcing the binding nature of the contract.

Section 2.1 Contract Law Essentials: Understanding Performance, Offers, and Rights"

Check your Progress – Quiz – 1

1. What does performance refer to in contract law?
   A) Negotiation process before contract formation
   B) Fulfillment of obligations outlined in a contract
   C) Withdrawal from a contract before completion
   D) Modification of contract terms after agreement

   Answer: B) Fulfillment of obligations outlined in a contract
2. Which of the following signifies a party's readiness to fulfill their contractual obligations?
   A) Breach of contract
   B) Acceptance of offer
   C) Offer to perform
   D) Termination of contract

   Answer: C) Offer to perform

3. Devolution of joint liabilities and rights occurs when:
   A) A contract is terminated by mutual agreement
   B) One party fails to fulfill their obligations under the contract
   C) Responsibilities and entitlements are transferred among multiple parties
   D) A contract is deemed void due to illegal object

   Answer: C) Responsibilities and entitlements are transferred among multiple parties
4. Why are time and place of performance important in contracts?
   A) To prolong the negotiation process
   B) To prevent parties from fulfilling their obligations
   C) To ensure clarity and accountability in fulfilling obligations
   D) To allow modification of contract terms anytime

   Answer: C) To ensure clarity and accountability in fulfilling obligations
5. Reciprocal promises in contract law represent:
   A) Commitments exchanged between parties, with each serving as consideration for the other
   B) One-sided commitments where only one party is bound
   C) Promises that can be revoked at any time before contract formation
   D) Oral agreements not enforceable by law

   Answer: A) Commitments exchanged between parties, with each serving as consideration for the other

2.2.1 DISCHARGE OF CONTRACT

Introduction:-

When the right & obligation arising out of the contract are distinguished the contract said to be discharged or terminated. The discharge of contract means that the parties are no more able under the contract.

2.2.2 Discharged by agreement:-

The contract may be discharged by mutual agreement of the concerned party. The right and obligation created by agreement can be discharged without their performances. The agreements may be either by express or implied.

i. **Actual performance:**

   The contract is said to have been performed, if both parties to the contract have performed their respective promises.

ii. **Attempted performance (or) Offer to perform (or) Tender:-**

   Tender is an offer to perform the obligation under the contract. When one party offers to perform its part of the promise and other party refuses to accept the performance.

2.2.3 Discharge by performance of contract:

Performance is the usual mode of discharge of contract. The contract is said to be discharged when parties to a contract perform their respective obligation which they have agreed to do. When the parties to a contract fulfill their obligation arising out of the

contract with in the time and in the manner prescribed, the contract is said to have been discharged by performance.

I. Novation:

The term notivation means substitution of a contract for the existing one. Novation implies a fresh contract in the place of the old one.

Types of Novation:

i. Novation involving changes of parties.
ii. Novation without changes of parties.

Example:

'A' owes 'B' Rs.10000. 'A' enter in to a agreement with 'B' and gives 'B' and gives

'B' mortgage of his 'A' estate for Rs.10000 in the place of debt of Rs.10000. This is new contract and terminates the old.

II. Alteration:

Alteration means a change in one or more of the material terms of the contract. The alteration is valid, when it is made with the consent of the parties.

Example:

'A' agrees to buy a car from 'B' for Rs.10000 and the payment is to be made after one month. Later on, 'A' request 'B' to accept the payment after 2 months. 'B'' accept the request the original contract is discharged by mutual consent.

III. Rescission:

Rescission means cancellation of a contract rescission may be total or partial.

Example:

'A' promises to supply certain goods 'B' on a certain day. Before the actual date performances 'A' and 'B' mutually agree that the contract will not be performed.

IV. Remission:

Remission may be declined as the acceptance of a contract lesser sum then what was contracted for a lesser fulfillment of the promise made.

Example:

'A' owes 'B' Rs.5000. 'A' pays to 'B' Rs.2000 to be paid at the time and place where Rs.5000 were payable and 'B' accepts it in satisfaction of the whole debt.

V. Waiver:

Waiver means abandonment a write which a person is entitled to consideration is not necessary.

Example:

'A' agrees to repair car of 'B'. 'B' later on forbids him to do so. 'A' is no longer bound to perform the promise the contract is terminated by waiver.

VI. Merger:

Merger takes place, when an inferior and superior right accruing to a party unclear accruing to the same party either under an agreement will vanish automatically.

Example:

'A' purchases the course which he was having on lease his right as a lessee will merge into his right as an owner. As right of a lessee is inferior to the right of an owner.

VII. Accord and satisfaction:

These two terms are used in English law the term accord may be defined as the promise to accept less amount then what is due under the contract satisfaction means payment or fulfillment of the lesser obligation.

Example:

'A' owes 'B' Rs.1000. 'B' agrees to accept Rs.500 in full satisfaction. This agreement is an accord and cannot be enforced but when Rs.500 is actually paid to 'B' who accepts them in full satisfactions of his claim of Rs.100. it is a valid discharge.

2.2.4 DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE:

A contract is discharge if the performance becomes impossible in other words there is no question of discharge of a contract which is entered into performs something. (ie) Obvious by impossible.

1. Initial impossibility:

It is the impossibility which exists at the time of formation of a contract.

Example:

'A' agreed with 'B' to discover a treasure by magic and 'B' agreed to pay Rs.5000 to 'A' for this act. The agreement is void on account of initially impossibility (or) subsequently to the formation of contract.

2. Subsequent impossibility:

Impossibility which arises subsequent to the formation of a contract is known as subsequent impossibility.

DISCHARGE BY LAPSE OF TIME:

A contract is discharge by lapse of time lapse. The period of limitations for simple contract is 3 years. If he 3 years expiry and condition fails a suit to recover his amount. The debtor is discharged from his liability.

Example:

A-B particular good ship England. Ship is accident, damage, destroyed. It is unknown they both party. So the contract is void.

2.2.5 DISCHARGE BY OPERATION OF LAW:

A contract may be discharged intelligent or indigently of the wishes of the party.

1. Unauthorized material alteration:

A material alteration made in a written document or contract by one party without the consent of the other, will make the whole contract void, an alteration which not affect the validity of the contract.

2. Death:

Death of the promise results in termination of the contract in case involving personal skill of ability. In other cases, the right and liability of the diseased person on to the legal represent able.

3. Insolvency:

A contract is discharges by the insolvency of one of the parties to it. When an insolvency court passes can "order of discharge".

4. Merger:

Merger takes place when an inferior right accruing to a party under a contract merger into a superior right accruing to the same parties either under the same contracts.

Example:

'A' purchases the house which he was having on lease, his right as lessee will merger into his rights as on owner. As right of losses is inferior to the right of an owner.

2.2.6 DISCHARGE BY BREACH OF CONTRACT:

The breach of contract means the failure of the party. To perform his obligation. A breach of a contract discharged by agreed party from performing his obligation breach of contract may either be actual breach of contract.

A. Actual breach of contract

Actual breach may take place at time the performance is due or during the performances of the contract.

Example:

'A' supplies 5 set of TV on 1apr 2013. He does not deliver the day. There is breach of contract.

B. Anticipatory breach of contract:

It is a declaration by one party of his intention not to perform his obligation under the contact.

1. He can get the damage claim.
2. Wait till the time of performance

2.2.7. REMEDIES FOR BREACH OF CONTRACT:

Parties to a lawful contract are accepted to perform their respective promises, when one of the party refuse to perform. His promise is said to have committed a

breach of contract. The injure of the aggrieve contract is entitled to bring action for damage.

The following for remedies are

- Suit for rescission
- Suit for damages
- Suit upon quantum merit
- Suit for specific performance
- Suit for injection

1. Suit for rescission:

Rescission means setting aside or cancelling. In other words, the term rescission may be defined as cancelling of a contract.

2. Suit for damages:

The damages are monetary compensation allowed to the injured party for the loss or injury suffered by him as a result of the breach of contract. The term damage is needed to mean compensation.

In money has a substitute for the promised performance. The fundamentals principal laying damages are to be awarded for losses which naturally arise from the contract the court will compel the party in breach to make goods the loss by paying to the other party.

2.2.8 KINDS OF DAMAGES

1. ordinary (or) general (or) compensatory damages:

Ordinary damages are those which are naturally calculated on the basis of actual loss.

Example:

'A' promises to supply 10 bags of wheat in a specific date. 'B' promise to pay the price on receipt of the goods. A does not supply the wheat bag on that day. 'B' needs not pay the price. He may treat this breach of the contract and damages from A.

2. Special damages:

Special damages are those resulting from a breach of contract. Under some special or unusual circumstances. These damages constitute the indirect loss suffered by the injured party due to the breach of contract.

Example:

'A', a builder constructed to build a house by the 1st jan 2013. So B may given possession of at that time to C, to whom B has constructed to let it. A built a house so badly and so before the 1st jan, it fell down and has to be rebuilt by B and is obliged to consequence

3. Exemplary damages (or) vindictive damages:

These are damages which are very small in amount. The nominal damages are awarded by way of compensation. For the loss suffered and not by way of punishment,

exemplary are granted for **injured** feeling suffering etc.,

Exemption of Exemplary damage

1. Breach of contract to marry

2. Dishonor of customers cheques by the bank without proper reason

D. Nominal damages:

These are damages which are very small in amount. The nominal damages are awarded only for name, sake even through the party.

Example:

'A' constructed to purchase a scooter form 'B' a dealer. But he fails to purchase scooter. However the demand the scooter far exceeds for supply and 'B' could sell the scooter agreed to be purchased without loss of profit. 'B' is entitling only to nominal charges.

3. Suit upon quantum meruit:

The phrase "Quantum merits" means "Payment in proportion" to the amount of work done or reasonable value of work done. A person can under certain circumstances claim payment of work done or goods supplied without any contract and in cases where the original contract as terminated by breach contract by one party or has become void or some reason.

4. Suit for specific performance:

Particularly to carry out the contract. The court may direct the party in breach to carry out his promise. According to the terms of the contract this is called specific performance.

5. Suit for injunctions:

An injunction is an order of the court restoring a person doing a particular act. Continue to the contract. The issuing order to the person.

2.2.9 QUASI CONTRACT

Quasi contract may a defined a "A transaction is which these is contract between the parties the law creates certain rights and obligation between them which are similar to those created by contract.

2.2.10 KINDS (OR) TYPES OF QUASI CONTRACT

- Supply of necessaries
- Payment by an interested person
- Benefit of the non-gratitude
- Responsibility of finder of goods
- Mistake (or) coercion

SUPPLY OF NECESSARIES

If a person incapable of entering into a contract, if a seller is supplied the necessaries to supplies in entitled to be reimbursed from the property of such incapable persons.

Example:

"A" supplies "B" a lunatic with necessaries suitable to his condition in life "A" is entitled to be reimbursed from "B" property.

PAYMENT BY AN INTERESTED PERSON

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

Example:

"B" holds land, on a lease granted by "A" but "A" did not pay the arrear amount. So his land is advertised for sale by the government. Here "B" may pay the amount.

Section 70 – Obligation of Person enjoying the benefits of a Non-Gratuitous Act:

If someone lawfully performs an act or delivers goods to another person without intending it to be a free service, and the other person benefits from it, they are liable to compensate the performer or return the goods.

The performer must prove that the act or delivery was lawful, not done gratuitously, and the other person benefited.

Section 71 – Responsibility of Finder of Goods:

If a person finds goods belonging to someone else and takes them into custody, they must:

Care for the goods as a prudent person would.

Not claim ownership of the goods.

Return the goods to the rightful owner if identified.

Section 72 – Money paid by Mistake or Under Coercion:

If someone receives money or goods due to a mistake or coercion, they are obligated to repay or return them.

Example: If someone pays municipal taxes mistakenly, they are entitled to reimbursement once the mistake is realized. Money paid under coercion, such as through oppression or extortion, is also recoverable.

Let's Sum up

In contract law, assignment involves the transfer of rights or obligations from one party to another. Remedies for breach of contract include various legal actions that parties can take when one fails to fulfill their contractual obligations, such as seeking damages or specific performance. Termination and discharge of contracts refer to the ways in which contracts can come to an end, either by mutual agreement, fulfillment of obligations, or breach. Quasi-contracts, on the other hand, are legal obligations imposed by courts to prevent unjust enrichment, typically arising when one party receives a benefit at the expense of another under circumstances where it would be unfair not to compensate the provider. Understanding these concepts is crucial for navigating contractual relationships and resolving disputes effectively.

Section 2.2 Navigating Contracts: Assignments, Breach Remedies, and Contract Termination

Check Your Progress – Quiz – 2

1. What is assignment in contract law?
   - A) Fulfillment of contractual obligations
   - B) Transfer of rights or obligations from one party to another
   - C) Legal action for breach of contract
   - D) Mutual agreement to end a contract

   Answer: B) Transfer of rights or obligations from one party to another
2. What are remedies for breach of contract?
   - A) Ways to modify contract terms
   - B) Legal actions parties can take when one fails to fulfill obligations
   - C) Negotiations to terminate a contract
   - D) Indemnification for contractual disputes

   Answer: B) Legal actions parties can take when one fails to fulfill obligations
3. How can a contract be terminated?
   - A) By fulfilling contractual obligations
   - B) By seeking damages for breach of contract
   - C) By mutual agreement, fulfillment of obligations, or breach
   - D) By assigning the contract to another party

   Answer: C) By mutual agreement, fulfillment of obligations, or breach
4. What are quasi-contracts designed to prevent?
   - A) Unilateral performance of contractual obligations
   - B) Enforcement of illegal contracts
   - C) Unjust enrichment
   - D) Contractual disputes

   Answer: C) Unjust enrichment

5. What is the main purpose of understanding assignment, remedies for breach of contract, termination and discharge of contract, and quasi-contracts?
   A) To complicate contractual relationships
   B) To navigate contractual disputes effectively
   C) To avoid entering into contracts
   D) To enforce contract terms aggressively

   Answer: B) To navigate contractual disputes effectively Check your progress

2.3 UNIT SUMMARY

In this comprehensive unit on contract law, learners have explored essential concepts essential to understanding contractual relationships. They've delved into the meaning of performance, which refers to fulfilling obligations outlined in contracts, offer to perform as an expression of readiness to fulfill those obligations, and the devolution of joint liabilities and rights, where responsibilities are transferred among multiple parties. Learners have also examined the importance of specifying time and place of performance and understanding reciprocal promises as mutual commitments exchanged between parties. Additionally, they've explored the assignment of contracts, remedies for breach of contract, and termination and discharge of contracts, along with quasi-contracts designed to prevent unjust enrichment. To reinforce their understanding, learners will undertake a task where they analyze a given contract scenario, identifying key elements such as offer, acceptance, consideration, and terms of performance, and propose remedies in case of breach or termination, fostering critical thinking and practical application of contract law principles.

