BUSINESS LAW

UNIT – I

Introduction

Meaning of contract

In simple terms, a contract means when two parties put into writing an agreement which contains certain obligations (promises) which are to be performed by such parties, and when such written agreement becomes enforceable by law, it becomes a Contract. Enforceable by law means when the agreement has acquired the force of law only for those who are a party to it and a violation of those obligations would attract legal action, including repudiation of the entire contract.

Contract Act defines a Contract as **"An agreement which is enforceable by Law".** An Agreement is a settlement between two parties, which contains obligations or promises which both parties need to fulfil. When such an agreement is made binding by Law it becomes a Contract.

Therefore an agreement consists of **reciprocal Promises** which are to be performed by parties to the contract. Promises are reciprocal when both parties have to perform something for the other.

Pollock- "Every agreement and promise enforceable by law is a contract".

Salmond- "A contract is an agreement creating and defining obligation between two or more persons by which rights are acquired by one or more to acts or forbearance on the part of others".

Anson- "The law of contract is that branch of law which determine the circumstances in which a promise shall be legally binding on the person making it'.
Now after examining the definitions of contract we can say that-

Contract = Agreement + Enforceability

Illustration: A contracted with B for purchase of 10 bags of cement of a certain quality, for Rs 1, 00,000. In this case, B's promise is to provide A with 10 bags of cement of that quality only for which A has contracted and A's promise is to duly pay B Rs.1, 00,000. In this case, both have to perform something for the other, thus it is a case of reciprocal promise.

Charity is not a case of reciprocal promise, because a person doing charity does not expect anything in return.

Contracts in India is primarily governed by *INDIAN CONTRACT ACT, 1872* **("Contract Act")**. It contains basic elements of a contract and several general rules which apply to contracts. It does not impose any positive duty on the parties rather; it states various formalities regarding contracts.

Essentials of a valid contract

Section 10 states conditions which are required for a contract to be valid.

- **Offer:** Firstly, there must be an offer from either party, without an Offer a contract cannot arise. However, in some cases, this principle could not be applied. For instance, Mulla talks about a situation in which offer and acceptance could not be traced, for instance, a commercial agreement reached after multiple rounds of negotiations.

- **Acceptance of the offer:** Secondly, the Offer must be accepted and accepted by the person to whom it was intended. So an offer by A to B has to be accepted by B only.

Acceptance in ad-idem: Thirdly, though acceptance is important, there must be *"**Consensus ad-idem**"*.

Consensus ad-idem means meeting of minds. It means that parties to the contract **should accept the terms of the contract in the "*same sense*"**. Thus parties to the contract must have the same understanding of the terms of the contract.

E.g. A contracted with B to purchase rice. Now A wanted a special type of rice, however, B thought of it to be normal rice. In this case, although there is a valid acceptance but there lacks meeting of minds between the parties; meeting of minds concerning the type or quality of rice. Similarly, if A contracted with B to buy stocks. What A meant was stocks in a company, whereas B understood it to be his livestock (farm animals). In this case, the understanding was not in a similar sense.

- Parties must be **competent** to contract, under the laws they are subjected to i.e. they must be legally capable to contract

- **Consideration,** for the performance of promises there must be a consideratio**ne.** something given for performance of promise from both parties to the contract.

Further, the **objective and consideration** of the contract must be lawful.

- **Free consent,** according to section 10 of contract act**"** *agreements are contracts if they are made by free consent"* It means that contract must be entered into out of parties own volition and without being forced, or deceived into.

- There must be an intention to enter into a legal relationship.

- **Certainty,** Contract must be certain and not ambiguous and vague. (Section 29)

- A contract **must not be expressly declared void.** (Section 10 of Contract Act)

PROPOSAL

Proposal is considered as the seed of the mammoth tree of contract. It is an wish of any person to do a work. Proposal has significance when it is accepted by another person. The person to whom proposal is made should accept to act in accordance with the proposal. Then only an accepted proposal becomes a promise. The person who proposes is known as promissor and who has accepted it is known as promisee. The promissor should remunerate promisee when he acts in accordance with the proposal otherwise it amounts to unjust enrichment which the law does not permit. Here there will be two promisee i.e. one by the

proposer to pay for service and another by promises to act in accordance with the promisee i.e. his service which can be either in the former goods, or service or money.

AGREEMENT

Promise or set promise where one would act as a consideration to another is known as an agreement. Sec 2 (e). An agreement is a kind of understanding between persons with regard to completion of work. When two or more persons agree to do the same work in the same manner it is known as 'consensus ad-idem'. The consensus ad-idem is the base of any agreement. These agreements are classified as (1) Social agreements (2) Legal agreements. On the basis of intention of the parties with regard to their relationship in an agreement. The character of a social agreement is the parties are related socially like, father and children, husband and wife and brother and sister, it is mainly based on love and affection between them, and one's concern towards another. In case of breach the aggrieved party (person who has suffered loss due to non performance of promise) cannot approach a court of law for remedy. As everything is based on love and affection and on err is excused.

BALFOUR Vs BALFOUR (1919)

The defendant and his wife were enjoying leave in England. When the defendant was due to return to Ceylon, where he was employed, his wife was advised, by reason of health to remain in England. The defendant agreed to send an amount of pound 30 a month for the probable expenses of maintenances. He did sent the amount for some time, but the differences afterwards arose which resulted in their separation, and the allowance fell no arrears. The wife claim to recover the arrears was dismissed. Mr. and Mrs. Balfour went to England on a vacation, after the completion of the vacation, Mr. Balfour promised to pay certain sum of money to Mrs. Balfour for her maintenance. On returning from England they were separated and Mr. Balfour failed to act in accordance with his promise. When his action was questioned by Mrs. Balfour it was held by the court that when social relations constitute the base of an agreement, and when the parties do not maintain that relation, there is no question of insisting on performance when a person fails to perform it. When the parties who are socially related express their intention to have legal relation or any person who are not socially related express their intention to have legal relation among themselves (when family members form a partnership and express their intention to be identified as partners of a firm, or a group of persons expressing their intention to be bound under a legal relation as partners). Such agreements are known as legal agreements, when any person commits a breach of agreement, the aggrieved party can go to a court of law to enforce his

right of being indemnified as every one has a right of being protected against any attempt of unjust enrichment by another.

DEFINITIONS OF THE TERM CONTRACT

Section 2 (h) of the contract Act defines the term contract as “Any agreement which is enforceable under law”

1. Fredrick Pollack defines as “Every agreement or promise or enforceable under law”.
2. ANSON defines: A contract consists of actionable promise or promises.

CLASSIFICATION OF CONTRACTS

1. Validity : Valid contracts, void agreements ,voidable contracts
2. Nature : Expressed, Implied, Quasi
3. Formation : Executed, Executory
4. Performance : Unilateral, Bilateral

A contract is any agreement enforceable under law i.e. a contract should be an agreement as it has legal agreements. But all agreements do not qualify themselves to be a contract as the intention of parties who enter into an agreement may be different, namely social agreement, and void agreements. In case of Social agreements more stress is on ‘social relationship’ based on love and affection, where in parties are prepared for any sacrifice, i.e., not insisting on exercise of their rights. As these do not knock the doors of law it is not a parties contract. The persons who enter into any agreement basically aim at getting the benefit without causing inconvenience or hardship to another but we also find people entering into agreements to get benefit at any cost, ignoring the consequences and they do not worry about the position of others. They also adopt various illegal ways of earning money. Such agreements which are not recognised under law are called as void agreements (abinitio void) not enforceable under law from beginning people may without the knowledge of consequences in such situations, as aggrieved party cannot go to a court of law i.e. why it is stated all contracts are agreements but all agreements are not contracts.

On the basis of legal recognition to a contract, we can classify the contracts as

(1) Valid

(2) Void agreement

(3) Voidable contracts.

(1) Basically a contract is an agreement which enforceable under law. The law would recognize an agreement as a contract, when it satisfies all the conditions of a valid contract stated in section 10 of the Indian contract act. Such agreements are "Valid Contracts".