2.4 Glossary

Performance	The fulfillment of obligations by parties according to the terms of the contract.

Offer to Perform	A party's expression of readiness to fulfill their contractual obligations, often subject to specified terms or conditions.
Devolution of Joint Liabilities & Rights	Transfer of responsibilities and entitlements among multiple parties involved in a contract.
Time and Place of Performance	Specified details outlining when and where contractual obligations must be met.
Reciprocal Promises	Mutual commitments exchanged between parties, with each promise serving as consideration for the other, reinforcing the binding nature of the contract.
Assignment of Contracts	Transfer of rights or obligations from one party to another.
Remedies for Breach of Contract	Legal actions parties can take when one fails to fulfill contractual obligations.
Termination and Discharge of Contract	Ways in which contracts can come to an end, either by mutual agreement, fulfillment of obligations, or breach.
Quasi-contracts	Legal obligations imposed by courts to prevent unjust enrichment, typically arising when one party receives a benefit at the expense of another under circumstances where it would be unfair not to compensate the provider.

2.5 Self – Assessment

1. Define performance in the context of contracts and discuss its importance in fulfilling contractual obligations under the Indian Contract Act, 1872.
2. Explain the concept of offer to perform in contracts according to the Indian Contract Act, 1872. How does it differ from actual performance?

3. Discuss the devolution of joint liabilities and rights in contracts as outlined in the Indian Contract Act, 1872. Provide examples to illustrate this concept.
4. Describe the significance of time and place of performance in contracts under the Indian Contract Act, 1872. What happens if these aspects are not specified in the contract?
5. Explain the concept of reciprocal promises in contracts as defined by the Indian Contract Act, 1872. How do they create obligations between parties?
6. Discuss the provisions related to the assignment of contracts under the Indian Contract Act, 1872. What are the requirements for a valid assignment?
7. Outline the remedies available for breach of contract as per the Indian Contract Act, 1872. How do these remedies aim to restore the aggrieved party?
8. Explain the various methods of termination and discharge of contracts under the Indian Contract Act, 1872. What circumstances lead to the termination of a contract?
9. Define quasi-contracts and discuss their role in situations where there is no formal contract but obligations exist under the Indian Contract Act, 1872.

2.6 Case Study

Apple Inc. vs. Qualcomm Inc.
Apple Inc. and Qualcomm Inc. engaged in a legal battle over patent licensing agreements. Apple accused Qualcomm of charging unfair royalties for its patented technologies used in iPhones, alleging breach of contract. The dispute resulted in lawsuits and counterclaims filed by both companies.
Netflix vs. Relativity Media LLC
Netflix entered into a contract with Relativity Media LLC to obtain streaming rights for a catalog of movies. However, Relativity Media filed for bankruptcy, leading to uncertainty over the fulfillment of contractual obligations. Netflix sought legal remedies to enforce the contract and protect its streaming rights.

Breach of Employment Contracts - Activision Blizzard
Activision Blizzard, a leading video game company, faced lawsuits from employees alleging breach of employment contracts and violations of labor laws. Employees accused the company of failing to fulfill contractual obligations related to workplace safety, fair compensation, and protection against discrimination and harassment.
Boeing vs. Suppliers in Aircraft Manufacturing
Boeing, an aerospace manufacturer, encountered delays and quality issues with aircraft components supplied by its subcontractors. Boeing alleged breach of contract by suppliers for failing to meet quality standards and delivery schedules, leading to disruptions in aircraft production and financial losses.
Breach of Contract in Sports Sponsorship - Nike vs. Lance Armstrong
Nike terminated its sponsorship contract with cyclist Lance Armstrong following revelations of doping and performance-enhancing drug use. Nike alleged breach of contract by Armstrong for violating the terms of the sponsorship agreement, which included maintaining ethical conduct and reputation.

2.7 Task

- ✓ Identify and explain the key terms and clauses of the contract, including the scope of work, delivery schedules, quality standards, and payment terms.
- ✓ Assess whether Global Parts Ltd. has fulfilled its contractual obligations according to the terms of the agreement. Provide evidence to support your assessment.
- ✓ Discuss the potential legal remedies available to Tech Innovate Inc. in case of breach of contract by Global Parts Ltd., such as seeking damages, specific performance, or termination of the contract.
- ✓ Provide recommendations on how Tech Innovate Inc. should proceed to resolve the contract dispute effectively, considering both legal and practical implications.

2.8 E – Content

S. No	Topics	E – Content Link	QR Code
1	Performance Of Contracts	https://youtu.be/QrFWCluemA0?si=D4pC_HBKbCjpXoVq	
2	How is a contract formed	https://youtu.be/3JE9jbWdyU0?si=l8-mWtbGkXYO4NhW	
3	Remedies for Breach of contract	https://youtu.be/LuSBV0CSx1E?si=_TvD0V_8fqUuA5pr	
4	Quasi Contract	https://youtu.be/5auaxv4tCfo?si=j8GEGh0225gYoWey	

2.9 Reference

https://www.geeksforgeeks.org/performance-of-contract-under-indian-contract-act/

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CONTRACT OF INDEMNITY AND GUARANTEE

Self-Learning Material Development – STAGE – 1

Contract of Indemnity and Guarantee
Contract of Indemnity and Contract of Guarantee - Extent of Surety‘s Liability, Kinds of Guarantee, Rights of Surety, Discharge of Surety

UNIT OBJECTIVES

The objectives of this unit module are to comprehensively understand the concepts of Contract of Indemnity and Contract of Guarantee, including the extent of surety's liability, kinds of guarantee, rights of surety, and discharge of surety. By the end of the module, learners should be able to differentiate between these two types of contracts, analyze the liabilities and rights of the parties involved, and apply their understanding to evaluate real-world scenarios. Through case studies, discussions, and practical exercises, learners will develop the skills necessary to navigate complex contractual relationships and effectively advise parties on matters related to indemnity and guarantee contracts.

Unit Module Structuring

- A concepts of Contract of Indemnity and Contract of Guarantee.
- Explore the extent of liability of a surety under a contract of guarantee.
- Understand the extent of a surety's liability under a contract of guarantee.
- Identify the various kinds of guarantees and their legal implications.
- Discuss the rights conferred upon a surety and the circumstances under which they may be discharged from their obligations.

STAGE – 2 – Modules Sections and Sub-sections structuring

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3.1.1 MEANING OF CONTRACT OF INDEMNITY

'To indemnity' means to compensate or make good the loss. A contract of indemnity is a contract in which one person promises to protect or compensate the other for the loss suffered by him due to the contract of the promisor or any other person.

3.1.2 Definition of Contract of Indemnity:

According to section 124 of Indian contact act "A contract by which one party promises to save the other from loss caused to him by the contract of the promisor himself or by the contract of any other person, is called a contract of indemnity.

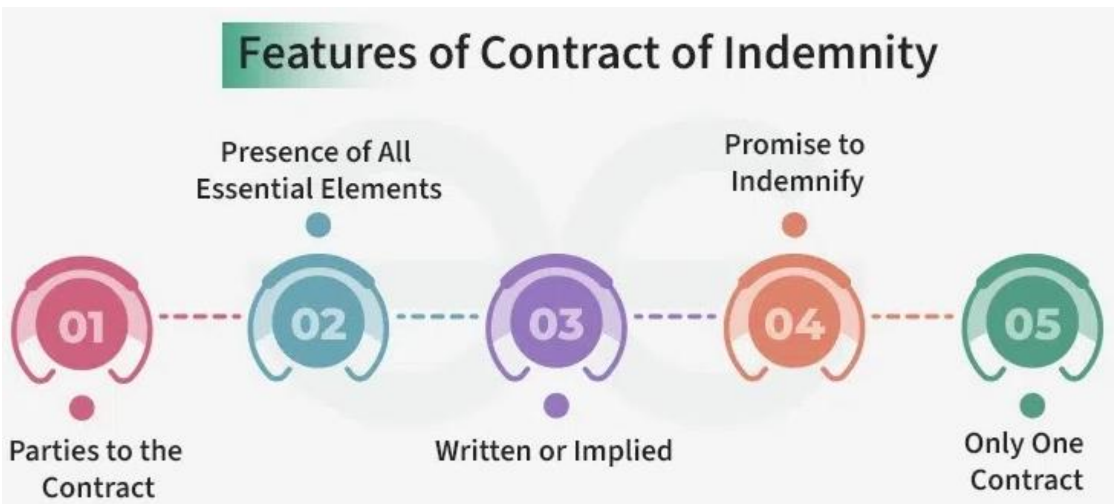
Parties:

A contract of indemnity has two parties. The promisor or indemnifier and the promisee or indemnified or indemnity holder.

The objective of contract of indemnity is essentially to protect the promisee from the anticipated (future) loss. A person who promises to make good the loss, that is, the promisor is called the indemnifier and the person whose loss is to be made good, that is, the promise is called the indemnity holder.

Example: A and B go into a shop. B says to the shopkeeper. Let him (A), have the goods. I will pay the amount. A contract of indemnity is really a class of contingent contracts. A contract of indemnity may be express or implied.

3.1.3 Essentials of a valid contract of indemnity

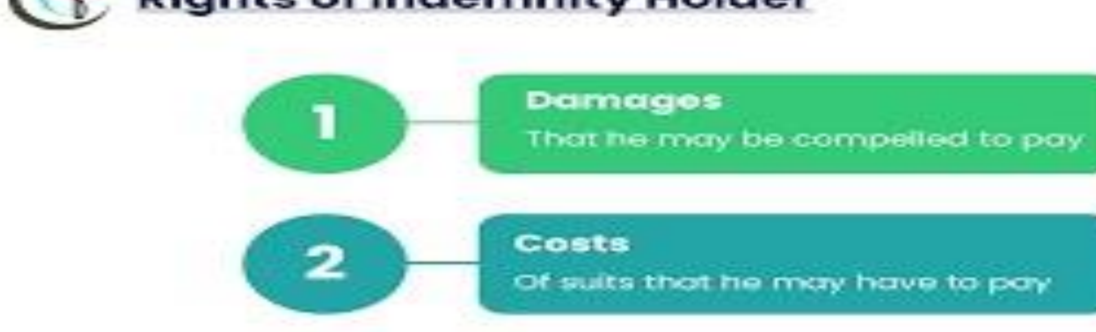


1. The contract of indemnity must contain all the essentials of a valid contract- capacity of parties, free consent, consideration etc.
2. It is a contract between two parties. One person promises to save the other from any loss.
3. It may be express or implied.
4. The loss may be caused by the contract of the promisor himself or any other person.

3.1.4 Rights of indemnity holder (indemnified)

An indemnity holder is entitled to recover from the promisor.

1. All costs which he may be compelled to pay such suit if in bringing or defending such suits. But the indemnified should have acted as any prevent man would act under similar circumstances in his own or with the authority of the indemnifier.
2. All should which he may have paid under the terms of any compromise of any such suit. The compromises should not be contrary to the order of the indemnifier and should be authorized by the indemnifier.



Rights of indemnifier:

The rights of the promisor are virtually the same as those of the surety in a contract of guarantee.

Time of commencement of the indemnifier's liability:

1. The Indian contract act does not state the time of the commencement of the indemnifier liability under the contract of indemnity
2. Different high courts have been observing different rules in this connection.
3. Some high courts have held that the indemnifier is not liable until the indemnifier has incurred an actual loss.

3.1.5 CONTRACT OF GUARANTEE

A guarantee may be either oral or written. It may be express or implied.

Example: A gives a loan of Rs. 1000 to B and c promises to A that if B does not repay the loan,he will pay.

Parties:

The person who gives the guarantees 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 'creditors'.

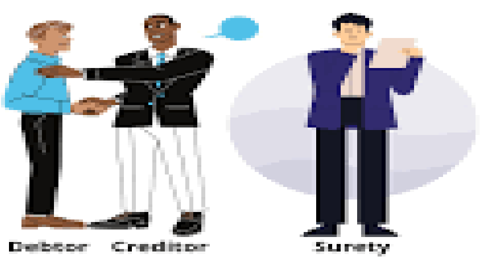
In the above example,

A is the creditor

B is the principal debtors

C is the surety (guarantor).

3.1.6 ESSENTIAL FEATURES OF A CONTRACT OF GUARANTEE



1. Concurrence:

A contract of guarantee requires the concurrence of all the 3 parties, to it, that is the principal debtor, the creditor and surety.

2. Primary liability in some person:

There must be a primary liability in some person other than surety. The word 'liability' is used in the definition of guarantee means "a liability which is enforceable at law"

The primary liability in a contract of guarantee is that of the 'principal debtor'. The liability of the surety is secondary. It arises only when there is a default by the principal debtor.

3. Essentials of a valid contract:

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

Such as there must be lawful consideration, lawful object, there must be free consent etc.

4. writing not necessary:

A guarantee may be either oral or written. It may be express or implied.

Implied guarantee maybe inferred from course of conduct of the parties concerned. But in England, a guarantee must be in writing and signed by the party to be charged.

3.1.7 INVALID GUARANTEE

A contract of guarantee is invalid in the following cases:

(i) Misrepresentation

(ii) Concealment

(iii) Not joining by co-surety

3.1.8 KINDS OF CONTRACT OF GUARANTEE

A guarantee may usually be given for:

(i) The repayment of a debt

(ii) The repayment of the price of goods sold on credit

(iii) Good conduct or honesty of a person employed with a particular person.

Mainly there are 2 types of contract of guarantee

They are

(i) Simple (specific) guarantee and

(ii) Continuing guarantee

1. Simple guarantee:

Simple guarantee is one in which guarantee is given for a single specific debt Transaction. It comes to an end as soon as liability under that transaction ends. A specific Guarantee once given is irrevocable. It is other called as specific guarantee.

2. **Continuing guarantee:**

A continuing which extends to a series of transaction is called a continuing guarantee.

Let's Sum Up

In contract law, both Contract of Indemnity and Contract of Guarantee serve to manage risk and provide security in transactions. A Contract of Indemnity involves one party promising to compensate another for any loss or damage incurred due to specified events, whereas a Contract of Guarantee involves a surety promising to fulfill the obligations of a principal debtor in case of default. Within Contracts of Guarantee, there are various kinds, including specific, continuing, conditional, and secured guarantees, each with distinct characteristics and legal implications. Understanding these concepts and distinctions is crucial for parties entering into such contracts, as well as for legal advisors providing guidance and representation.

Section 3.1 Understanding Contracts: Indemnity vs. Guarantee

Check Your Progress – Quiz – 1

1. Which of the following is a feature of a Contract of Indemnity?
   a) It involves a primary obligation
   b) The indemnifier's liability arises only on the happening of a specified event
   c) It is a secondary obligation
   d) Both parties have primary obligations

   Answer: b) The indemnifier's liability arises only on the happening of a specified event
2. In a Contract of Guarantee, who is primarily liable to the creditor?
   a) Guarantor
   b) Principal debtor
   c) Creditor
   d) Indemnifier

   Answer: b) Principal debtor
3. What kind of guarantee is provided when a creditor takes a guarantee from the debtor that he will fulfill his obligations?
   a) Specific guarantee
   b) Continuing guarantee
   c) Personal guarantee
   d) Performance guarantee

   Answer: c) Personal guarantee
4. Which of the following is not a type of guarantee?
   a) Specific guarantee
   b) Continuing guarantee
   c) Implied guarantee
   d) General guarantee

   Answer: d) General guarantee

5. A contract where one party promises to indemnify the other for any loss is called:
    a) Contract of Guarantee
    b) Contract of Insurance
    c) Contract of Indemnity
    d) Contract of Surety

    Answer: c) Contract of Indemnity

3.2.1 REVOCATION OF CONTINUING GUARANTEE

A Continuing guarantee may be revoke regards future transactions under the following circumstance

(i) By Notice:

A Continuing guarantee may at any time be revoked by notice to the creditor. The liability of surety causes from the date of his service of notice upon the creditor. However, surety remains liable for the transaction entered into by him before giving notice

(ii) By Death of Surety:

The death of surety operates in the absence of any contract to the contrary revocation of continuing guarantee, so far as regards future transactions.

(iii)By other modes:

A continuing guarantee is also revoked.

(i) By novation

(ii) By variance in the terms of contract

(iii) By relevance or discharge of the principal debtor

(iv) By loss of security

(v) By compounding with the principal debtor

3.2.2 COMPARISON BETWEEN CONTRACT OF INDEMNITY AND CONTRACT OF GUARANTEE:

BASIS OF DISTINCTION	CONTRACT OF INDEMNITY	CONTRACT OF GUARANTEE
Parties	There are two parties in a contract of indemnity, namely the indemnifier and the indemnity holder.	There are three parties in a contract of guarantee, namely the principal debtor, the creditor, and the surety.
No. of contracts	It consists of only one contract between the indemnifier and the indemnity holder. The indemnifier promises to indemnify the indemnified/indemnity holder in event of a certain loss.	It consists of three contracts- A contract between principal debtor and creditor wherein the debtor promises to perform his obligation/make payment. The contract between surety and creditor wherein the surety promises to perform the aforesaid obligation/make the payment

		if the principal debtor makes a default. An implied contract between the surety and the principal debtor. The principal debtor bounds himself to indemnify the surety for the sum that he has paid under the guarantee undertaken by him.
3. Nature of liability	The liability of the indemnifier is primary. The liability in a contract of indemnity is contingent in the sense that it may or may not arise.	The liability of the surety is a secondary one, i.e., his obligation to pay arises only when the principal debtor defaults. Liability in a contract of guarantee is continuing in the sense that once the guarantee has been acted upon, the liability of the surety automatically arises. However, the said liability remains in suspended animation until the debtor makes default.
Default of third person	The liability of an indemnifier is not conditional on the default of somebody else. For example, Mrinal promises the shopkeeper to pay, by telling him that, “Let Anil have the	Liability of surety is conditional on the default of the principal debtor. For example, Anil buys goods from a seller and Mrinal tells the seller that if Anil doesn’t

	goods, I will be your paymaster". This is a contract of indemnity as the promise to pay by Mrinal is not conditional on default by Anil.	pay you, I will. This is a contract of guarantee. Thus, the liability of Mrinal is conditional on non-payment by Anil.
Principal debt	No requirement of the principal debt.	Principal debt is necessary. (refer to the previous example)
Whether subsequent recovery is possible	Once the indemnifier indemnifies the indemnity holder, he cannot recover that amount from anybody else.	After the surety has made the payment, he steps into the shoes of the creditor and can recover the sums paid by him from the principal debtor.
Whether a contract has to be in writing or can be oral as well	In India, contracts of indemnity may be either oral or written.	In India, a contract of guarantee may be either oral or written.

3.2.3. SURETY LIABILITIES

i. The surety is liable for what a principal debtor is liable.

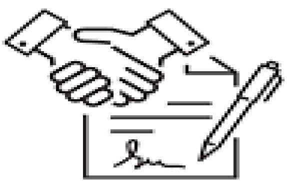
ii. The liability of the surety is only secondary, collateral or contingent. His liability arises only on default by the principal debtor.

iii. Surety is liable only when principal debtor does not pay. So the surety is sometimes called favored debtor.

iv. A discharge of the principal debtor by operation of law (example, insolvency) does not discharge the surety.

v. The liability of a surety does not to an end upon the death of the principal debtor.

3.2.4 RIGHTS OF SURETY



A surety has rights against

(a) The creditor

(b) The principal debtor

(c) The co- sureties.

(A) Rights of surety against the creditor

(i) Before payment of the guaranteed debt:

A surety may after the guaranteed debt has become due and before he is called upon to pay, require the creditor to sue the principal debtor. However, the surety will have to indemnify the creditor for any expenses or loss resulting there from.

(ii) Right to set-off:

The surety is also entitled to the benefit of any set-off or counter-claims which the principal debtor might possess against creditor.

(iii) On payment of the guaranteed debt:

In this case, the surety is subrogated to all the rights of the creditor and gets the rights to demand from the creditor at the time of payment all the securities whether they had been received before, at or after the creation of the guarantee.

(iv) Rights to equities:

On payment of the guaranteed debt, the surety is entitled to all equities which the creditor could have enforced not only against the principal debtor himself, but also against persons claiming through him.

(v) Rights of subrogation:

Where guaranteed debt has become due and the surety has paid all that he is liable for, he is invested with all the rights which the creditor had against the principal debtor.

B. Rights against principal debtor:

(i) Right to be relieved of liability:

Before the payment has been made the surety can compel the principal debtor to relieve him from liability by paying off the debt.

(ii) Right to indemnity:

In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor or payment properly made.

C. Rights against co-sureties

When a certain debts they are two or more sureties is guarantee is called co-sureties.

(i) Liability of co- surety bound in different sum:

Co-sureties who are bound in the limits of their respective obligations permit.

(ii) Release of co – surety:

Where there are co – sureties release by the creditor of one of them does not discharge the others, neither does it free the surety to released from his responsibility to the other.

3.2.5 DISCHARGE OF SURETY

1. BY REVOCATION

(i) Revocation by surety:

A guarantee may be specific guarantee or continuing guarantee. A specific guarantee once given irrevocable. A continuing guarantee may at any time revoked by the surety.

(ii) Revocation by death:

The death of the surety operate, in the absence of any contract to the contrary, as revocable of continuing guarantee, so far as regards to future transaction.

(iii) Revocation by novation:

Novation means the substitution of a new contract either between the same parties or different parties for the old one. Thus, novations of a contract guarantee discharge it.

2. BY THE CONDUCT OF THE CREDITOR

(i) Variance in terms of contract:

When term of the contract between the principal debtor and the creditor are varied without the surety's consent, the surety is discharged.

(ii) Compounding by creditor with principal debtor:

A contract between the creditor and the principal debtor, by which the creditor make a promise to give time to or not sue, the principal debtor, discharge the surety, unless the surety assent to such contract.

(iii) Relevance or discharge:

The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

(iv) Creditors act or omission impairing eventual remedy:

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

(v) Loss of security:

The words ‘loss’ here means loss because of carelessness or negligence. If the creditor loses or without the consent of the surety, parts with any security given to him at the time of the contract of guarantee, the surety is discharged from liability.

3. BY INVALIDATION OF CONTRACT

(i) Misrepresentation:

Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction is invalid.

(ii) Concealment:

Any guarantee which the creditor has obtained by means of keeping silence as the material circumstances is invalid.

(iii) Failure of co-surety to join:

When a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co- surety, the guarantee is not valid if that other person does not join.

(iv) Failure of consideration:

Where in a contract of guarantee there is a failure of consideration as guarantee the creditor and the principal debtor, the surety is discharged.

Let's Sum up

The concept of a revocation of continuing guarantee encompasses the termination of a guarantor's obligation to a creditor. This revocation typically occurs when the guarantor communicates their desire to withdraw from the agreement or when there's a material change in the terms of the original contract. The extent of the surety's liability refers to the maximum amount for which the guarantor can be held responsible under the guarantee agreement. The rights of the surety include the right to demand information about the principal debtor's obligations and the right to indemnification from the debtor for any payments made on their behalf. The discharge of the surety transpires when the guarantee obligation is fulfilled, terminated, or becomes unenforceable, releasing the guarantor from any further liability.

Section 3.2 Contracts Demystified: Indemnity vs. Guarantee

Check your progress – Quiz – 2

1. What is the primary difference between a Contract of Indemnity and a Contract of Guarantee?
   a) The presence of consideration
   b) The number of parties involved
   c) Extent of liability
   d) Mode of acceptance

   Answer: c) Extent of liability
2. In a Contract of Guarantee, what are the rights of the surety?
   a) Right to demand payment directly from the debtor
   b) Right to benefit of creditor's securities
   c) Right to terminate the contract unilaterally
   d) Right to withhold information from the creditor

   Answer: b) Right to benefit of creditor's securities
3. When does a surety get discharged from his obligations?
   a) Upon the death of the creditor

b) By the mere indulgence of the creditor to the debtor
c) By variation in terms of the contract without the consent of the surety
d) None of the above

Answer: c) By variation in terms of the contract without the consent of the surety

4. What is the term for the amount for which the surety is liable in a Contract of Guarantee?
   a) Guarantee
   b) Premium
   c) Indemnity
   d) Liability

   Answer: a) Guarantee

5. Which case established the principle that a guarantee may be either oral or written?
   a) State of Bombay v. R.M.D. Chamarbaugwala
   b) Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram
   c) Lampleigh v. Braithwait
   d) Carlill v. Carbolic Smoke Ball Company

   Answer: b) Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram

3.3 UNIT SUMMARY

Contracts of Indemnity involve one party promising to cover any losses or damages suffered by another party due to specific events. These contracts are like insurance policies, where one person agrees to compensate another if something goes wrong. In Contracts of Guarantee, three parties are involved: the creditor, the debtor, and the guarantor. The guarantor promises to pay the creditor if the debtor fails to do so. Guarantees are often used in loans or business transactions. The guarantor's responsibility is as serious as the debtor's, and they have rights, like using the creditor's securities for protection. If the terms change without their consent or if they fulfill their

obligation, the guarantor can be released. These concepts are illustrated through real-life examples to help learners grasp their importance in everyday situations.

3.4 Glossary

Contract of Indemnity	A promise by one party to compensate another for any loss or damage suffered as a result of specified events or circumstances.
Contract of Guarantee	A promise by a surety to fulfill the obligations of a principal debtor in case of default.
Surety	The party who provides the guarantee in a contract of guarantee, undertaking to fulfill the obligations of the principal debtor.
Principal Debtor	The party who owes obligations to a creditor, for which a guarantee is provided by a surety.
Specific Guarantee	A guarantee limited to a particular transaction or obligation.
Continuing Guarantee	A guarantee that extends to cover all future transactions between the creditor and the principal debtor until revoked.
Conditional Guarantee	A guarantee that is contingent upon the occurrence of a specified event or condition.
Secured Guarantee	A guarantee supported by collateral or security provided by the principal debtor.

Rights of Surety	The legal entitlements of a surety, including the right to demand indemnification, subrogation, and contribution from co-sureties.
Extent of Liability	The scope of a surety's liability under a contract of guarantee, which may be limited by the terms of the guarantee or discharge upon fulfillment of obligations.
Principal Debtor	The party whose debt or obligation is guaranteed by the surety.

3.5 Self – Assessment

1. Define a contract of indemnity and a contract of guarantee according to the Indian Contract Act, 1872. What are the key differences between these two types of contracts?
2. Explain the extent of the surety's liability in a contract of guarantee as outlined in the Indian Contract Act, 1872. Under what circumstances can the surety's liability be limited?
3. Discuss the different kinds of guarantees recognized under the Indian Contract Act, 1872, including specific, continuing, and continuing guarantees for a specified period.
4. Describe the rights of a surety in a contract of guarantee as provided by the Indian Contract Act, 1872. How do these rights protect the surety's interests?
5. Explain the various ways in which a surety can be discharged from their obligations under a contract of guarantee according to the Indian Contract Act, 1872. Provide examples to illustrate each method of discharge.

3.6 Case Study

Enron Corporation Fraud

Enron Corporation, a former energy company, collapsed in 2001 due to accounting fraud and corporate misconduct. Several banks and financial institutions had provided guarantees for Enron's loans and debts, resulting in substantial losses when the company went bankrupt. **Legal Issue:** Analysis of the extent of liability of banks and financial institutions acting as sureties for Enron's obligations under contracts of guarantee.

Housing Loan Guarantee

A bank provides a mortgage loan to an individual for purchasing a house, with the individual's parents acting as guarantors. The individual defaults on the loan, leading to foreclosure proceedings. **Legal Issue:** Examination of the rights and liabilities of the parents as sureties under the contract of guarantee, including their obligation to fulfill the defaulted loan obligations.

Performance Bond in Construction

Background: A construction company enters into a contract with a client to build a commercial complex. As part of the contract, the construction company provides a performance bond issued by a surety company to guarantee completion of the project. **Legal Issue:** Analysis of the legal implications of the performance bond, including the surety's obligations in case of default by the construction company.

Union of India v. Raman Iron Foundry: In this case, the Supreme Court of India examined the nature of a bank guarantee and its enforceability. The court held that a bank guarantee is an independent contract between the bank and the beneficiary, and the bank's liability is not affected by disputes between the beneficiary and the

principal debtor. This case emphasizes the importance of understanding the independence of bank guarantees and their significance in commercial transactions.
Bharatiya Agro Industries Foundation v. Bank of Maharashtra: This case involved a dispute over the invocation of a bank guarantee. The court ruled that a bank guarantee can be invoked by the beneficiary if the terms of the guarantee are satisfied, irrespective of any dispute between the principal debtor and the beneficiary. This case underscores the principle that a bank guarantee is a separate and independent contract, and its enforcement is based on strict compliance with its terms.
Satya Jain v. Anis Ahmed Rushdie: In this case, the Delhi High Court examined the scope of a personal guarantee provided by an individual for a loan obtained by a company. The court held that the personal guarantee extended to cover all liabilities of the company, including future debts, even if the guarantee agreement did not specifically mention such liabilities. This case highlights the broad interpretation given to personal guarantees and their implications for guarantors.