(2) An agreement which is against to the provisions of law is known as 'Void agreement'. Void agreements are not enforceable from beginning. An agreement becomes enforceable when a party to the agreement fails to perform his part in the contract, then the aggrieved party can enforce his right to get back the benefit which he has lost. But in a void agreement the sufferer cannot insist on performance section 27 of the act lists void agreement. For example: If A promises to pay Rs. 1000/- to B, if B bets C, and (1) after B has bet C and A fails to pay or A has paid B the promised amount and B has failed to do his part of the act in both cases approach the court of law to enforce their claim as the agreement between them was a void agreement..

(3) Voidable contract is basically a valid contract at the time of formation. But at a later stage one of the party to the contract feels that he would suffer loss if he performs the contract, and his consent was not free, so he expresses his intention to cancel the contract as his consent was obtained by another, by unfair means. (A consent is said to be a free consent, when it is not influenced by coercion, (section 15) undue influence (section 16) fraud (section 17) misrepresentation (section 18) mistake (sec. 20, 21, 22) The contract becomes voidable from the stage of expression of lack of free consent. But the person would be allowed to set aside the contract only when he proves to a court of law that the consent to the contract was obtained by another by unfair values the court, would allow him to set aside the contract if it is satisfied, otherwise it may insist on performance. Eg: If A agrees to sell 100 bags of Rice to B at Rs. 500/= per bag and later finds it he would incur loss if it sold at that price, if A approaches the court with a plea that he consented to sell rice at the price as was forced to agree (an act of coercion) or he was made to believe that the market price is lower that Rs. 500/=, even though it was not so. (an act of fraud) and if it is proved that his consent was not free he can be allowed to be aside the contract.

Nature:

(1) A contract would be considered as an expressed one when the parties communicate their intention to be bound by a contract by means of use of words (oral or written communication) the contract would be complete when they are able to understand the communication and act upon it.

(2) An implied contract is one in which the parties express their intention to be bound under contractual relation by means of their action. For eg: If Mr. A boards a bus and occupies a seat in the bus, he is supposed to purchase a ticket, for travelling in that bus. If he fails so he can be punished.

ESSENTIALS OF A CONTRACT

Essential Elements of a Valid Contract

The following are the essential elements of a valid contract.

1. Offer and Acceptance

   Basically, a contract unfolds when an offer by one party is accepted by the other party . The accepted offer should be without any qualification and be definite. An offer needs to be clear, definite, complete and final. It should be communicated to the offeree. A proposal when accepted becomes a promise or agreement. The offer and acceptance must be 'consensus ad idem' which means that both the parties must agree on the same thing in the same sense i.e. identity of wills or uniformity of minds.

2. Intention to Create Legal Relationship

   The intention of the parties to a contract must be to create a legal relationship between them. Agreements of social nature, as they do not contemplate legal relationship, are not contracts. For instance, if a father fails to give his daughter the promised pocket money, the daughter cannot sue the father, because it was purely a domestic arrangement. Thus, it is clear that all agreements, which do not result in legal relations, are not contracts.

3. Capacity to Contract

   If an agreement is entered between parties who are competent enough to contract, then the agreement becomes a contract.

4. Genuine and Free Consent

   Free consent is another essential element of a valid contract. An agreement must have been made by free consent of the parties. The contract would be void in case of mutual mistakes. When consent is obtained by unfair means, the contract would be voidable.

5. Lawful Object

Objectives of an agreement should be lawful. It must not be illegal or immoral or opposed to public policy. It is lawful unless it is forbidden by law. When the object of a contract is not lawful, the contract is void.

6. Lawful Consideration

Something in return is Consideration. In every contract, agreement must be supported by consideration. It must be lawful and real.

7. Certainty and Possibility of Performance

The agreements, in which the meaning is uncertain or if the agreement is not capable of being made certain, it is deemed void. T&C of the contract should always be certain and cannot be vague. Any contract that are uncertain are considered void. The terms of the agreement must also be capable of performance and should not enforce impossible act.

8. Legal Formalities

Legal formalities if any required for particular agreement such as registration, writing, they must be followed. Writing is essential in order to effect a sale, lease, mortgage, gift of immovable property etc. Registration is required in such cases and legal formalities in the relevant legislation should be strictly followed.

Rights of parties to a contract are the rights that are guaranteed through a legally valid contract to the parties that have made the agreement. Contract rights are related to (but different than) contract duties, which are the obligations to perform that each party has under the terms of the agreement.

Rights of parties to a contract are the rights that are guaranteed through a legally valid contract to the parties that have made the agreement. Such rights can be written; for example, the exclusive rights to copyrighted content. Rights can also be implied; for example, each party has a right to a fair and transparent disclosure of the contract material itself.
Contract rights exist on each side of the contract, but will most likely look different depending on the content of the contract. Each agreement will naturally involve a different set of rights than another agreement. One party might have the right to purchase a service,

while the other party might have the right to provide a service to that party. Contract rights are related to (but different than) contract duties, which are the obligations to perform that each party has under the terms of the agreement.

What Makes a Contract Unenforceable?

If a contract is deemed unenforceable, the court will not compel a party to act or compensate the other for not fulfilling the contract terms. While the elements of an enforceable contract (offer, acceptance, consideration) seem simple, there are strict standards for enforceability. A contract can be rendered unenforceable for numerous reasons related to circumstances of the signing, terms of the agreement itself, or events that occur after the contract has been signed.

Potential Issues Prior to Signing of the Contract

Signing a contract can have significant consequences for both parties. It is vital to understand the circumstances that could render a contract unenforceable. By being on alert prior to the signing, you can identify any potential red flags ahead of time, which can prevent the need for costly court intervention. Here are some of the most common issues that can render a contract unenforceable.

- **Lack of Capacity**

  For a contract to be enforceable, both parties must have the capacity to understand the terms of the contract. What makes a contract unenforceable is when one party doesn't understand the terms or how they will be bound by it. Lack of capacity commonly applies to minors (children under the age of 18), mentally ill individuals or people under the influence of drugs or alcohol.

- **Duress or Undue Influence**

  Parties must agree to the terms of the contract willingly. For a contract to be enforceable, one side cannot feel threatened or pressured into signing the contract. Duress is defined as a coercive action that leaves the party with no other alternative other than to sign the agreement. In this context, a contract could be deemed unenforceable if one party threatens a lawsuit unless the other party signs. Undue influence is a bit subtler and more centered around a power dynamic. If one party is in a special relationship with the other that impacts their ability to decide

to sign the contract willingly, the agreement is unenforceable. For example, contracts between employer and employee, or caregiver and patient, could be more susceptible to undue influence. It doesn't mean they cannot have legal agreements, but special care and attention need to be paid to the circumstances regarding the contract.

- **Misrepresentation**
  Misrepresentation occurs when one party knowingly (this is considered fraudulent) or unknowingly (this is considered negligent) makes an untrue statement with the intent to induce the other party to sign the contract.

For example, Company A falsely tells a vendor they will not hire a competing business if they sign the contract. Meanwhile, Company A has a meeting with a competitor the next day and intends to enter into business with them. Company A would have committed fraudulent misrepresentation, which renders the contract unenforceable. Remember: Always include all terms of the contract in writing.

Issues within the Contract

When looking for an example of an unenforceable contract, you will find countless agreements with issues surrounding the terms themselves. It is essential to thoroughly read and review all terms within a contract before signing. Here are some potential pitfalls that signify the contract may not be enforceable.

- **Mistakes**
  To err is human. While it is everyone's responsibility to thoroughly review a contract before signing, mistakes happen. But if a contract includes a unilateral or mutual mistake, a court will not enforce it. Take, for instance, parties who negotiate the sale of widgets for $5.00 per unit, but the contract includes a printing error that changed the price to $500 per widget. The contract would be declared unenforceable, and it would be changed to conform to the original intent of the parties.

- **Public Policy**

Sometimes terms will be regarded as unenforceable because the contract could cause harm to society. Contracts that include terms opposing state or federal law are

automatically unenforceable. For example, if an employer forces an employee to sign a contract that prevents him or her from taking sick leave, it would be considered unenforceable.