3.7 Task

Learners to identify:

- ✓ The parties involved (e.g., creditor, debtor, surety, indemnifier).
- ✓ The nature of the obligation or risk being addressed.
- ✓ Whether a Contract of Indemnity or Contract of Guarantee would be suitable and why.
- ✓ The extent of the surety's liability in each scenario.
- ✓ The specific kind of guarantee that would apply (e.g., specific guarantee, continuing guarantee).
- ✓ The rights of the surety and how they may be exercised.
- ✓ Possible methods for the discharge of the surety's obligations.

3.8 E – Content

S. No	Topics	E – Content Link	QR Code
1	**Indemnity Contracts & It's Features**	https://youtu.be/BiEZ_V6N2mY?si=-CU1kcTERLEVtJDU	
2	**Guarantee Contracts & It's Features**	https://youtu.be/qCdkfNa4RXE?si=T-36__cuD4dgC1W4	
3	**Rights of a Surety**	https://youtu.be/ExQau7014Lo?si=KsaArzXXxIhWBQw2	
4	**Discharge of Surity**	https://youtu.be/fMj8yRnknQU?si=5SjwZ4NzBrIBD-9J	

3.9 Reference

https://www.indiafilings.com/learn/contract-of-indemnity-and-guarantee/

https://www.legalserviceindia.com/legal/article-6298-nature-and-extent-of-surety-s-liability.html

https://lawnotes.co/types-of-guarantee/

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BAILMENT AND PLEDGE

Self-Learning Material Development – STAGE – 1

Bailment and Pledge
Bailment and Pledge–Bailment–Concept–Essentials – Classification of Bailments, Duties and Rights of Bailor and Bailee–Law of Pledge–Meaning–Essentials of Valid Pledge, Pledge and Lien, Rights of Pawner and Pawnee

UNIT OBJECTIVES

This content aims to provide a comprehensive understanding of Bailment and Pledge, covering their concepts, essentials, classification, duties, and rights of the parties involved. Learners will explore the fundamental principles of bailment, including its definition and the essential elements required for its formation. They will also delve into the classification of bailments based on their nature and purpose, as well as the respective duties and rights of the bailor and bailee. Additionally, learners will study the concept of pledge, its essentials for validity, and its relationship with the law of lien. The content further examines the rights and obligations of the pawner (pledgor) and pawnee (pledgee) in a pledge arrangement, providing insights into the legal framework governing such transactions.

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4.1. INTRODUCTION OF BAILMENT:

The word ‘Bailment’ is derived from the ‘french’ word ‘baillier’ which means ‘to deliver’. It means any kind of ‘handing over’.

4.1.1 MEANING AND DEFINITION OF BAILMENT:

Bailment involves changes of possession goods from one person to another for some specific purpose. Bailment signifies a contract resulting from delivery. It involves changes of possession and not transfer of ownership.

Example:

(i) Hiring of furniture

(ii) Delivering a car for repairs etc.

Parties:

The person delivering the goods is called the bailor. The person to whom they delivered is called the bailee. The transaction is called 'bailment'.

Definition of Bailment:

"According to the section 148of the Indian contract act a bailment is the delivery of goods by one person to another for some purpose is accomplished, be returned or

otherwise disposed of according to the directions of the person delivery them"

4.1.2 ESSENTIALS OF REQUISITES TO BAILMENT:

1. **Contract**
2. **Delivery of goods**
3. **Specific purpose**
4. **Return of goods**

(i) Contract:

Bailment is based upon a contract between bailor and bailee. The agreement may be express or implied. The agreement is that goods are to be returned when the purpose is fulfilled.

The condition is that the goods should be returned either in the original form or in altered form.

Example: delivering of cloth to a tailor for making suit.

(ii) Delivery of goods:

Bailment involves change of possession. A bailment necessarily involves delivery of possession of goods by bailor to bailee. The ownership of the goods is retained by the bailor.

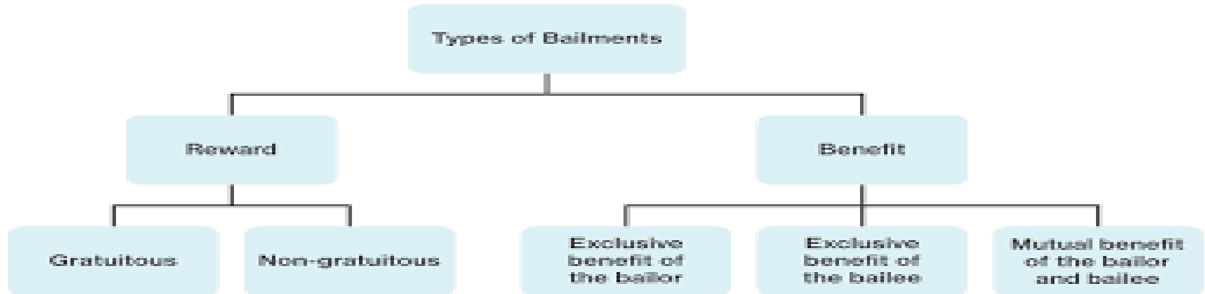
(iii) Specific purpose:

The delivery of goods from bailor to bailee must be for some purpose. If goods are delivered by mistake to a person, there is no bailment.

(iv) Return of goods:

Bailment is made for some purpose and after the accomplishment of the purpose, the foods should be returned to the bailor. The bailment is concerned with only movable goods.

4.1.3 KINDS OF BAILMENT



I. Bailment may be classified on the basis of benefits:

(i) Bailment for the exclusive benefit of bailor: It may be in the case of safe custody, where goods are delivered to a neighbor for safe custody without any while the bailor goes away.

(ii) Bailment for the exclusive benefit of bailee: It may be in the case of a delivery of a thing to someone else for his use without any charge. For example delivery of scooter to a friend to go somewhere.

(iii)Bailment for mutual benefit: In this type of bailment delivery of goods is done with some consideration, for example delivering a scooter to a mechanic for repairs.

II. Kinds on the basis of reward:

(i) Gratuitous bailment:

It is one in which neither bailor nor bailee is entitled to any remuneration, for example A gives his book to B for reading.

(ii) Non- Gratuitous bailment:

It is a bailment for some charges. Either the bailor or the bailee is entitled to remuneration, for example, cycle given for repairing.

4.1.4 RIGHTS OF BAILOR

1. If bailee does not take care and destruction of goods takes place, bailer can claim compensation.
2. If bailee uses the goods for un-authorized purposes, bailer has the right to claim compensation.
3. Bailor has the right to claim return of goods.
4. Bailor has right to claim not only delivered goods but also accruals on goods if any.
5. In case where bailee has mixed the goods and they are of sufferable nature, bailer can claim cost of separation from bailee.
6. In case where the goods are of insufferable nature, bailor has right to claim compensation.

7. Bailor has right to repudiate the Contract of bailment whenever he wants but, by doing so, if bailee comes across any suffering, bailer has to compensate.

4.1.5 RIGHTS OF BAILEE

Following are the important right of bailee:

1. Recovery of Losses

If the bailee suffers a loss or damage due to the defects of the bailed goods he has a right to recover it from the bailor.

2. Compensation Right

It is the right of the bailee that he should received compensation from the bailor for any loss which he has suffered due to defects in the title of the bailor.

3. Right of Retain

Sometimes bailee performs some services for the purpose of bailment. In such cases bailee has a right to detain such bailed goods until he receives the reward of his services.

4. Recovery of Expenses

All the expenses incurred for the bailment may be recovered by the bailee from the bailor.

5. Right of Indemnity

Any loss which bailee has sustained may recover from the bailor on the following grounds, "The bailor was not entitled to make the bailment, or receive back the goods, or to give directions in this respect.

4.1.6 DUTIES OF BAILOR

1. **Duty to dispose faults*:***

Bailor should disclose faults present in goods at the time of making delivery. Faults are of two types namely; Known faults and Un-known faults. On the other hand bailments also are of two types namely

Gratuitous bailment and Non-Gratuitous bailment. In case of gratuitous bailment, bailer is liable to compensate for bailee injuries arising out of known faults. In Gratuitous bailment, bailer is not answerable to un-known faults. In case of Non-Gratuitous bailment, bailer is answerable to both known faults and Un-known faults.

2**. Duty to contribute for expenses**:

Bailor should contribute for expenses incurred by bailee. In case of Gratuitous

bailment, bailor need not contribute for ordinary expenses and extra ordinary expenses or to the contributed by bailer. In case of Non-Gratuitous bailment, bailer should contribute for both ordinary expenses and extra ordinary expenses.

3. Duty with regard to defective title*:*

In case where bailor has delivered the goods with defective title, the bailee may come across suffering from the side of true owner due to bailors defective title. In such a case bailer with defective title should compensate bailee.

4. **Duty to Indemnify:**

Principal of indemnity operates between bailer and bailee, where bailer becomes implied indemnifier and bailee becomes implied indemnity holder. So bailer has duty to indemnify bailee.

5. **Duty to take the Goods back:**

After fulfillment of purpose bailee returns the goods to bailer. Then bailer should take them back. If bailer refuses to take the goods back, bailer has to compensate bailee.

4.1.7 DUTIES OR RESPONSIBILITIES OR LIABILITIES OF THE BAILEE:-

Following are the liabilities of the bailee:

1. Care of Goods

It is the duty of the bailee that he should take as much care of the goods as a man of ordinary prudence takes care about his own goods.

2. Act According the Bailment

Any act of the bailee should not be against the conditions of the contract. Otherwise contract will be voidable at the option of the bailor.

3. Mixing is Not Allowed

It is the duty of the bailee that he should keep the bailor goods separate from his own goods. If he mixed without the consent of the bailor then he himself will bear the expenses of separation and loss.

4. Should Not Deny the Title

It is the duty of the bailee that he should not deny or change the title of the bailor about the ownership of goods.

5. Default of Responsibility

It is the duty of the bailee that he should not deny or change the title of the bailor about the ownership of goods.

6. Return of Goods

It is the duty of the bailee to return or deliver the goods bailed according to the bailors conditions.

7. Return at Proper Time

It is the duty of the bailee that he should return the goods bailed as the time or purpose of bailment completes without the demand of the bailor.

8. Return of Profit

It is also the duty of the bailee that he should deliver the profit or any increase occurred in the bailed goods to the bailor.

9. Proper Use of Goods

It is the duty of the bailee that he should use the goods according the conditions of the contract. If he misuses the goods then he will compensate the loss to the bailor.

4.1.8 TERMINATION OF BAILMENT

1. When the period or purpose is over:

In case the bailment is for a specific period or purpose, it is terminated on the expiry of that period or on the completion of the purpose.

2. When the bailee makes unauthorized use of the goods:

In case the bailee makes unauthorized use of the goods bailed, the bailment is voidable at the option of the bailor.

3. When the subject-matter is destroyed or becomes illegal:

In case the subject-matter is destroyed or becomes illegal, the bailment is terminated.

4. At the will of the bailor:

Where the bailment is gratuitous, it can be terminated merely at the sweet will of the bailor. However, the termination should not cause loss to the bailee in excess of the benefit derived by him. In case the loss exceeds the benefit derived by the bailee, the bailor must compensate the bailee for such a loss (Sec. 159).

5. When the bailor or bailee dies:

A gratuitous bailment is terminated by the death of the bailor or bailee.

Let's Sum Up

Embark on a journey into the world of property transfers with our comprehensive guide to bailment and pledge. Learn about the temporary transfer of possession through bailment, where goods change hands for various purposes, from safekeeping to mutual benefit. Delve into the duties and rights of both parties involved, understanding the responsibilities of the bailor in delivering property and the obligations of the bailee in its care. Discover the intricacies of pledge, where personal property serves as security for debts, exploring the essentials of a valid pledge and the rights of both pledgor and pledgee. Through real-life case studies and engaging exercises, grasp the practical applications of these legal concepts and emerge equipped to navigate property transactions with confidence.

Section4.1. Navigating Property Transfers: Understanding Bailment and Pledge"

Check your Progress – Quiz – 1

1. What is bailment?
   - A) Permanent transfer of property
   - B) Temporary transfer of possession of property
   - C) Exchange of goods
   - D) None of the above

   Answer: B) Temporary transfer of possession of property
2. Which of the following is not a classification of bailments?
   - A) Safekeeping bailments
   - B) Gratuitous bailments
   - C) Lease bailments
   - D) Bailments for hire

   Answer: C) Lease bailments
3. What are the duties of the bailor?

A) Proper care of property
B) Use of property as agreed
C) Reimbursing expenses
D) None of the above

Answer: C) Reimbursing expenses

4. What rights does the bailee have?
   A) Right to terminate bailment
   B) Right to demand return of property
   C) Right to compensation
   D) All of the above

Answer: C) Right to compensation

4.2.1 MEANING OF PLEDGE:

It is defined in the following words, "Bailment of goods as a security for the payment of a debt or performance of a promise is called pledge."

Parties involved in pledge: There are two parties involved in the contract of pledge.

(I) Pawnor:

Bailor is called pownor or pledger. The person who delivers the goods for the performance of promise is called pawnor.

(II) Pawnee:

Bailee is called paween or pledge. The person to whom the goods are delivered and the person who gives debt is called pawnee.

Example:-

Mr. Shukla borrows Rs. Ten thousands from Mr. Pritam and keeps his motor cycle as security for payment of the debt. The bailment of motor cycle is called pledge.

4.2.2 DEFINITION OF BAILOR:

According to Sec. 172, the bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The bailor is called the 'Pawnor' or 'pledger'. The bailee is called the 'Pawnee' or 'pledgee'.

Example:

A borrows 200 rupees by depositing his watch with B as a security for repayment of the debt.

4.2.3 BASIC ESSENTIALS OF PLEDGE

Following are the important essentials of pledge:

1. Moveable Property:

The pledge is concerned with the moveable property. All types of goods and valuable documents are included in it.

2. Transfer of Possession

In case of pledge only possession of goods transferred by the pawnor to the pawnee.

Example:

Mr. Nelson ledges car with Mr. Mcculan and gets Rs. 100,000. He gives the possession of car to Mr Mcculan.

3. Ownership Right:

In case of pledge, the ownership of the goods remains with the pawnor. It is not transferred to pawnee.

Example:

Mr. Wali pledges the plot with Mr. Raffel and gets 10 lac. The ownership of the plot remains with Mr. Wali.

4. Case of Mere Custody:

Those people who have only mere custody of the goods cannot pledge them.

Example:-

A custodian cannot pledge his master's banglow. It will be invalid pledge.

5. Limited Interest:

Pledge property cannot be used for unlimited interest. When a person pledges goods in which he has only limited interest, the pledge is valid to the extent of that interest only.

Example:-

Mr. Nelson gives car to Mr. Andre for repair, but does not pay Rs. 20,000 repair charges.

Mr Andre pledges the car with Mr. Smith and borrows Rs. fifty thousands. This pledge is valid only up to ten thousands

4.2.4 RIGHTS OF PAWNOR:

Following are the rights of pawnor :

1. Right of Redemption:

A pawnor has a right of redemption after depositing the dues.

2. Right of Suit:-

If pawnee makes unauthorized sale the pawnor has the right to file a suit against the pawnee.

3. Right of Proper Care:

The pawnor can enforce the pawnee to do proper care and maintain the pledged goods.

4.2.5 DUTIES OF THE PAWNOR:

Following are the duties of Pawnor :

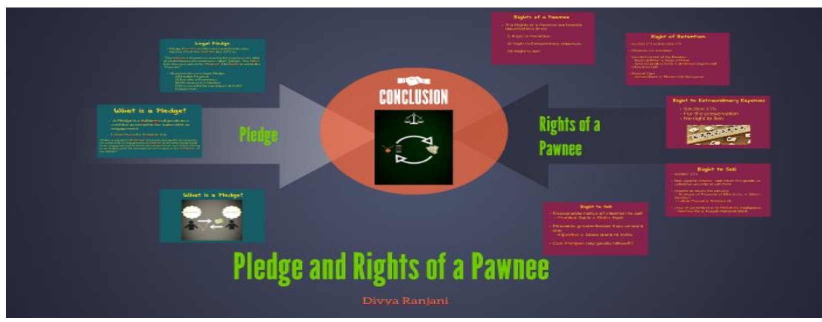
1. Meet the Obligations:-

Pawnor must meet the obligations regarding the contract with in specified time.

2. Pay Extra Expenditure:

He should also pay the extra ordinary charges.

4.2.6 RIGHTS OF PAWNEE:



Following are the rights of Pawnee :

1. Receipt of Payment :

Pawnee can retain the goods pledged until his dues are paid.

2. Retain for other Debts:

He has also right to retain the pledged goods for other debts taken.

3. Recover other Charges:

He has also right to recover the other charges like preservation of the pledged goods.

4. Sell the Goods:

If pawnor fails to make payment then pawnee can sell the pledged goods after issuing the reasonable notice.

4.2.7 DUTIES OF PAWNEE:

Following are the duties of pawnee :

1. Return of Goods :-

On the receipt of his dues he should return the goods.

2. Reasonable Care:

He must do the reasonable care of the pledges goods.

3. Comply Terms:

He should abide by the terms.

4. No Misuse:

He should not make unauthorized use the pledged goods.

5. No Mixation:

He should not mix the pledged goods with his own goods beard by the pawnee.

4.2.8 Difference between Pledge and Hypothication.

Basis Pledge Hypothecation

Agreement It is created by two parties. It is also created as an agreement between the other parties.

Purpose It is created for the purpose of securing repayment of loan. It is also created for the purpose of securing the repayment of the loan.

Possession The possession of the goods is transferred from pawnor or pawnee The possession of the goods remains with the pawner. However the change is created.

Default In case, the pledge can sell the goods after giving notice to sale. In case, the credit has no right to sell the goods as he has no possession. He can sue for the sale made.

Lets Sum up

The law of pledge pertains to a legal arrangement where a borrower (pawnee) offers an item of value as security to a lender (pawner) against a loan. For a pledge to be valid, essentials such as an intention to create a security interest, delivery of possession, and existence of a debt are required. Pledge differs from lien as it involves transfer of possession to the pawner. The pawnee has the right to retain possession of the pledged item until the debt is repaid, including the right to sell it upon default and recover the outstanding debt from the proceeds. Conversely, the pawner possesses the

right to redeem the pledged item upon repayment of the debt. This legal concept serves as a crucial mechanism in securing loans and protecting the interests of both borrowers and lenders.

Section 4.2 Understanding the Law of Pledge

Check your progress – Quiz – 2

1. What is the main difference between a pledge and a lien?
   a) Transfer of possession
   b) Transfer of ownership
   c) Transfer of title
   d) None of the above

   Answer: d) None of the above
2. Which of the following is not an essential of a valid pledge?
   a) Contract
   b) Delivery of possession
   c) Legal capacity
   d) Transfer of ownership

   Answer: d) Transfer of ownership
3. Who retains ownership of the pledged asset in a pledge agreement?
   a) Pawner
   b) Pawnee
   c) Lender
   d) Borrower

   Answer: a) Pawner
4. Which of the following is an essential requirement for a valid pledge?
   a) Payment of a fee
   b) Physical transfer of possession
   c) Verbal agreement
   d) Written consent

   Answer: b) Physical transfer of possession

5. In a pledge agreement, who has the right to sell the pledged asset if the borrower defaults on the loan?
   a) Pawner
   b) Pawnee
   c) Both pawner and pawnee jointly
   d) Government

   Answer b) Pawnee

UNIT SUMMARY

Bailment and Pledge are crucial legal concepts concerning the transfer of possession and control over goods. Bailment, defined by its essentials and classification, outlines the responsibilities and rights between the bailor and bailee. Meanwhile, the law of pledge, which encompasses the essentials of a valid pledge and its relationship with lien, elucidates the rights and duties of the pawner and pawnee. This content aims to equip learners with a thorough understanding of these concepts, facilitating their comprehension of related legal principles and practical applications in various contractual arrangements involving goods.

Glossary

Bailor	The person who delivers personal property to another person (the bailee) in a bailment.
Bailee	The person who receives possession of personal property from the bailor in a bailment.
Delivery of Possession	The transfer of physical control or custody of the bailed property from the bailor to the bailee.
Purpose of Bailment	The specific reason or objective for which the property is delivered by the bailor to the bailee.

Gratuitous Bailment	A bailment without consideration or compensation provided by the bailor to the bailee.
Non-gratuitous Bailment	A bailment with consideration or compensation provided by the bailor to the bailee.
Pawnee (Pledgee)	The creditor who receives possession of personal property (pledged goods) from the debtor (pawner) as security for a debt or obligation.
Pawner (Pledgor)	The debtor who delivers possession of personal property (pledged goods) to the creditor (pawnee) as security for a debt or obligation.
Security Interest	The legal right or interest granted to the pawnee (pledgee) in the pledged goods to secure repayment of the debt or performance of the obligation.
Redemption	The act of repaying the debt or fulfilling the obligation secured by the pledged goods, thereby entitling the pawner to reclaim possession of the property.
Foreclosure	The process by which the pawnee (pledgee) sells the pledged goods upon default by the pawner (pledgor) to recover the amount owed under the debt or obligation.
Surplus Proceeds	Any excess proceeds from the sale of the pledged goods after satisfying the debt or obligation secured by the pledge.
Deficiency	The shortfall between the amount owed under the debt or obligation and the proceeds obtained from the sale of the pledged goods.

Self – Assessment

1. What is bailment, and what are its essential elements?
2. Explain the classification of bailments and provide examples of each type.
3. What are the duties of a bailor and a bailee in a bailment agreement?
4. Define pledge and outline the essentials required for a valid pledge.
5. Distinguish between pledge and lien, providing examples of each.

Case Study

The Jewelry Pledge
Sophia needed funds for her business venture. She approached a pawn shop and pledged her grandmother's heirloom jewelry in exchange for a loan. The pawnbroker became the pawnee, holding onto the jewelry until the loan was repaid. Unfortunately, Sophia was unable to repay the loan within the agreed-upon time frame. As per the pledge agreement, the pawnbroker sold the jewelry to recover the loan amount. Sophia learned the importance of understanding the terms and conditions of a pledge agreement before entering into it. The pawnbroker legally sold the jewelry to recover the outstanding loan amount, and Sophia lost the family heirloom due to defaulting on the loan.
Mortgage Pledge
David wanted to purchase his dream home but lacked the necessary funds. He obtained a mortgage loan from a bank, pledging the property itself as collateral. The bank became the pawnee, holding the property's title until the loan was repaid. Due to financial setbacks, David defaulted on the mortgage payments. The bank initiated foreclosure proceedings and sold the property to recover the outstanding debt.
Stock Pledge
Emily needed capital to start her business. She pledged her stock portfolio as collateral to obtain a loan from a financial institution. The bank became the pawnee, holding the stocks in custody until the loan was repaid. Unfortunately, Emily's business faced unexpected challenges, and she defaulted on the loan. The bank

liquidated the stocks to recover the outstanding loan amount.
Vehicle Pledge
Michael needed funds to cover medical expenses. He pledged his car as collateral to obtain a loan from an auto pawn shop. The pawnbroker became the pawnee, holding possession of the car until the loan was repaid. Despite his efforts, Michael was unable to repay the loan within the agreed time frame. The pawnbroker sold the car to recover the outstanding loan amount.
Equipment Pledge
Alex needed financing to expand his construction business. He pledged his construction equipment as collateral to secure a loan from a lending company. The lender became the pawnee, holding onto the equipment until the loan was repaid. Unfortunately, Alex's business suffered a downturn, and he defaulted on the loan. The lending company seized and sold the equipment to recover the outstanding debt.
Bailment of Jewelry Sarah accidentally damaged Emily's jewelry while it was entrusted to her as a bailee. As Sarah didn't exhibit negligence or intent to harm the jewelry, she wasn't held liable for the damage, emphasizing the bailee's duty to exercise reasonable care.
Pledge of Stock Portfolio John defaulted on a loan secured by his pledged stock portfolio. The bank, as the pawnee, lawfully liquidated the stocks to recover the outstanding debt, highlighting the pawnee's right to sell pledged assets in the event of default.
Bailment of Equipment Tom, as a bailee, damaged a crane he had rented from a company due to negligence. He was held liable for the damage, illustrating the bailee's responsibility to use the rented property with reasonable care.

Task

- ✓ Identify the key legal principles involved, and determine the duties, rights, and responsibilities of the parties (bailor, bailee, pawner, and pawnee) in each scenario. Discuss the outcomes and implications of the cases.
- ✓ Divide learners into groups and assign them roles representing different parties involved in bailment and pledge agreements (e.g., bailor, bailee, pawner, and pawnee).
- ✓ Debate on Legal Issues (e.g., bailor, bailee, pawner, and pawnee).
- ✓ Creating Info graphics or Visual Aids (e.g., bailor, bailee, pawner, and pawnee).
- ✓ Drafting Sample Agreements: (e.g., bailor, bailee, pawner, and pawnee).
- ✓ Create a templates or guidelines for drafting sample bailment and pledge agreements.
- ✓ Discuss the essentials and legal principles discussed in the content to create agreements

E – Content

S. No	**Topics**	E-Content Link	QR Code
1	**Bailment Contracts**	https://youtu.be/zTvLu3iDBrE?si=d3xDd1_mmwgUL8qS	
2	**Rights & Duties of Bailee**	https://youtu.be/US90x2VoASA?si=jlYWx6ha7EexEtvH	

3	**Contracts of Pledge**	https://youtu.be/yCJi3NINmwc?si=HifP-9TMWIXCaz0M	re

Reference

https://cleartax.in/glossary/bailment/#:~:text=Bailment%20represents%20the%20contractual%20transfer,possess%20the%20bailable%20chattel%20physically.

https://www.investopedia.com/terms/b/bailment.asp

https://www.geeksforgeeks.org/contract-of-pledge-meaning-features-duties-and-rights/

https://lawnotes.co/tag/define-pledge/

Self-Learning Material Development – STAGE – 1

Sale of Goods Act 1930:
Definition of Contract of Sale–Formation – Essentials of Contract of Sale – Conditions and Warranties – Transfer of Property –Contracts involving Sea Routes-Sale by Non-owners - Rights and duties of buyer - Rights of an Unpaid Seller

UNIT OBJECTIVES

The objectives of studying the Sale of Goods Act 1930 are to understand the legal framework governing contracts of sale in India comprehensively. Learners will delve into the essentials of contract formation, distinguishing between conditions and warranties, and grasping the intricacies of property transfer in sale transactions. Additionally, learners will explore special provisions regarding sales involving sea routes and sales by non-owners, as well as the rights and duties of buyers and sellers outlined in the Act. The aim is to equip learners with the knowledge and skills necessary to navigate commercial transactions effectively, ensuring compliance with legal standards and facilitating fair and equitable resolution of disputes.

Unit Module Structuring

- Understand Contract of Sale
- Identify Essentials of Contract of Sale
- Differentiate Conditions and Warranties
- Learn Transfer of Property
- Explore Contracts Involving Sea Routes
- Understand Sale by Non-Owners
- Know Rights and Duties of Buyer
- Familiarize with Rights of an Unpaid Seller

STAGE – 2 – Modules Sections and Sub-sections structuring

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5.1.1. INTRODUCTION TO SALE OF GOODS ACT, 1930

The sale of Goods Act, 1930 was passed in 1930 for the exclusive contract dealing with the sale of only movable goods. It extends to the whole of India except the state of Jammu and Kashmir. This Act does not deal with the sale of immovable property. Sale of Goods Act is the most important one because it affects the exchange function (ie) buying and selling.

5.1.2 DEFINITION OF CONTRACT OF SALE OF GOODS

According to sec 4(1) of the sale of Goods Act, a contract of sale is “a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. In

other words, a contract to transfer property in the goods is known as a contract of sale. The ownership is transferred from the seller to the buyer. The person who sells or agrees to sell goods is called the "seller" and the person who buys or agrees to buy the goods is called the "buyer".