Events that Create Unenforceability After a Signing

Just because a contract is signed doesn't mean both parties are held to the terms under all circumstances. Some events can make the terms of a contract impossible to complete, thus making the agreement unenforceable.

For example, let's say Company A contracts to sell 2,000 pounds of fish for $3.00 per pound to Company B. A natural disaster causes the fish population to decline greatly. Company A has to switch suppliers, and now the fish will cost them $9.00 per pound. This loss of over $6.00 per pound would make the contract terms financially disastrous.

An assignment of contract occurs when one party to an existing contract (the "assignor") hands off the contract's obligations and benefits to another party (the "assignee"). Ideally, the assignor wants the assignee to step into his shoes and assume all of his contractual obligations and rights. In order to do that, the other party to the contract must be properly notified. Read on to learn how assignments work, including how to keep an assignment option out of your contract.

What is a Breach of Contract?

A breach of contract may occur when a party to a valid contract has failed to fulfill their side of the agreement.

For instance, the terms of a contract are what guides the parties in what they must do and how they should do it in order to maintain their promise. If a party does not do what the contract instructs that they do, then the non-breaching party will be allowed to take legal action and can file a lawsuit against them in court.

A breach of contract can occur as either a partial or a complete breach. A court will also assess whether the breach was a substantial one or only a minor one. This will help the court determine what type of damages the breaching party should have to pay.

What are the Ways You Can Breach a Contract?

There are three main ways for which a party can be held liable for breach of contract. This includes when:

- There is an anticipatory breach. Often referred to as anticipatory repudiation, this type of breach occurs when the breaching party tells the non-breaching party that they will not be fulfilling the terms of their contract. Once the other party is notified, they can sue for breach of contract.
- A party has committed a minor breach. A minor breach of contract happens when a party fails to perform a small detail of the contract. In this case, the entire contract has not been violated and can still be substantially performed. This also comes up when there is a technical error with the contract (e.g., a wrong date, price, or typo within the terms of the contract).
- If there is a material or fundamental breach. These are the most common types of breaches cited as the basis of a breach of contract action. This is when the breach is so substantial that it essentially cancels the contract because it renders performance by either party impossible.

Some other ways that a contract can be breached include when the contract is fraudulent, if the contract was formed illegally or is unconscionable, and when there is a mistake of fact present in the contract terms. The parties may also include conditions that are unique to their particular contract, which will specify when a party's actions can be considered a breach. Additionally, state laws and the type of contract it is (e.g., lease agreement, sales contract, government contract, etc.) may indicate other ways that a contract can be breached.

The term 'Performance of contract' means that both, the promisor, and the promisee have fulfilled their respective obligations, which the contract placed upon them. For instance, *A* visits a stationery shop to buy a calculator. The shopkeeper delivers the calculator and *a* pays the price. The contract is said to have been discharged by mutual performance.

I. Actual Performance

When a promisor to a contract has fulfilled his obligation in accordance with the terms of the contract, the promise is said to have been actually performed. Actual performance gives a discharge to the contract and the liability of the promisor ceases to exist. For example, A agrees to deliver10 bags of cement at B's factory and B promises to pay the price on delivery.

A delivers the cement on the due date and B makes the payment. This is actual performance. Actual performance can further be subdivided into substantial performance, and partial Performance

II. Substantial Performance

This is where the work agreed upon is almost finished. The court then orders that the money must be paid, but deducts the amount needed to correct minor existing defect. Substantial performance is applicable only if the contract is not an entire contract and is severable. The rationale behind creating the doctrine of substantial performance is to avoid the possibility of one party evading his liabilities by claiming that the contract has not been completely performed. However, what is deemed to be substantial performance is a question of fact to be decided in both the case. It will largely depend on what remains undone and its value in comparison to the contract as a whole.

III. Partial Performance

This is where one of the parties has performed the contract, but not completely, and the other side has shown willingness to accept the part performed. Partial performance may occur where there is shortfall on delivery of goods or where a service is not fully carried out.
There is a thin line of difference between substantial and partial performance. The two following points would help in distinguishing the two types of performance.

Partial performance must be accepted by the other party. In other words, the party who is at the receiving end of the partial performance has a genuine choice whether to accept or reject. Substantial performance, on the other hand, is legally enforceable against the other party.

Payment is made on a different basis from that for substantial performance. It is made on quantum *meruit*, which literally means as much as is deserved. So, for example, if half of the work has been completed, half of the negotiated money would be payable. In case of substantial performance, the party that has performed can recover the amount appropriate to what has been done under the contract, provided that the contract is not an entire contract. The price is thus, often payable in such circumstances, and the sum deducted represents the cost of repairing defective workmanship.

IV. Attempted Performance

When the performance has become due, it is sometimes sufficient if the promisor offers to perform his obligation under the contract. This offer is known as attempted performance or more commonly as tender. Thus, tender is an offer of performance, which of course, complies with the terms of the contract. If goods are tendered by the seller but refused by the buyer, the seller is discharged from further liability, given that the goods are in accordance with the contract as to quantity and quality, and he may sue the buyer for.breach of contract if he so desires. The rationale being that when a person offers to perform, he is ready, willing and capable to perform. Accordingly, a tender of performance may operate as a substitute for actual performance, and can effect a complete discharge.

In this regard, **Section 38 of Indian Contract Act** says:

'Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. For example, ***A*** contracts to deliver to ***B***, 100 tons of basmati rice at his warehouse, on 6 December 2015. ***A*** takes the goods to ***B***'s place on the due date during business hours, but ***B***, without assigning any good reason, refuses to take the delivery. Here, ***A*** has performed what he was required to perform under the contract. It is a case of attempted performance and ***A*** is not responsible for non-performance of ***B***, nor does he thereby lose his rights under the contract.'

V. Discharge of a Contract

A contract creates certain obligations on one or all parties involved. The discharge of a contract happens when these obligations come to an end. There are many ways in which a contract is discharged. In this article, we will look at various such scenarios.

VI.1] Discharge by Performance

When the parties to a contract fulfil the obligations arising under the contract within the time and manner prescribed, then the contract is discharged by performance.

Example: Peter agrees to sell his cycle to John for an amount of Rs 10,000 to be paid by John on the delivery of the cycle. As soon as it is delivered, John pays the promised amount.

Since both the parties to the contract fulfil their obligation arising under the contract, then it is discharged by performance. Now, discharge by the performance of a contract can be by:

1. Actual performance
2. Attempted performance

As shown in the example above, actual performance is when all the parties to a contract do what they had agreed for under the contract. On the other hand, it is possible that when the promisor attempts to perform his promise, the promisee refuses to accept it. In such cases, it is called attempted performance or tender.

VII. 2] Discharge by Mutual Agreement

If all parties to a contract mutually agree to replace the contract with a new one or annul or remit or alter it, then it leads to a discharge of the original contract due to a mutual agreement.

Example: Peter owes Rs 100,000 to John and agrees to repay it within one year. They document the debt under a contract. Subsequently, he loses his job and requests John to accept Rs 75,000 as a final settlement of the loan. John agrees and they make a contract to that effect. This discharges the original contract due to mutual consent.

VIII. 3] Discharge by the Impossibility of Performance

If it is impossible for any of the parties to the contract to perform their obligations, then the impossibility of performance leads to a discharge of the contract. If the impossibility exists from the start, then it is impossibility ab-initio. However, the impossibility might also arise later due to:

- An unforeseen change in the law
- Destruction of the subject-matter essential to the performance
- The non-existence or non-occurrence of a particular state of things which was considered a given for the performance of the contract
- A declaration of war

Example: Peter enters into a contract with John to marry his sister Olivia within one year. However, Peter meets with an accident and becomes insane. The impossibility of performance leads to a discharge of the contract.

IX.4] Discharge of a Contract by Lapse of Time

The Limitation Act, 1963 prescribes a specified period for performance of a contract. If the promisor fails to perform and the promisee fails to take action within this specified period,

then the latter cannot seek remedy through law. It discharges the contract due to the lapse of time.