The contract of sale may be made:

i) In writing

ii) By Words

iii) Party in writing and partly by words

iv) Implied from the conduct of parties

5.1.3 ESSENTIALS OF A VALID CONTRACT OF SALE:

- **Essential elements of a valid contract:** All the requirements of a valid contract such as free consent, valid consideration, competency of the parties, lawful object must be fulfilled
- **Two parties:** Another essential element of a contract of sale is that there must be two parties to the contract of sale viz, seller and buyer.
- **Goods:** There must be some goods as a subject-matter. Goods must be one which is defined in the sale of Goods Act. Here the goods means every kind of movable property and it includes
  - A) stock and shares
  - B) Growing crops and
  - C) The things attached to or forming a part of the land.
- **Transfer of ownership:** In every contract of sale, the ownership of the goods must be transferred by the seller to the buyer or there must be an agreement to transfer the ownership by the seller to the buyer.
- **Price:** Another essential element of a contract of sale is that there must be some price for the goods. That means the goods must be sold for some price. According to sec 2(10) of the sale of Goods Act, The term price means “The money consideration for a sale of goods”.

5.1.4 Meaning of sale and Agreement to sell

Sale:

Sec 4(3) of the sale of Goods Act, 1930 describes “sale” as, “where under a contract of sale, the property (ownership) in the goods is transferred from the seller to the buyer, it is called a sale”.

Agreement to sell:

Sec 4(3) of the sale of Goods Act, 1930 describes “agreement to sale” as, “where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell

Agreement to sell Sale

An agreement to sell as an executory contract. It is an executed contract.

The transfer of property in the goods is to take place at a future time or subject to certain conditions to be fulfilled. The property in the goods passes fromthe seller to the buyer immediately so that the seller is no more the owner of goods sold.

If the goods are destroyed the loss falls on the seller even though they were in the possession of the buyer. It the goods are destroyed, the loss fallson the buyers even though they were in the possession of the seller.

It creates a right in person am (ie) against a specified person only. It creates a right in rem (ie) against the whole world.

Performance is conditional and is made in future. Performance of sale is absolute and without any condition.

The property in the goods remains with the seller and he can dispose of the goods as he likes, although he may thereby commit a breach of his contract. The property is with the buyer and as such the seller cannot resell the goods.

If the buyer becomes insolvent before he pays price for the goods, the seller may refuse to deliver the goods unless the price is paid by him. If the buyer becomes

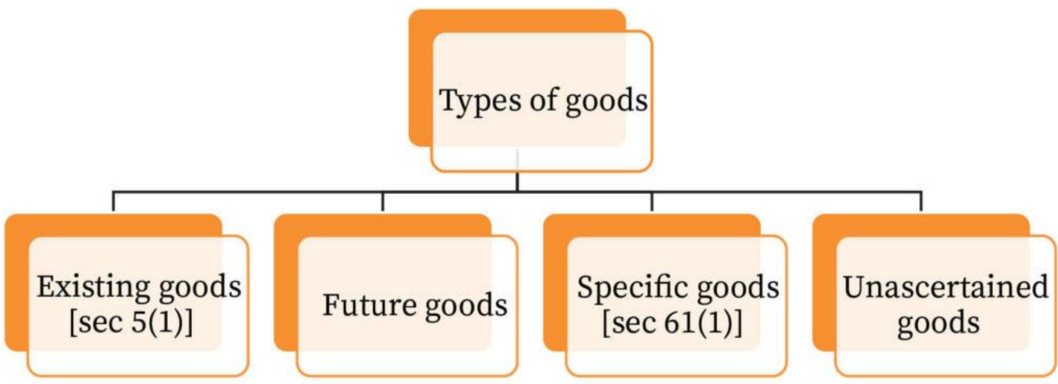
insolvent before he pays price for the goods, the seller in the absence of a lien, Must deliver the goods to the official Receiver or assignee. He can claim An agreement to sell is mostly in case of future and contingent goods.

5.1.5 Definition of goods .

According to sec 2(7) of the sale of Goods Act, "Goods means every kind of movable property other than actionable claims and Money; and includes stocks and shares, growing crops, things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

5.1.6 Different kinds of goods with examples.

As per the sale of Goods Act, the goods may be classified into three types namely,



1. Existing Goods:

Existing goods are those goods that are legally owned and possessed by the seller the time of sale. In otherwords, these are goods which are in actual existence at the time of contract of sale. The seller is either the owner of such goods or he has the possession of such goods. The existing goods may be classified into three types as follows:

i) Specific goods: Specific goods are those goods that identified and agreed upon to buy or sell For eg: If A who owns a no. of. Horses, promises to sell one of them, the contract is for unspecified goods. But if the horse that is be sold has been singled out, the contract for specific goods.

ii) Ascertained goods: The goods that are identified only after the formation of the contract of sale, are called as ascertained goods.

For eg: If a merchant agrees to supply one bag of sugar from his godown to a buyer, it is a sale of unascertained goods because it is not known which bag will be delivered. As soon as a particular bag is separated out and marked or identified for delivery it becomes specific goods.

iii) Unascertained goods:

Unascertained goods are also called general goods. The goods which are not specifically identified at the time of contract of sale, are known as unascertained goods. These goods are usually described in the form of contract.

For eg: A had 5 cows. He agreed to sell two cows to B. In this case, the contract is for thesale of unascertained goods as the cows have not been identified at the time of contract of sale.

3. Future goods:

Future goods are goods that will be manufactured or acquired by the seller after

making the contract of sale. So these goods are not in existence at the time of contract of sale.

When a person purports to make a present sale of the future goods, the contract operates as an agreement to sell, and not sale because in such cases the ownership of the goods cannot be transferred before the goods come into existence.

3. Contingent Goods:

Contingent goods are the goods which are also not in existence at the time of contract of sale. These are also a type of future goods. Here the acquisition of the goods by the seller depends upon a contingency which may or may not happen.

5.1.7 Discuss the effects of destruction of goods.

Sec 7 and 8 of the sale of Goods Act 1980 deal with effect of perishing of goods on the rights and obligation of the parties of to a contract of sale. The effect of perishing of goods can be discussed under the following two heads.

1. Goods perishing before making the contract.
2. Goods perishing after agreement to sell; but before the sale is completed.

1. Goods perishing before making of the contract [sec 7]:

If the goods perish before the making of the contract of sale, the contract is void. However the following conditions should be fulfilled.

1. The contract must be for the sale of specific goods.
2. The goods must have been perished before the making of the contract.
3. The seller must not have the knowledge of the destruction.

Where in a contract for the sale of specific goods, only part of the goods are destroyed or damage, the effect of perishing will depend upon whether the contract is entire or divisible. If it is entire (indivisible) and party only of the goods has perished, the contract is void. If the contract is divisible, it will not be void and the part available in good condition must be accepted by the buyer.

Eg: A agrees to sell to B, a specific cargo supposed to be on its way from England to Bombay. But before the day of the Bargain, the ship conveying the cargo had been cast away and goods lost. Neither party was aware of the fact. The agreement is void.

2. Goods perishing after Agreement to sell, but before the sale is completed [sec 8]:

If the goods perish after an agreement to sell is made but before the completion of the sale, the contract of sale becomes void provided the contract is for the sale of specific goods and the goods are destroyed without any fault of the seller or buyer. However, the following conditions must be fulfilled.

1. The contract must be an "agreement to sell" and not an "actual sale".
2. It must be an agreement to sell specific goods.
3. The goods must have been perished before the agreement to sell becomes a sale and without the fault of either of the party.

5.1.8 Define the term "price".

Acc to sec 2(10) of the sale of Goods Act, "price means the money consideration for a sale of goods". It must be expressed in money.

"The price in a contract of sale may by fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties" –sec 9(1).

Sec 9 provides the following modes of the determination of price:

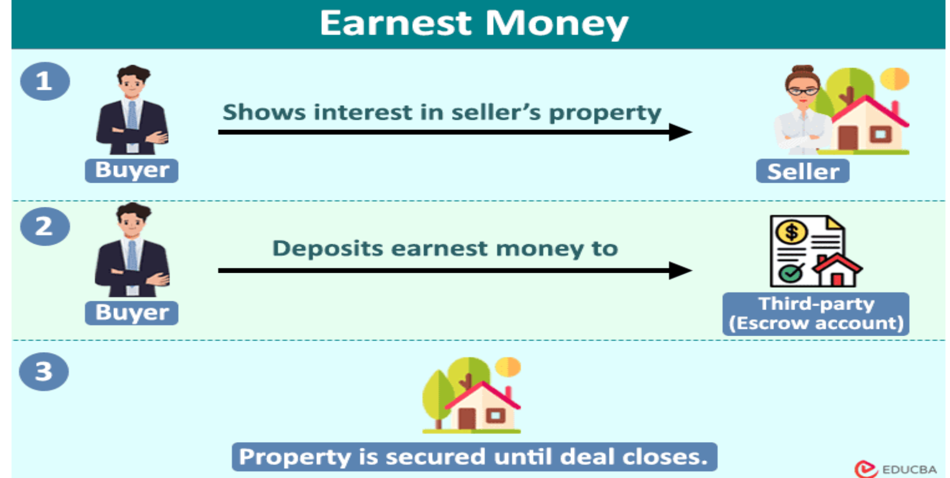
1. **Price may be fixed by the contract:** The parties may fix such price for the goods as they may please. The price may be expressly stated in the contract Inadequacy of price does not affect a sale.
2. **Price may be fixed in a manner agree upon:** The contract of sale may provide for some manner in which price is to be fixed. In such cases, the price may be fixed in a manner provided in the contract.
3. **The Fixation of price by course of Dealings:** Where the price is not fixed, it can be determined in the course of dealings between the parties of as it is sometimes called the market price of the goods.
4. **Fixation of Reasonable price**: In the absence of above modes, the buyer shall pay to the seller a reasonable price what is reasonable price is a Question of fact depending upon the circumstances of each case.

Sec 10 lays down that if price is left to be fixed by the values and the values fails to fix the price, the agreement becomes void except as to part of goods delivered and accepted as to which the buyer is bound to pay a reasonable price. However if one of the parties prevents the values from making the valuation, he would be liable to pay damagesto the other contracting party.

5.1.9 What do you mean by Earnest Money?

Earnest Money is the money which is paid in advance by one party to another party, as a security for the proper performance of his part of the contract. If there is any default on the part of the person (in the performance of the contract) who pays the earnest money, the person who receives it has the right to forfeit it on the other hand,

the person who receives it fails on his part, then the person who pays it can get back the same.



5.1.10 Transfer of property in the sale and agreement to sell

"Transfer of property" in the sale and agreement to sell and" The Document of title of goods" in the contract of sale.

Transfer of property:

In a sale, the property in the goods passes from the seller to the buyer immediately so that the seller is no more the owner of the goods sold. In an agreement to sell, the transfer of property in the goods is to take place at a future time or subject to certain conditions to be fulfilled. In this sense, a sale is an executor contract.

Document of title to Goods:

A document of title to goods is a proof of the ownership of the goods. It authorizes its holder to receive goods mentioned therein or to further transfer such right to another person by proper endorsement and delivery.

a) **Bill of lading:** A Bill of lading is a receipt given by the ship owner acknowledging the receipt of goods for carriage.

b) **Dock Warrant**: A Dock Warrant is document which is issued by a dock owner. It authorizes the person holding it to receive the possession of the goods.

c) **Warehouse Keeper's Certificate:** Warehouse keeper's certificate is a document which issued by the warehouse keeper. It is a certificate by the warehouse keeper that the goods specified in the document are in the warehouse or wharf.

d) **Railway Receipt:** A Railway Receipt is a document which issued by the railway as the acknowledgement of the receipt of goods. It provides that on surrender of the receipt at the destination of the goods by the consignee the goods mentioned therein will be delivered to him.

e) **Delivery order:** A Delivery order is an order which as given by the owner of goods directing a person who holds the goods on his behalf to deliver them to a persons named therein.

Let's Sum Up

A contract of sale, as governed by legal frameworks such as the Sale of Goods Act, is an agreement between a buyer and a seller for the exchange of goods or property for a price, with the transfer of ownership from the seller to the buyer. Its formation requires elements like offer, acceptance, consideration, and an intention to create legal relations. Essential aspects of such contracts include conditions, which are fundamental terms whose breach allows the innocent party to repudiate the contract,

and warranties, which are ancillary terms providing assurances about the goods. Understanding these essentials ensures clarity and fairness in commercial transactions, guiding parties in their rights and obligations.

Section 5.1 Foundations of Contractual Exchange: Understanding Sale of Goods"

Check Your Progress – Quiz – 1

1. What is a contract of sale?
   a) An agreement between a buyer and a seller for the exchange of goods or property for a price.
   b) An agreement between two parties to perform a service.
   c) An agreement between a landlord and a tenant.
   d) An agreement between partners in a business venture.

   Answer: a) An agreement between a buyer and a seller for the exchange of goods or property for a price.
2. What is required for the formation of a contract of sale?
   a) Offer, acceptance, consideration, and intention to create legal relations.
   b) Offer and consideration.
   c) Offer and acceptance.
   d) Offer, acceptance, and consideration.

   Answer: a) Offer, acceptance, consideration, and intention to create legal relations.
3. Which of the following is NOT an essential of a contract of sale?
   a) Capacity
   b) Free consent
   c) Written agreement
   d) Lawful object

   Answer: c) Written agreement
4. What happens if there is a breach of a condition in a contract of sale?

a) The innocent party can claim damages but cannot repudiate the contract.
b) The innocent party can repudiate the contract and claim damages.
c) The contract becomes void.
d) The contract is automatically terminated.

Answer: b) The innocent party can repudiate the contract and claim damages.

5. Which of the following is an example of a condition in a contract of sale?
   a) A seller promises to deliver goods by a specific date.
   b) A seller guarantees the quality of goods sold.
   c) A seller undertakes to provide free maintenance for one year.
   d) A seller promises to deliver goods in good condition.

Answer: d) A seller promises to deliver goods in good condition.

5.2.1.Define the Term Conditions and Warranties

According to Sec 12 (2), “a condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated” in other words, it is a stipulation which is there is any breach of condition, the aggrieved party can treat the contract is repudiated.

According to Sec 12 (3), “ a warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to right to reject the goods and treat the contract as repudiated”.

In other words, the warranty is a stipulation that is collateral to the main purpose of the contract. If there is a breach of warranty, the aggrieved party cannot treat the contract as repudiated. He can claim only damages.

5.2.2 Difference between Condition and Warranty

Condition Warranty

It is a stipulation that is vital to the main purpose of the Contract. It is a stipulation that is only collateral to the purpose of the contract.

Unless the condition is fulfilled, the main Contract can be completed. Even if the Warranty is not fulfilled, the main Contract cannot be completed.

In case of breach of a condition, the buyer can reject the performance of a contract.

In case of breach of a warranty, the buyer cannot reject the contract. He can claim damages only.

A breach of condition can be treated be treated as a breach of condition A breach of warranty cannot be treated as

5.2.3 Express and Implied Conditions in a contract of sale as provided in the Sale of Goods Act.

Conditions and Warranties may be either express or implied. When the Conditions and Warranties are definitely written in the contract they are known as express Conditions and Warranties. When the Conditions and Warranties are not

written in the contract but are attached to the contract by operation of law or custom, they are called implied Conditions and Warranties.

Conditions are of two types namely.

1. Express Conditions and
2. Implied Conditions

Express Conditions: It is a condition, which has been expressly agreed upon by both the parties at the time of the contract of sale. It may be noted that it is open to both the parties to include in their contract any number of express conditions.

Implied Conditions: When the Conditions are not written in the contract but are attached to the contract by the operation of law or custom they are called as implied condition. The following are implied in every contract of sale.

i) **Condition as to title of Goods:** In every contract of sale of Goods, there is an implied condition that the seller has right to sell the goods at the time the sale is affected. In case of an agreement to sell, the seller will have the right to sell the goods at the time when the property is to pass from the seller to the buyer. This condition is called a condition as to title.

The condition as to the seller's title is very essential to protect the interest of the innocent buyers. The whole object of the sale is to transfer the property from one person to another.

ii) Condition as to Description: When the goods are sold by description the implied condition is that the goods shall correspond with the description.

iii) Condition as to Sample: In case of a contract of sale by sample, the implied conditions are:

a. the Goods delivered shall correspond with the sample.

b. Buyer shall have a reasonable opportunity of comparing the goods with the sample.

c. Goods shall be free from apparent defects.

iv) Condition as to Sample as well as Description: In case of a contract of sale by sample and description, the implied condition is that the goods shall correspond with both, the sample as well as description.

v) Condition as to Quality: The general rule is "caveat emptor", i.e., "let the buyer beware". So, the seller need not disclose the faults in the goods he sells. The buyer must buy the goods after having satisfied himself about the Quality and fitness. According to Sec. 16 of the Sale of Goods Act, there shall be no implied condition as to Quality for particular purpose. But, there is an implied condition as to Quality only if the following requirements are fulfilled.

1. The goods are required by the buyer for a particular purpose.
2. The buyer should make "known to the seller with regard to the particular purpose.
3. The buyer should rely on the skill or judgment of the seller.

vi) Condition as to Merchantability: When the goods are sold by description it is implied that the goods shall correspond with the description and also that they shall be of Merchantable Quality. i.e., a Quality that is ordinarily accepted in the market.

Goods will be merchantable if they have defect which will make them unfit for ordinary use or are such that a reasonable person knowing of their condition would not buy them.

vii) **Condition as to wholesomeness:** In the case of eatables and provisions, besides the implied condition with regard to merchantability, there is another implied condition that the goods shall be wholesome.

5.2.4 Express and Implied Warranties in a contract of sale as provided in the Sale of Goods Act

Warranties may be discussed under two heads namely,

1. **Express Warranties**
2. **Implied Warranties**

1. Express Warranties: It is a warranty which has been expressly agreed upon by both the parties at the time of contract of sale. It may be noted that it is open to both the parties to include in their contract many number of express warranties.

2. Implied Warranties: It is a warranty that the law implies into the Contract of Sale. That is, it is the stipulation which has not been included in the contract of sale in express word. But the law presumes that the parties have incorporated it into their contracts. Following are the implied warranties that are contained in the Sale of Good Act.

i) Warranty as to Quiet Possession: As per this warranty, the buyer shall have and enjoy the Quiet Possession of the goods. If buyer's right of possession and enjoyment is disturbed by any one, then the buyer can recover the damages from the seller through the court of law.

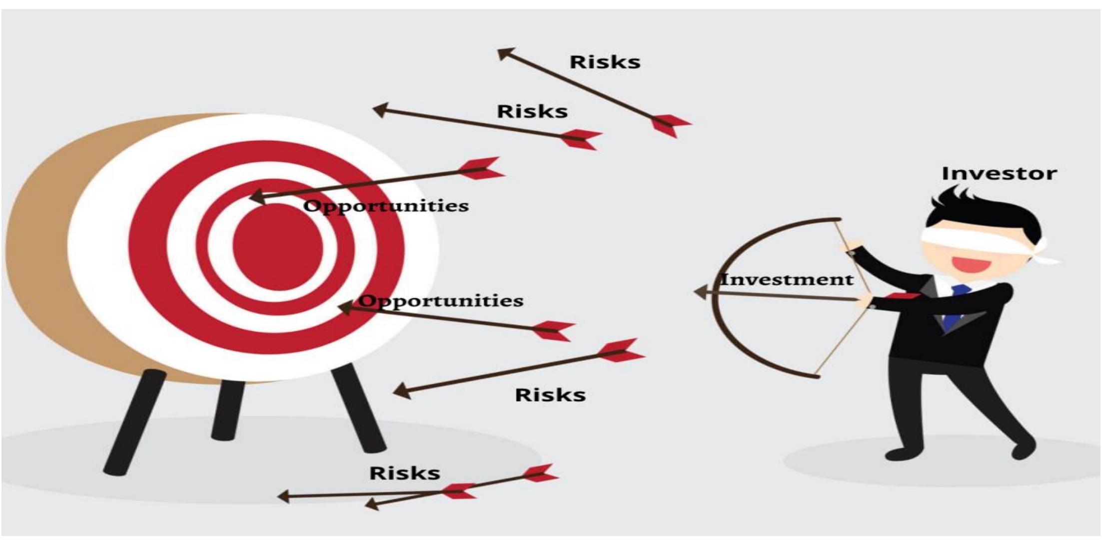
ii) Warranty as to Free from Encumbrance: According to this warranty, there is an implied condition that the goods shall be free from encumbrances in favour of any third person.

iii) Warranties implied by Customer: As the parties enter into an agreement subject to the known customs or usage of trade, implied warranties may be attached to a contract of sale by custom or usage of trade.

5.2.5 Rule of Caveat Emptor

Caveat Emptor

The maxim Caveat Emptor means let the buyer beware. In other word, the buyer must take care of his own interest while purchasing the goods. Buyer in a contract of sale of specific goods will purchase them at his own risk with regard to the Quality or fitness of the goods except in case of fraud or where a condition to that effect is laid down in the contract itself.



Exceptions to the Doctrine of Caveat Emptor

I. **Implied Condition regarding Quality or Fitness:** Where the buyer has made known to the seller the purpose for which he requires the

goods and depends on the skill and judgment of the seller, there is an implied condition that the goods will be fit for the purpose for which the buyer requires them. This condition is not applicable in those cases where the goods have been sold under a patent mark or trade name.

II. **Sale of Goods by Description:** Where the goods are purchased from a seller by description, who deals in such class of goods, there will be implied condition that the goods shall be of Merchantable Quality.

III. **Usage of Trade:** An implied warranty or condition as to Quality or fitness for a particular purpose may be annexed by the custom or usage of trade.

IV. **Consent by Fraud:** The doctrine of Caveat emptor shall not apply to all those purchases which have been made by a buyer and a contract where his consent was obtained by the seller by fraud.

V. **Misrepresentation:** Where the seller has made a false representation relating to the goods and the buyerhas relied upon it, the doctrine will not apply. Such a contract being voidable at the optionof the innocent party the buyer has a right to rescind the contract.

5.2.6 Meaning of Transfer of Property

The Transfer of property “in goods means transfer of ownership of goods from seller to the buyer. The term ‘property’ in the goods may be defined as the legal ownership of the goods. The term “property in the goods” means the ownership of the goods, whereas the term “possession of the goods” simply mean the custody or physical control over the goods.

5.2.7 Importance of Transfer of property

The right and liabilities of the parties are linked with the transfer of ownership.

The following points are significant for the transfer of ownership of the goods.

1. **Risk follows ownership:** Risk passes to the buyer as property in the goods passes to him. The risk of destruction or loss of goods sold falls on the buyer and not on the seller through the goods may still be in the possession of seller.

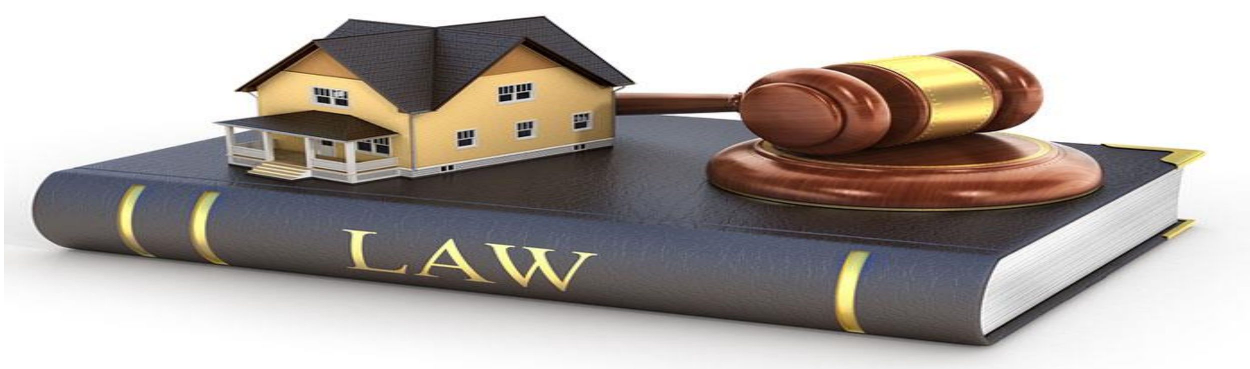
2. **Action against Third Parties:** When there is danger to the goods being damaged by the action of third parties. It is only the owner who can take action. That is the right to proceed against a third party for destruction or damage to the goods depends not on possession but on the transfer of property.

3. **Suit for Price:** The seller can see for the price, unless otherwise agreed, only if the goods have become the property of the buyer. That is, the transfer of property confers upon the seller the right to see the buyer for the prices.

4. **Insolvency:** When the buyer or seller becomes insolvent, the official assignee to determine the insolvent is the owner of the goods at the time of his becoming insolvent. If he finds that he is the owner of the goods he can take over the goods otherwise he cannot take over it.

5.2.8 Rules regarding Transfer of Property

The following are the basic rules regarding the transfer of property.



1. **Goods to be Ascertained:** According to Sec. 18, "where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained".

2. **Parties Intention:** According to Sec. 19(1), "where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred".

3. **When no Intention is Expressed:** According to Sec. 19(3), "unless a different intention appears, the rules contained in Sec. 20 to 24 of the sale of Goods

Act, are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer”.

The rules regarding the passing of property form the seller to the buyer in a contract for the sale of goods (or) State the provisions of the Sale of Goods Act, as regards the passing of property in (a) ascertained goods (b) unascertained goods (c)Goods sold on approval (or) on sale (or) return .

I. Transfer of ownership in case of Sale of Specific Goods: The rules relating to the transfer of ownership in case of sale of specific goods are contained in Sec. 20 to 22.

1. The ownership is Transferred at the Time of making the Contract: In case of a contract for the sale of specific goods, in a deliverable state, if the contract is unconditioned. Property passes as soon as the contract in entered into (Sec20).
2. The ownership may also be transferred at some other time: When the ownership will not be transferred at the time of contract of sale therule contained in Sec 21 7 22 of the Sale of Goods Act will applicable.

* When Goods not in a deliverable state: If the seller has to do something to put them in a deliverable state, property passesonly when such thing is done and notice thereof is given to the buyer (Sec.21).

* When the price of goods is to be ascertained by weighing etc: In a deliverable state if the seller has to do something for the purpose of ascertaining the price, the property will pass only when such act is done and notice thereofis given to the buyer (Sec. 22).

Here deliverable state means such a state that the buyer would under the contract be bound to take delivery of the goods.

II. Transfer of ownership in case of Sale of unascertained goods

In case of sale of unascertained goods, the ownership is transferred to the buyer as and when the goods are identified and are set apart for the purpose of delivering to the buyer. The ownership in case of unascertained goods is transferred to the buyer only on the fulfillment of the following two conditions.

1. When the goods are ascertained and
2. When the goods are appropriated to the contract.

III. Transfer of ownership in case of sale on Approval

"Sale on approval" is a sale in which the buyer may return the goods within a reasonable period, if the goods do not serve his purpose. This is also called "sale or return" basis. In this case, the ownership is transferred to the buyer when he accepts the goods. If the goods are not within a reasonable time, the seller can only recover the price of the goods and cannot ask for the return of the goods. Here, the ownership is transferred to the buyer in any of the following three ways.

i. By acceptance: The buyer may accept the goods and inform the seller accordingly.
ii. By adoption of the transaction: The buyer may adopt the transaction by doing some act in respect of thegoods. It is known as the implied acceptance.
iii. By failure to Return the goods: The ownership is also transferred to the buyer when he fails to return thegoods to the seller. This also amounts to implied acceptance of the goods.

5.2.9 Exceptions to the Rule (Sale by Non-owners)

The following are the exceptions to the above rule.

i. **Sale by a person not the owner or title by estoppels (Sec. 27)** : Where the owner by his conduct or act, leads the buyer to believe that the seller has the authority to sell, the buyer in such a case get a better title than such seller.

ii. **Sale by a Mercantile Agent:** Where goods are sold by a mercantile agent who is in the possession of the goods or any document of title to the goods, with the consent of the real owner, in the ordinary course of the business, the buyer will get good title if he acts in good faith (Sec.27).

iii. **Sale by one or several Joint owners (Sec.28):** If one of the several Joint owners, who is in sole possession of the goods by permission of the other co-owners sells the goods, a buyer in good faith of those gets a good title to the goods.

iv. **Sale by a person in possession under a voidable contract (Sec. 29):** In this case, the buyer acquires a good title to the goods, if he buys them in good faith and without notice of the seller's defect of title.

v. **Sale by Seller in possession after sale [Sec. 30(1)]:** Where a seller having sold goods, continues to be in possession of the good and sells them either himself or through a mercantile agent to a person who buys them in good faith and without notice of the previous sale, the buyer gets a good title.

vi. **Sale by buyer in possession of Goods:** In this case, the buyer who acts in good faith and without notice of any lien or otherright of the original seller in respect seller in respect of the goods gets a good title.

vii. **Sale by an unpaid seller [Sec. (3)]:** Where an unpaid seller who has exercised his right of lien or stoppage in transit, resells the goods, the buyer acquires a good title to the goods as against the original buyer.

5.2.10 Performance of Contract of Sale:

Performance of a contract of sale means as regards the seller, delivery of the gods t the buyer, and as regards the buyer, acceptance of the delivery of the goods and payment for them, in accordance with the terms of the contract (Sec.31).