Example: Peter takes a loan from John and agrees to pay instalments every month for the next five years. However, he does not pay even a single instalment. John calls him a few times but then gets busy and takes no action. Three years later, he approaches the court to help him recover his money. However, the court rejects his suit since he has crossed the time-limit of three years to recover his debts.

X. 5] Discharge of a Contract by Operation of Law

A contract can be discharged by operation of law which includes insolvency or death of the promisor.

XI. 6] Discharge by Breach of Contract

If a party to a contract fails to perform his obligation according to the time and place specified, then he is said to have committed a breach of contract.

Also, if a party repudiates a contract before the agreed time of performance of a contract, then he is said to have committed an anticipatory breach of contract.

In both cases, the breach discharges the contract. In the case of:

- an actual breach, the promisee retains his right of action for damages.
- an anticipatory breach of contract, the promisee cannot file a suit for damages. It also discharges the promisor from performing his part of the contract.

XII. 7] Discharge of a Contract by Remission

A promisee can waive or remit the performance of promise of a contract, wholly or in part. He can also extend the time agreed for the performance of the same.

In example 3 above, Peter only repays a part of the money he owes to John. However, John agrees to accept it as a final settlement of the debt. John's act of remission discharges the contract.

XIII. 8] Discharge by Non-Provisioning of Facilities

In many contracts, the promisee agrees to offer reasonable facilities to the promisor for the performance of the contract. If the promisee fails to do so, then the promisor is discharged of all liabilities arising due to non-performance of the contract.

Example: Peter agrees to fix John's garage floor provided he keeps his car out for at least 6

hours. Peter approaches him a few times but John is reluctant to get his car out. John fails to provide reasonable facilities to Peter (an empty floor). This discharges him of all obligations arising under the contract.

XIV. 9] Discharge of a Contract due to the Merger of Rights

In some situations, it is possible that inferior and superior right coincides in the same person. In such cases, both the rights combine leading to a discharge of the contract governing the inferior rights.

Example: Peter rents John’s apartment for two years. One year into the contract, he offers to buy the property from John, who agrees. The enter a sale contract and Peter becomes the owner of the apartment. Here Peter has two rights; one accorded by the lease agreement making him the renter and second by the sale agreement making him the owner. The former being an inferior right merges with the superior one and discharges the lease contract.

UNIT – II

PLEDGE AND BAILMENT

Bailment and Pledge are two special contracts that are often confused. Every pledge is a bailment but every bailment is not pledge[1]. Bailment means a delivery of goods from one person to another for a special purpose. Whereas Pledge means delivery of goods as security for the payment of debt or performance of a promise. Therefore, Bailment & Pledge are two different contracts. Pledge is a special kind of bailment.

- Bailment

A bailment is a special contract defined under section 148 of the Indian Contract Act, 1872. It is derived from a French word i.e. "bailer" which means "to deliver"[2]. The etymological meaning of bailment is "handing over"or "change of possession of goods". By bailment, we mean delivery of goods from one person to another for a special purpose on the contract that they shall reimburse the goods on the fulfilment of the purpose or dispose of them as per the direction of the bailor. The person who delivers the goods is known as bailor. And the person to whom the goods are given is known as Bailee. And the property bailed is known as Bailed Property.

- Essentials of Bailment
- There shall be a contract between the parties for the delivery of goods,
- The goods shall be delivered for a special purpose only,
- Bailment can only be done for movable goods and not for immovable goods or money,
- There shall be a transfer of possession of goods,
- Ownership is not transferred to Bailee, therefore Bailor remains the owner,
- Bailee is duty bound to deliver the same goods back and not any other goods.
  - ***Exception:*** *The money deposited in the bank shall not account to bailment as the money returned by the bank would not be the same identical notes. And it is one of the essentials of the bailment that same goods are to be delivered back.*
- Duties of a Bailor

Section 150 of the Indian Contract Act, 1872 bound the bailor with certain duties to disclose the latent facts specifically pertaining to defect in goods. Bailor's duty of disclosure are:

- **Gratuitous Bailment:** It is the duty of the bailor to disclose all the defects in the

goods that he is aware of to the Bailee that can interfere with the use of goods or can expose him to extraordinary risks. And failure to do the same will make bailor liable for damages.

- **Non Gratuitous Bailment (Bailment for Reward):**This duty particularly deals with the goods given on hire. As per this provision, when the goods are bailed for hire, then in such a situation even if the bailor is aware of the defect in the goods or not will be held liable for the injury that has been caused due to the existence of such defect.

In *Hyman v Nye & Sons*, the plaintiff took a carriage on hire from the defendant but the carriage was not fit for the journey and subsequently, the plaintiff suffered injuries. The court held that even though the defendant was aware of such defect or not he shall be liable.

- Duties of Bailee

Bailee has to fulfil several obligations as per Indian Contract Act, 1872. That is:

- **Duty to take reasonable care:** It is the duty of the Bailee to take care of goods as his own goods. He shall ensure all safety measures that are necessary to protect the goods. The standard of care should be such as taken care by a prudent man. The goods shall be taken care of equally whether they are gratuitous or non-gratuitous. The Bailee shall be held liable for payment of compensation if he fails to take due care. But if the Bailee has taken due care and instead of that the goods are damaged then in such a situation Bailee will not be liable to pay compensation. The Bailee is not liable for the loss of goods due to destruction by fire. (Section 151-152)
- **Duty not to make unauthorized use of the goods:**Bailee is duty bound to use the goods for a specific purpose only and not otherwise. If he uses the goods for any other purpose than what is agreed for then the bailor has the right to terminate such bailment or is entitled with compensation for damage caused due to unauthorized use. (Section 153-154)
- **Duty not to mix bailor's goods with his own goods:** It is the duty of the Bailee not to mix bailor's goods with his own. But if he wants to do the same then he shall seek consent from the bailor for mixing of goods. If the bailor agrees for the mixing of the goods then the interest in the mixed goods shall be shared in proportion. In case, Bailee without the consent of bailor mixes the goods with his own then two situations arise: goods can be separated and goods can't be separated. In the former case the Bailee has to bear the cost of separation and in the latter case since there is the loss of the goods, therefore, bailor shall be entitled with damages of such loss. (Section 155-

157)

- **Duty to return the goods on the fulfilment of purpose:**Bailee is duty bound to return the goods once the purpose is achieved or on the expiry of the time period for which the goods were bailed. But if the Bailee makes default in returning the goods on proper time then he will be responsible with the loss, destruction or deterioration of the goods if any. (Section 160-161)

In the case of *Bank of India v. Grains & Gunny Agencies*[5] the court held that if the goods are lost or destroyed due to the negligence of servant of Bailee, then in such case as well Bailee shall be liable.

- **Duty to deliver to the bailor increase or profit if any on the goods bailed:**The Bailee has a duty to return the goods along with increase or profit subject to contract to the contrary. Accretion that has accrued from the bailed goods is the part of the bailed goods and therefore bailor has the right over such accretions if any. And such accretions shall be handed over to the bailor along with the goods bailed. For instance, A leaves a cow in the custody of B and cow gives birth to the calf. Then B is duty bound to hand over the bailed goods along with accretion to the bailor[6]. (Section 163)
- Rights of a Bailor

As such Indian Contract Act, 1872 does not provide for Rights of a Bailor. But Rights of a Bailor is same as Duties of the Bailee i.e. Rights of Bailor = Duties of Bailee[7]. So the rights of bailor are:

- **Enforcement of Bailee's Duty:**Since Right of the bailor is same as the right of the Bailee, therefore on the fulfilment of all duties of Bailee the bailor's right is accomplished. For example, it is the duty of the Bailee to give the accretions and it is the right of bailor to demand the same.
- **Right to claim damages:** If the Bailee fails to take care of the goods, the bailor has the right to claim damages for such loss. (Section 151)
- **Right to Termination the Contract:** If the Bailee does not comply with the terms of the contract and acts in a negligent manner in such case the bailor has the right to rescind the contract. (Section 153)
- **Right to claim compensation:** If the Bailee uses the goods for an unauthorized purpose or mixes the goods which cause loss of goods in such case bailor has the right to claim compensation.
- **Right to demand the return of goods:** It is the duty of the Bailee to return the goods

and the bailor has the right to demand the same.