Delivery of Goods – Meaning

Delivery means “voluntary transfer of possession of goods from one person to another” [Sec.2(2)].

5.2.11 Kinds of Delivery of Goods

Following are the various kinds of delivery of goods.

i) Actual Delivery: In this case, the goods are handed over by the seller to the buyer or his duly authorized agent.

ii) Symbolic Delivery: Where the goods are bulky and incapable of actual delivery, the delivery is made by delivering some symbol that carried with if the real possession or control over the goods. For eg. Delivery of the key of the warehouse where the goods are stored or the bill of lading etc.

iii) Constructive Delivery or Delivery by Attornment: Where a third person (eg. Bailee) who is in possession of the goods of the seller at the time of the sale acknowledges to the buyer that be holds the goods on his behalf, there takes place a delivery by attornment or constructive delivery [Sec.36(3)].

5.2.12 Rules to Delivery of Goods

I. **Mode of Delivery (Sec.33):** Delivery of goods may be actual, constructive or symbolic.

II. **Delivery and Payment – Concurrent conditions:** Delivery of the goods and the payments of the price must be according to the terms of the contract. The seller should be willing to give possession of the goods and the buyer must be willing to pay.

III. **Effect of Part Delivery:** A delivery of part of the goods in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole.

IV. **Expenses of Delivery:** Unless otherwise agreed, the expenses of and incidental to make delivery shall be borne by the seller.

V. **Buyer to apply for Delivery:** Apart from any express contract, the Seller of goods is not bound to deliver them until the buyer applies for delivery (Sec.75).

VI. **Place to Delivery:** It should be specified in the contract. Further, the goods must be delivered at that place during business hours on a working day.

VII. **Time of Delivery:** It no time is specified in the contract, the seller must deliver within a reasonable time [Sec.36(2)].

VIII. **Goods in possession of a third party:** Where the goods are in possession of a third person, there can be no delivery to the buyer unless the third person acknowledges that he holds them on behalf of the buyer [Sec.36(3)].

IX. **Delivery of Wrong Quantity:** If the seller sends to the buyer a larger or a smaller Quantity of goods than he ordered, the buyer may:-

i. Reject the goods as a whole or
ii. Accept the whole or
iii. Accept the Quantity ordered and reject the rest.

X. **Installment Deliveries:** Unless otherwise agreed, the goods are not to be delivered by installments.

5.2.13 Right of the Buyer

1. **To have Delivery as per Contract:** The buyer has the right to have delivery of the goods, as per the contract. He also has the right to reject them if they are not as per the contract (Sec.37).

2. **To Repudiate the Contract:** The buyer has to repudiate the contract if the goods have been delivered by installment unless otherwise agreed upon.

3. **To Notice of Insurance:** Where the goods are sent by the seller by a Sea route to the buyer, unless otherwise agreed, the buyer has a right to be informed by the seller so that he may insure the good

4. **To examine the goods:** The buyer has a right to examine the goods before its acceptance.

5. Right to sue for Breach of Contract

1. The buyer has a right to sue the seller for damages for non delivery of the goods.
2. The buyer has a right to sue the seller for specific performance of the Contract.
3. Sue the seller for damages for breach of warranty.
4. Claim of interest on the amount of price paid form the date on which the payment was made in case of breach of contract by the seller, when the buyer sues for the refund of the prices.
5. The seller repudiates the contract before the date of delivery.

5.2.14 Duties to the Buyer

1. To Accept Delivery of Goods and make Payment (Sec.31): It is the duty of the buyer to accept the goods and pay for them as per the terms of the contract of sale.
2. To Demand for Delivery (Sec. 35): Unless otherwise agreed, the seller of goods is not bound to deliver the goods until the buyer demands for delivery.
3. To Demand for Delivery at a Reasonable hour [Sec. 36(4)]: It is the duty of the buyer to demand for delivery of goods at a reasonable hour.
4. To inform the seller if he rejects the Goods (Sec.43): Apart from any express contract, it is the duty of the buyer to inform the seller if he rejects the goods.
5. To Compensate the Seller: Where the buyer neglects or refuses to take delivery of the goods when tendered, unless otherwise contracted, he is liable to compensate the seller of the goods.

5.2.15 Who is an Unpaid Seller?

A seller is an unpaid seller (i) if the full or part of the price has not been paid to him (ii) f the conditional payment is made by bill of exchange or other negotiable instruments and such instrument is dishonored.

i. The goods have been sold on credit, but the term of the credit has expired.
ii. The buyer becomes insolvent (Sec.47).

i) Right of Stoppage in Transit: When the buyer of goods becomes an insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit.

ii) Right of Resale

The unpaid seller can resell the goods-

i. Where the goods are of a perishable in nature
ii. Where he has exercised his right of lien or stoppage in transit and given notice to the buyer has not within a reasonable period of time paid price and
iii. Where the seller expressly reserves a right of resale in case the buyer should make default (Sec54).

1. Where the ownership of the Goods is not transferred t the buyer [Sec.46(2)]

If the property in the goods has not passed to the buyer, the unpaid seller cannot exercise the right of lien but gets a right of withholding the delivery of goods, similar to and co-extensive with lien.

I. Right Against the Buyer personally

The unpaid seller also has certain rights against the buyer. These rights may be discussed under the following heads.

a. Suit for Price
b. Suit for Damages
c. Suit for Interest
d. Suit for Repudiation of Contract.
e. Suit for Price: When under a contract of Sale, the property in the goods has 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 (Sec.55).

ii) Suit for damages: Where the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the damages for non-acceptance (Sec.56).

iii) Suit for Interest: The seller can recover interest on price from the date on which the payment became due, if there is a special agreement to the effect.

iv) Suit for Repudiation of Contract: Where the buyer in a contract of sale repudiate the contract before the date of delivery, the seller may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contracts as rescinded and use for damages for the breach (Sec.60).

State the various Remedies available to the aggrieved party for Breach of Contract. Remedies for Breach of Contract of Sale

The sale of Goods act give the following remedies to a seller and a buyer for breach of a contract of sale.

Seller’s Remedies

1. Suit for price.
2. Suit for damages for non-acceptance of the goods.
3. Suit for interest.

4. Suit for damages for repudiation of contract by the buyer before the due date

Buyer's Remedies

1. Suit for damages for non-delivery of the goods.
2. Suit for specific performance.
3. Suit for breach of warranty.
4. Suit for damages for repudiation of contract by the seller before due date.
5. Suit for interest.

5.2.16 Define the term "action sale" and state the legal rules regarding the same.

An auction is a method of selling property by bids usually to the highest bidder by public competition. The auctioneer who sells goods by action, is an agent of the seller only. However, he may sell his own property as principal and need not disclose the fact that he is so selling. The auctioneer hold the goods as bailee. Under this methods of sale, a contract is formed between the auctioneer and the buyer, and incurs certain liabilities though not all the liabilities of a seller.

Rules for auction Sales

i) Goods put up for sale in lots: Here, each lot is prima facie, deemed to be the subject of a separate contract of sale [Sec.64 (1)].

ii) Completion of Sales: The sale is completed when the auctioneer announces its completion by the fall of the hammer or in some other customary manner like "one, two or three".

iii) Right of seller to bid: A right of bid may be reserved expressly by or on behalf of the seller.

iv) Sale not notified subject to a right to bid It is not lawful.

a. For the seller to bid himself or to employ any person to bid at such sale or

b. For the auctioneer knowingly to take any bid from the seller or any such person.

v) Reserve Price: It is a price below which the auctioneer will not sell. Every bid is accepted conditionally on the reserve price being reached. Otherwise goods will be sold to the highest bidder.

vi) Use of Pretended bidding: In this case, the sale is voidable at the option of the buyer [Sec.64(6)].

Meaning of Damping?

Damping is an unlawful act by which an intending purchases is prevented from bidding or raising the price at an auction sale usually, it is done in any of the following ways.

1. Pointing out defects in the goods put up for auction sale.
2. Taking the intending purchases away from the place of auction by some other means.

Lets Sum up

Conditions and warranties in contracts of sale delineate essential terms and ancillary assurances, respectively, governing the buyer-seller relationship. Breach of a condition entitles the aggrieved party to repudiate the contract, while warranties provide secondary assurances about the goods. Transfer of property, as stipulated by the Sale of Goods Act, signifies the passage of ownership from seller to buyer, adhering to contractual terms. Contracts involving sea routes entail specific provisions, such as bills of lading and charter parties, influencing the exchange of goods. Sale by non-owners introduces complexities, as the seller may possess voidable titles or unauthorized

possession. Understanding the rights and duties of buyers ensures adherence to contractual obligations, while the rights of an unpaid seller offer recourse in case of default.

Section 5.2 Navigating Property Transfer

Check your progress – Quiz – 2

1. What distinguishes a condition from a warranty in a contract of sale?
    a) Conditions are minor terms, while warranties are essential terms.
    b) Breach of a condition allows repudiation, while breach of a warranty does not.
    c) Conditions are oral agreements, while warranties are written agreements.
    d) Warranties provide primary assurances, while conditions provide secondary assurances.

    Answer: b) Breach of a condition allows repudiation, while breach of a warranty does not.
2. In a contract of sale, what signifies the transfer of property from seller to buyer?
    a) Offer and acceptance
    b) Consideration
    c) Delivery
    d) Payment

    Answer: c) Delivery
3. Which of the following is NOT a contract involving sea routes?
    a) Charter parties
    b) Bills of lading
    c) Sale by auction
    d) Marine insurance contracts

    Answer: c) Sale by auction
4. What is a voidable title in the context of sale by non-owners?
    a) Title that cannot be rescinded
    b) Title that is automatically valid
    c) Title that may be voided by the true owner
    d) Title that cannot be transferred

    Answer: c) Title that may be voided by the true owner

5. What recourse does an unpaid seller have in case of default by the buyer?
    a) Right to retain possession of goods
    b) Right to demand double the payment
    c) Right to void the contract
    d) Right to sell the goods to a third party

Answer: a) Right to retain possession of goods

5.3 Unit Summary

The Sale of Goods Act 1930 governs contracts of sale in India, ensuring clarity and fairness in commercial transactions. It outlines the essentials of a valid contract of sale, including offer and acceptance, consideration, and lawful object. The Act differentiates between conditions, which are essential terms, and warranties, which are minor terms, in a contract of sale. It also addresses the transfer of property in goods, special provisions for contracts involving sea routes, and the legal implications of a sale by non-owners. Additionally, it defines the rights and duties of buyers and sellers in a contract of sale and outlines the rights of an unpaid seller when buyers fail to fulfill their payment obligations. Understanding these provisions is essential for conducting business transactions effectively and resolving disputes in accordance with the law.

5.4 Glossary

Contract of Sale	An agreement between a buyer and a seller for the exchange of goods or property for a price.
Conditions	Essential terms of a contract of sale that go to the root of the agreement.
Warranties	Minor terms of a contract of sale that are not essential to its performance.

Transfer of Property	The process of transferring ownership of goods from the seller to the buyer.
Sale by Non-Owner	A sale where the seller is not the owner of the goods being sold.
Rights of Unpaid Seller	Rights available to a seller when the buyer fails to fulfill payment obligations.
Voidable Title	Title to goods that may be voided or rescinded by the true owner of the goods due to fraud, mistake, or coercion.
Rescission	The cancellation or annulment of a contract, returning the parties to their pre-contractual positions.

5.5 Self – Assessment

Short Questions

1. What are the essential elements of a contract of sale?
2. How do conditions differ from warranties in a contract of sale?
3. What rights does an unpaid seller have when the buyer fails to pay?
4. Can a person sell goods if they are not the owner? Explain.
5. Provide an example of a real-life incident involving breach of warranty in a sale transaction.

Essay type Questions

1. What are the rights and remedies available to a buyer if goods purchased do not conform to the terms of the contract? Explain with examples.

2. Discuss the legal implications of a sale by a person who is not the owner of the goods. What rights does the buyer have in such a situation?
3. Explain the concept of voidable title in the context of the Sale of Goods Act 1930. How does it affect the validity of a sale transaction?
4. Describe the rights of an unpaid seller under the Sale of Goods Act 1930, including the right of lien and right of stoppage in transit.
5. Discuss the importance of distinguishing between conditions and warranties in a contract of sale. Provide examples of each.
6. What are the special provisions for contracts involving transportation of goods by sea under the Sale of Goods Act 1930? How do they impact sale transactions?

5.6 Case Study

The "Hoverboard" Incident:
A manufacturer sells hoverboards online with a warranty for safety. Several customers experience battery malfunctions, resulting in fires. The manufacturer faces lawsuits for breach of warranty and product liability.
Sale of Stolen Goods:
A person sells a laptop to a buyer on an online marketplace. It is later discovered that the laptop was stolen. The buyer demands a refund, and the seller faces legal consequences for selling stolen goods.
Real Estate Purchase:
A couple enters into a contract to purchase a house. After the sale is finalized, they discover undisclosed defects in the property. They sue the seller for breach of contract and failure to disclose material information.

5.7 Task

Role-Playing: Divide into groups and role-play scenarios of contract negotiations, including offer, acceptance, and consideration.

Case Study Analysis: Analyze real-life case studies of contract disputes and discuss the legal principles involved.

Drafting Contracts: Draft sample contracts of sale, including terms and conditions, for hypothetical transactions.

5.8 E – Content

S. No	Topics	E-Content Link	QR Code
1	**The Sale of Goods Act - 1930**	https://youtu.be/GUblINDIz0M?si=cVLtcoalII2UM8VQ	
2	**Conditions & Warranties**	https://youtu.be/QS3FZrabgp8?si=IMohMZLPNM7H8BLy	
3	**Rules of Transfer of Property in Goods**	https://youtu.be/1GLbX5KTHvA?si=vfN3iSa5fV8o9TU2	
4	**Rights & Duties of Seller & Buyer**	https://youtu.be/A3XWWKpxsJw?si=5SZRDZgQUMCAuV4p	

5.9 Reference

https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC_CEN_3_20_00059_193003_1523350185738&orderno=5&orgactid=AC_CEN_3_20_00059_193003_1523350185738

https://www.indiacode.nic.in/bitstream/123456789/2390/1/193003.pdf

https://cleartax.in/glossary/earnest-money/#:~:text=Earnest%20money%20refers%20to%20the,%2C%20property%20valuation%2C%20and%20inspections.

https://www.bartleby.com/subject/business/concepts/sale-of-goods