- Rights of a Bailee
- **Right to recover expenses:**In the contract of Bailment, the Bailee incurs expenses to ensure the safety of goods. The Bailee has the right to recover such expenses from the bailor. (Section 158)
- **Right to remuneration:** When the goods are bailed to the Bailee he is entitled to receive certain remuneration for services that he has rendered. But in case of gratuitous bailment, the Bailee is not awarded any remuneration.
- **Right to recover compensation:**At times a situation arises wherein bailor did not have the capacity to contract for bailment. Such a contract causing loss to the Bailee, therefore the Bailee has the right to recover such compensation from the bailor. (Section 168)
- **Right to Lien:**Bailee has the right over Lien. By this, we mean that if the bailor fails to make payment of remuneration or does not pay the amount due, the Bailee has the right to keep the goods bailed in his possession till the time debtor dues are cleared. Lien is of two types: particular lien and general lien. (Section 170-171)

In the case of Surya Investment Co. v. S.T.C, the court held that expenses incurred by Bailee during preservation of goods under lien shall be borne by bailor.

- **Right to suit against a wrongdoer:**After the goods have been bailed and any third party deprives the Bailee of use of such goods, then the Bailee or bailor can bring an action against the third party. (Section 180)
- Pledge

Pledge is a kind of bailment. Pledge is also known as Pawn.It is defined under section 172 of the Indian Contract Act, 1892. By pledge, we mean bailment of goods as a security for the repayment of debt or loan advanced or performance of an obligation or promise. The person who pledges the goods as security is known as Pledger or Pawnor and the person in whose favour the goods are pledged is known as Pledgee or Pawnee.

- Essentials of Pledge

Since Pledge is a special kind of bailment, therefore all the essentials of bailment are also the essentials of the pledge. Apart from that, the other essentials of the pledge are:

- There shall be a bailment for security against payment or performance of the promise,
- The subject matter of pledge is goods,
- Goods pledged for shall be in existence,
- There shall be the delivery of goods from pledger to pledgee,

- There is no transfer of ownership in case of the pledge.
  - ***Exception:*** *In exception circumstances pledgee has the right to sell the movable goods or property that are been pledged.*
- Rights of Pawnor

As per Section 177 of the Indian Contract Act, 1872 the Pawnor has the Right to Redeem. By this, we mean that on the repayment of the debt or the performance of the promise, the Pawnor can redeem the goods or property pledged from the Pawnee before the Pawnee makes the actual sale. The right of redemption is extinguished once the actual sale is done by the Pawnee as per his right under section 176 of the Indian Contract Act, 1872.

- Rights of a Pawnee

The rights of the Pawnee as per Indian Contract Act, 1872 are:

- **Right to retain the goods:** If the Pawnor fails to make the payment of a debt or does not perform as per the promise made, the Pawnee has the right to retain the goods pledged as security. Moreover, Pawnee can also retain goods for non-payment of interest on debt or non-payment of expenses incurred. But Pawnee cannot retain goods for any other debt or promise other than that agreed for in the contract. (Section 173-174)
- **Right to recover extraordinary expenses:** The expenses incurred by Pawnee on the preservation of goods pledged can be recovered from Pawnor. (Section 175)
- **The right of suit to procure debt and sale of pledged goods:** On the failure to make repayment to Pawnee of the debt, the Pawnee has two right: either to initiate suit proceedings against him or sell the goods. In the former case, the Pawnee retains the goods with himself as collateral security and initiate the court proceedings. He need not provide any notice of such proceedings to the Pawnor. And in the latter case, the Pawnee can sell the goods after giving due notice of sale to the Pawnor. If the amount received from the sale of goods is less than the amount due then the rest amount can be recovered from Pawnor. And if the Pawnee gets more amount than the due amount then such surplus is to be given back to Pawnor. (Section 176)

UNIT – III

LAW OF AGENCY

CREATION OF AGENCY

Agency system is very popular in the current business scenario. There are two parties in the agency system one is the principal and another the agent. An agent is a person acting on behalf of his principal. It's a connecting link between the principal and the third party. Herein we will discuss the creation of agency under the Indian Contract Act, 1872.

Creation of Agency

A contract of agency may be express or implied. Consideration is not an essential element in the agency contract. Agency contract may also arise by estoppel, necessity or ratification.

1) *Types of an Agency Contract*

1. Express Agency

A contract of agency can be made orally or in writing. Example of a written contract of agency is the Power of Attorney that gives a right to an agency to act on behalf of his principal in accordance with the terms and conditions therein.

A power of attorney can be general or giving many powers to the agent or some special powers, giving authority to the agent for transacting a single act.

2. Implied Agency

Implied agency arises when there is any conduct, the situation of parties or is necessary for the case.

a. Agency by Estoppel

Estoppel arises when you are precluded from denying the truth of anything which you have represented as a fact, although it is not a fact.

Thus, where P allows third parties to believe that A is acting as his authorized agent, he will be estopped from denying the agency if such third-parties relying on it make a contract with an even when A had no authority at all.

b. Wife as Agent

Where a husband and wife are living together, we presume that the wife has her husband's authority to pledge his credit for the purchase of necessaries of life suitable to their standard of living. But the husband will not be liable if he shows that:

(i) he had expressly warned the tradesman not to supply goods on credit to his wife; or

(ii) he had expressly forbidden the wife to use his credit; or

(iii) he already sufficiently supplies his wife with the articles in question; or

(iv) he supplies his wife with a sufficient allowance.

Similarly, where any person is held out by another as his agent, the third-party can hold that person liable for the acts of the ostensible agent, or the agent by holding out. Partners are each other's agents for making contracts in the ordinary course of the partnership business.

Agency of Necessity (Sections 188 and 189):

In certain circumstances, a person who has been entrusted with another's property may have to incur unauthorized expenses to protect or preserve it. This is called an agency of necessity.

For example, a sent a horse by railway. On its arrival at the destination, there was no one to receive it. The railway company, is bound to take reasonable steps to keep the horse alive, was an agent of the necessity of A.

A wife deserted by her husband and thus forced to live separate from him can pledge her husband's credit to buy all necessaries of life according to the position of the husband even against his wishes.

a) *d. Agency by Ratification (Sections 169-200):*

Where a person not having any authority act as agent, or act beyond its authority, then the principal is not bound by the contract with the agent in respect of such authority. But the

principal can ratify the agent's transaction and accept liability. In this way, an agency by ratification arises.

This is ex post facto agency— agency arising after the event. By this ratification, the contract is binding on principal as if the agent had been authorized before. Ratification will have an effect on the original contract and so the agency will have effect from the original contract and not on ratification.

Duties of an agent

1. Duty to execute mandate
2. Duty to follow instructions or customs
3. Duty of reasonable care and skill
4. Duty to avoid conflict of interest
5. Duty not to make secret profit
6. Duty to remit sums
7. Duty to maintain accounts
8. Duty not to delegate

Rights of an agent

1. Right to remuneration– an agent is entitled to get an agreed remuneration as per the contract. If nothing is mentioned in the contract about remuneration, then he is entitled to a reasonable remuneration. But an agent is not entitled for any remuneration if he is guilty of misconduct in the business of agency.
2. Right of retainer– an agent has the right to hold his principal's money till the time his claims, if any, of remuneration or advances are made or expenses occurred during his ordinary course of business as agency are paid.
3. Right of lien– an agent has the right to hold back or retain goods or other property of the principal received by him, till the time his dues or other payments are made.
4. Right to indemnity– an agent has the right to indemnity extending to all expenses and losses incurred while conducting his course of business as agency.
5. Right to compensation– an agent has the right to be compensated for any injury suffered by him due to the negligence of the principal or lack of skill.

LIABILITY OF AN AGENT

An agent is not generally liable for **contracts** made; the principal is liable. But the agent will be liable if he is undisclosed or partially disclosed, if the agent lacks **authority** or exceeds it, or, of course, if the agent entered into the contract in a personal capacity.

TERMINATION OF AGENCY

Agency may be terminated two ways -
1) By the Act of the Parties –
2) By Operation of Law –
By the act of the parties -

By agreement - The Contract of Agency can be terminated at any time by mutual agreement between the principal and agent.
By revocation of the principal - The Principal revoke agency at any time by giving notice to the agent.
By Renunciation of an agent - Renunciation which means withdrawing from responsibility as Agent. Like Principal, Agent can also renounce the agency. According to Section 206 of the Indian Contract Act 1872, the agent must give to his Principal reasonable notice of renunciation. Otherwise, he will be liable to make good for the damage caused to the principal for want of such notice.

By operation of law –
Agency can be terminated by operation of law
i) By the completion of agency - Agency can become to an end after the completion of work for which the agency is created.
ii) By expiry of the time - Agency can also be terminated by the expiry of time. if the agency is created for the specific period, it is terminated after the expiry of the time.

iii) Death or insanity of principal or agent - Section 209 of the Indian Contract Act 1872 imposes an agent, duty to terminate the contract of agency on the death of the principal. In other words, Agency comes to an end on the death or insanity of the principal or agent.

iv) Insolvency of principal - According to Section 201 of the Indian Contract Act 1872, an insolvent or bankrupt is a person who is unable to run the business due to Excess of liabilities over assets. In this way, if the principal becomes an insolvent agency can be terminated.

v) Destruction of the subject matter - If this subject matter of the agency is destroyed agency comes to an end.

For example - Any agency is created for sale of an Airplane if the Airplane caught fire before the sale the agency comes to an end. In this contract Airplane is the subject matter.

vi) Principal becoming an alien enemy - If the Principal becomes an alien enemy the contract of agency comes to an end.

vii) Dissolution of company or firm - A Firm or company may be regarded as a Principal in the contract of Agency. If the company or firm is dissolved the agency comes to an end.

Kinds of Agents

On the point of view of the extent of their authority and the nature of the work performed by them agents may be Classified under the following heads : -

1)Universal Agent :

A Universal agent is one who is authorised to do all the acts which the Principal can lawfully do and can delegate.

2) Special Agent:

A Special Agent is one who is employed to do some particular act or represent his Principal in some particular transactions.

for example, An agent employed to sell a Bike. If the special agent does anything outside his authority, the principal is not bound by it and third parties are not entitled to assume that the agent has unlimited powers.

3) General Agent:

A General Agent is one was employed to do all acts connected with particular business or employment.

For example, A manager of a firm. He can bind the principal by doing anything which Falls within the ordinary scope of that business. Whether he is actually authorised for any particular act or not, is immaterial provided that third party acts bona fide.

4) De Credere Agent:

He is one who in consideration of an extra commission guarantee his Principal that the third person with whom he enters into contracts on behalf of the principal shall perform their financial obligations that is, if the buyer does not pay, he will pay. Thus he occupies the position of a surety it as well as an Agent. He is not answerable to his principle for the failure of the third person to perform the contract. A del credere agent constituted an exception to this rule.

5) Pakka Adatia And Kaccha Adatia

Pakka Adatia is an agent of his constituent only up to a certain point only for the purpose of ascertaining and giving a correct quotation of the price. But thereafter when the transaction takes place, he cease to be an agent and assumes towards his constituent the character of a Principal, and the transaction must be regarded as a contract between Principal and Principal.

6) Broker :

He is one who is employed to make contracts for the purchase and sale of goods. He is not entrusted with the possession of goods. He simply act as a connecting link and bring it to parties together to bargain and if the circumstances materialise he becomes entitled to his commission called brokerage. He makes a contract in the name of his Principal. Thus, a broker is an agent primarily employed to negotiable a contract between two parties where he is a broker for sale he has no position of the goods to be sold.

7) Factor :

A factor is a mercantile agent to home goods are entrusted for sale. He enjoys Wide discretionary powers in relation to the sale of goods. A Factor is an agent who is entrusted with the possession and contract of the goods to be said by him for his Principal.

He has possession of the goods, authority to sell them in his own name and a general discretion as to this sale. He may sale on the usual term of credit may receive the price and give a good discharge to the buyer.

8) Commission Agent:

Commission Agent is a mercantile Agent who buys or sells goods for his Principal on the best possible terms in his own name and who receives Commission for his labours. He may have possession of course or not.

9) Auctioneers :

An auctioneer is an agent to sell property at a public auction. He is primary an agent for the seller, but upon the property being knocked down he becomes also the agent of the buyer. He is mercantile agent within the meaning of Section 2(9) of the Sale of goods Act.

UNIT- IV

PARTNERSHIP

The Indian Partnership Act, 1932 governs partnership forms of business in India. Section 4 of this Act defines a partnership as the relationship between partners who have agreed to share the firm's profits carried on by all or any one of them acting for all.

Elements of a Partnership

A partnership as we know is an agreement between two or more persons to run a business together and share the profits they earn from this business. Now according to the Indian Partnership Act 1932, there is five important and necessary elements of a partnership. Let us learn about them.

Elements of a Partnership

The Indian Partnership Act 1932 defines a partnership as a relation between two or more persons who agree to share the profits of a business run by them all or by one or more persons acting for them all. As we go through the Act we will come across five essential elements that every partnership must contain. Let us take a look at them.

1] Contract for Partnership

A partnership is contractual in nature. As the definition states a partnership is an association of two or more persons. So a partnership results from a contract or an agreement between two or more persons. A partnership does not arise from the operation of law. Neither can it be inherited. It has to be a voluntary agreement between partners.

A partnership agreement can be written or oral. Sometimes such an agreement is even implied by the continued actions and mutual understanding of the partners.

2] Association of Two or More Persons

A partnership is an association between two or more persons. And persons by law only includes individuals, not other firms. The law also prohibits minors from being partners. But

minors can be admitted to the benefits of a partnership.

The Act is actually silent on the maximum number of partners. But this has been covered under the Companies Act 2013. So a partnership can only have a maximum of 10 partners in a banking firm and 20 partners in all other kinds of firms.

3] Carrying on of Business

There are two aspects of this element. Firstly the firm must be carrying on some business. Here the business will include any trade, profession or occupation. Only that some business must exist and the partners must participate in the running of such business.

Also, the business must be run on a profit motive. The ultimate aim of the business should be to make gains, which are then distributed among the partners. So a firm carrying on charitable work will not be a partnership. If there is no intention to earn profits, there is no partnership.

4] Profit Sharing

The sharing of profits is one of the essential elements of a partnership. The profit sharing ratio or the manner of sharing profits is not important. But one partner cannot be entitled to the entire profits of the firm.

However, the sharing of losses is not of any essence. It is up to the partners whether the losses will be shared by all the partners. If nothing is said then the losses are also split in the profit sharing ratio.

Say for example two individuals are operating out of the same warehouse. So they agree to divide the rent amongst themselves. This is not a partnership since there is no profit sharing between the two.

5] Mutual Agency

The definition states that the business must be carried out by the partners, or any partner/s acting for all of them. This is a contract of mutual agency another one of the five elements of a partnership.

This means that every partner is both a principle as well as an agent for all the other partners of the firm. An act done by any of the partners is binding on all the other partners and the firm as well. And so every partner is bound by the acts of all the other partners. This is one of the most important aspects of a partnership. It is, in fact, the truest test of a partnership.

Relationship of Partners to Each Other

Each partner has a right to share in the profits of the partnership. Unless the partnership agree
ment states otherwise, partners share profits equally. Moreover, partners must contribute equa
lly to partnership losses unless a partnership agreement provides for another arrangement. In
some jurisdictions a partner is entitled to the return of her or his capital contributions. In juris
dictions that have adopted the RUPA, however, the partner is not entitled to such a return.

In addition to sharing in the profits, each partner also has a right to participate equally in the
management of the partnership. In many partnerships a majority vote resolves disputes relatin
g to management of the partnership. Nevertheless, some decisions, such as admitting a new p
artner or expelling a partner, require the partners' unanimous consent.
Each partner owes a fiduciary duty to the partnership and to copartners. This duty requires tha
t a partner deal with copartners in Goodfaith, and it also requires a partner to account to copar
tners for any benefit that he or she receives while engaged in partnership business. If a partne
r generates profits for the partnership, for example, that partner must hold the profits as a trust
ee for the partnership. Each partner also has a duty of loyalty to the partnership. Unless
copartners consent, a partner's duty of loyalty restricts the partner from using partnership
property for personal benefit and restricts the partner from competing with the partnership, en
gaging in self-dealing, or usurping partnership opportunities.

Relationship of Partners to Third Persons

A partner is an agent of the partnership. When a partner has the apparent or actual authority a
nd acts on behalf of the business, the partner binds the partnership and each of the partners fo
r the resulting obligations. Similarly, a partner's admission concerning the partnership's affair
s is considered an admission of the partnership. A partner may only bind the partnership, how
ever, if the partner has the authority to do so and undertakes transactions while conducting th
e usual partnership business. If a third person, however, knows that the partner is not authoriz
ed to act on behalf of the partnership, the partnership is generally not liable for the partner's u
nauthorized acts. Moreover, a partnership is not responsible for a partner's wrongful acts or o
missions committed after the dissolution of the partnership or after the dissociation of the part
ner. A partner who is new to the partnership is not liable for the obligations of the partnership
that occurred prior to the partner's admission.

Liability

Generally, each partner is jointly liable with the partnership for the obligations of the partnership. In many states each partner is jointly and severally liable for the wrongful acts or omissions of a copartner. Although a partner may be sued individually for all the damages associated with a wrongful act, partnership agreements generally provide for indemnification of the partner for the portion of damages in excess of her or his own proportional share.

Some states that have adopted that a partner is jointly and severally liable for the debts and obligations of the partnership. Nevertheless, before a partnership's creditor can levy a judgment against an individual partner, certain conditions must be met, including the return of an unsatisfied writ of execution against the partnership. A partner may also agree that the creditor need not exhaust partnership assets before proceeding to collect against that partner. Finally, a court may allow a partnership creditor to proceed against an individual partner in an attempt to satisfy the partnership's obligations.

- Dissolution of a Partnership

Before the dissolution of the partnership, let us understand the difference between the 'dissolution of the partnership' and the 'dissolution of the partnership firm'. Dissolution of partnership means the end of the partnership business and dissolution of partnership firm means the end of partnership business along with the firm.

The dissolution of a partnership firm means termination of every contractual relationship between the partners and that all the operations which are being performed in a company are suspended and all the assets and liabilities are settled and disposed off.

Now the question arises when the partnership is going to be dissolved? There can be different reasons for the dissolution of a partnership as when a new partner is added or when a partner is dead or leaves the partnership, etc and the remaining partners can continue their business. And when there is a change in the partners so the prior partnership comes to an end and the new partnership takes place with the liability and assets of the old one.

The partnership may be dissolved due to the following reasons:

1. Due to the death of the partner.
2. Due to the admission of a new partner.
3. Due to the retirement of a partner.
4. Due to the bankruptcy of a partner.
5. Due to the expiry of the partnership period, if the partnership is for a particular period.

- Modes of Dissolution

There are some modes by which a partnership can be dissolved and those are:

1. By an act of partners: when a partner agrees to dissolve a partnership at a particular time. Partners can come into an agreement regarding a particular time period maybe five years. In which partners can end the agreement at the end of the five years. Sometimes partners can dissolve it in the middle of the time period under specific conditions.
2. By operation of law: a partnership is the consequence of an agreement which is governed by law. Therefore if any unlawful activity is performed so it will be dissolved. You can make a valid partnership for illegal work.
3. By the court's decree: a partnership can be dissolved by the court and the court will only allow under these conditions:
   a. If the partner is incapable to work;
   b. If the partner is mentally unstable;
   c. If the partner misbehaves which creates a bad impact on the partnership;
   d. If there is a breach of the agreement by a partner.
4. Statement of dissolution: dissolution can be done by filing the statement to the state's secretary. The form must contain the information regarding the partnership name, date and reason of dissolution.

- Statutory provisions regarding the Dissolution

There are certain provisions which are mentioned in the Indian Partnership Act regarding the dissolution are:

Section 4 defines the meaning of partnership.
Section 6 defines the modes of the existence of the partnership.
Section 45 defines the liabilities of the partner after the dissolution of a partnership.
Section 46 defines the rights of the partner regarding the business after dissolution.
Section 48 defines the modes of the settlement of the account of partners after dissolution.

Rights after Dissolution

Section 46 of the Indian Partnership Act, 1932 deals with the rights of partners after dissolution. After the dissolution of the partnership, partners have certain rights regarding the same:

1. Right to an equitable lien: on the dissolution of the firm, every partner is entitled to certain rights like the right to have the property of the firm used in payments of debts and liabilities and rights to have surplus distributed among all the partners.
2. Right to return of premium: at the time of the partnership, partners pay an amount in the form of premium when the partnership dissolves. Partners get that premium according to the agreement.
3. Rights where partnership contract is revoked for fraud or for other reasons: if a partner agrees to join a firm by fraud or by misrepresentation by the other partners, or if he finds so he has the right to put an end to the partnership agreement.
4. Right to restrain the use of the firm's name or property: after the dissolution of the partnership, the partner has a right to stop other partners from using the same name of the firm.
5. The right to earn personal profit by using the firm's name: if on the dissolution, the partner has a right to use the name of the firm as he buys goodwill of the firm and can earn profit from it.

- Liabilities after Dissolution

Section 45 of the Indian Partnership Act, 1932 deals with the liability for acts of partners done after the dissolution. Liabilities are:

- The partners continue to be liable to the third party until the public notice of the dissolution is given, it will not be applied to the partner who is dead or the partner who is insolvent or to the sleeping partner or to the retired partner.
- After the dissolution of the partnership, the partner is liable to pay his debt and to wind up the affairs regarding the partnership.
- After the dissolution, partners are liable to share the profit which they have decided in agreement or accordingly.

It can be derived from the above explanation of dissolution of the partnership that with the dissolution of the relationship between the partners they have certain rights and responsibilities which they need to fulfil and one can claim for it with the help of the Indian Partnership Act, 1932 as it gives certain provision regarding the same.

The act clearly provides grounds for dissolution of the partnership, so that nobody can take advantage of the same and it also helps to maintain a good environment in the firm.

UNIT – V

SALE OF GOODS ACT

The sale of Goods Act deals with 'Sale of Goods Act,1930,'contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price." 'Contract of sale' is a generic term which includes both a sale as well as an agreement to sell.

Definition of Sale

Section 4 of the Sales of Goods Act, 1930 defines a sale of goods as a "contract of sale whereby the seller transfers or agrees to transfer the property in goods to the buyer for price".

The term 'contract of sale' includes both a sale and an agreement to sell.

A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer by the other party. The contract may be oral or in writing. A contract of sale may be absolute or conditional.

Formalities of a contract of sale: *Section 5* of the Act specifically provides for the following three steps or formalities in a contract of sale:

1) ***Offer and Acceptance:*** A contract of sale is made by an offer to buy or sell the goods for a price and acceptance of such offer.
2) ***Delivery and Payment:*** It is not necessary that the payment for the goods to the seller and delivery of goods to the buyer must be simultaneous. They can be made at different times or in instalments – as per the contract.
3) ***Express or Implied:*** The contract can be in writing, oral or implied. It can also be partly oral and partly written.

Essentials

The five essential features of a contract of sale are as discussed below:

1) Two partied
2) Subject matter to be goods

3) Transfer of ownership of goods

4) Consideration is price.

5) Essential elements of a valid contract

1) ***Two parties:*** A sale has to be bilateral because the goods have to pass from one person to another. There must be a buyer – a person who buys or agrees to buy the goods and a seller – a person who sells or agrees to sell goods. The seller and the buyer must be different persons. A part owner can sell to another part owner. A partner may, therefore, sell to his firm or a firm may sell to a partner. But if joint owners distribute property among themselves as per mutual agreement, it is not 'sale'. A person cannot be the seller of his own goods as well as the buyers of them.

However, when a bankrupt person's goods are sold under an execution of decree, the person may buy back his own goods from his trustee.

2) ***Subject matter to be goods:*** The term 'goods' is defined in S*ection 2(7).* It states that 'goods' "means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale".

Money cannot be sold because money means legal tender and not the old coins which can be sold and purchased as goods. Actionable claims are things that a person cannot make use of, but which can be claimed by him by means of legal action such as a debt.

Sale of immovable property is not covered under this Act. As per *Section 3* of the Transfer of Property Act, 1882, 'immovable property' does not include standing timber, growing crops or grass. They are considered movable property and thus goods. Standing timber is taken as movable property while trees are immovable property.

Things like goodwill, copyright, trademark, patents, water, gas, electricity are all goods. In the case of *Commissioner of Sales Tax vs. Madhya Pradesh Electricity Board* [AIR 1970 SC 732], the Supreme Court observed – "…electricity…can be transmitted, transferred, delivered, stored, possessed, etc., in the same way as any other movable property…If there can be sale and purchase of electric energy like any other movable object, we see no difficulty in holding that electric energy was intended to be covered by the definition of "goods".

In the case of *H. Anraj vs. Government of Tamil Nadu* [AIR 1986 SC 63], it was held that lottery tickets are goods and not actionable claims. Thus, sale of lottery tickets is sale of goods. Sugarcane supplied to a sugar factory is goods within the meaning of *Section 2(7)* of

the Act as held in the case of *UP Cooperative Cane Unions Federation vs. West UP Sugar Mills Assn.* [AIR 2004 SC 3697]

3) ***Transfer of ownership of Goods:*** There must be transfer of ownership or an agreement to transfer the ownership of goods from the seller to the buyer – not the transfer of mere possession or limited interest as in the case of pledge, lease or hire purchase agreement). If goods remain in possession of seller after sale transaction is over, the 'possession' is with seller, but 'ownership' is with buyer. The Act uses the term 'general property' implying that sale involves total ownership and not a specific right limited by conditions.

Delivery of goods refers to a voluntary transfer of possession of goods from one person to another. Delivery may be constructive or actual depending upon the circumstances of each case. A contract may provide for the immediate delivery of the goods or immediate payment of the price or both. Alternatively, the delivery or payment may be made by instalments or be postponed.

4) ***Consideration is Price:*** The consideration in a contract of sale has to be price i.e., money. If goods are offered as the consideration for goods, it will not amount to sale. It will be barter. If there is no consideration, it will be called gift. But where the goods are sold for definite sum and the price is paid partly in kind and partly in cash, the transaction is a sale.

Consideration is an essential for a valid contract as per the Indian Contract Act, 1872. It is the duty of a buyer who has received and appropriated the goods to pay a reasonable price. According to *Section 2(10)* 'price' means the money consideration for the sale of goods. If the price is not fixed, the contract is void *ab initio*.

Section 9 lays down how the price may be fixed in a contract of sale:

1. a) It can be fixed by the contract itself; or
2. b) It can be fixed in a manner provided by the contract, such as appointment of a valuer; or
3. c) It can be determined by the course of dealings between the parties; or
4. d) If the price is not capable of being fixed in any of the ways mentioned ways, the buyer is bound to pay reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. It is not necessary that reasonable price should be equal to the market price.

Section 10 makes it clear that if the third party appointed under the agreement to fix the price cannot or does not make such valuation, then the agreement to sell goods will become void. If the third party is prevented in his valuation due to the buyer or the seller, the party not at fault can file a suit for damages against the party in fault.

5) ***Essential elements of a valid contract:*** All the essentials of a valid contract must be present. viz., competent parties, free consent, legal object and so on. The transfer of possession and ownership under the Act has to be voluntary and not be tainted with fraud or duress.

Time: Any stipulation with respect to time is not deemed to be of essence to a contract of sale unless a different intention appears from the terms of the contract.

SALE & AGREEMENT TO SELL

A contract of sale is a generic term and includes both an actual sale and an agreement to sell. *Section 4* provides that if the property in goods is transferred from the seller to the buyer under a contract, the contract is called a sale. Where the transfer of the property in the goods will take place at a future time or is subject to some condition which has to be fulfilled, the contract is called an agreement to sell. Such an agreement to sell becomes a sale when the prescribed time lapses or the conditions are fulfilled.

The Sale of Goods Act 1930 provides the definition for a Condition as – *"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"* and for a Warranty as – "*A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated".*

A Condition forms the core of the contract i.e. considered as an essential to the main purpose of the contract. Therefore, the repercussion would be repudiation of the contract or claim for damages or both depending upon the breach and case. Breach of a Condition makes a contract voidable on the part of non-defaulting party to the contract. However, a Warranty is treated as collateral to the main purpose of a contract and therefore, the repercussions of breach of warranty by one of the parties would be only a claim for damages by the non-defaulting party.

A breach of Warranty by one of the parties does not make the contract a contract voidable and does not give any right to the non-defaulting party to repudiate the contract. The same position is further, clarified by section 59 of Sale of Goods Act, which provides that when there is a breach of warranty by the seller, this breach does not provide the buyer with the right to breach the contract, he may only sue the seller for breach of Warranty in diminution or extinction of the price. Whether a particular stipulation in the contract is a Condition or a Warranty, depends on the case to case.

A breach of warranty by one party cannot treated as one of breach of condition, however, a breach of a Condition by one of the parties to the contract can be treated as a breach of Warranty. The Sale of Goods Act provides for the situations when a breach of a Condition by one of the parties can be treated as breach of warranty under a contract of sale of goods. Those situations being: –

1. When the buyer himself waives the Condition, which gives right to the buyer to repudiate the contract on breach of that particular stipulation; or
2. When the buyer treats the Condition as a Warranty and does not repudiate the contract on the basis of such breach; or
3. Where the contract is non-severable and the buyer has accepted either the whole goods or any part under the contract; or
4. Where the law itself excuses the fulfilment of a Condition.

EXPRESS AND IMPLIED CONDITONS AND WARRANTIES

Terms of a contract of sale of goods can be both express or implied. When a stipulation (Condition or Warranty) is expressively provided in the contract of sale of goods, it is considered as express stipulation. On the other hand, when the contract does not expressively provide for an express Condition or Warranty, however, due to the nature of the nature of the contract or intention of the party there is existence of a Condition or Warranty in the nature, it is known as implied Condition or Warranty. The Sale of Goods Act provides provisions for express and implied Conditions and Warranties.

IMPLIED CONDITIONS

Section 14 of the Sale of Goods Act states that, "*an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass",* which means that it is an implied condition that the seller of a good has the right to sell

it or has the right to transfer the title of the property. Therefore, when the seller's title to the property turns out to be defective or the seller does not have the right to transfer the property to the buyer, it gives the right to the buyer to repudiate the contract of sale of goods and to claim the money from the seller in addition to damages, if any. A seller can only sell or transfer the oppression of the property when he is the true owner of the property or has the right to transfer the property.

The Sale of Goods Act also provides for situations when goods are sold by description i.e. there is a contract of sell the goods by description given. In such situations, it is an implied condition that the goods sold to the buyer should match the description given about the goods. If the goods do not match with the description given, in such cases the buyer can repudiate the contract making the contract voidable at the option of buyer. The buyer cannot be compelled to accept the goods when the goods sold are not in accordance to the description provided.

Where goods are to be sold to the buyer as per the sample as well as the description given. However, if the goods sold to the buyer matches or are in accordance to the sample but are not in accordance with the description given, the buyer can repudiate the contract on the breach of such stipulation. In such situations, the necessity of goods sold to the buyer to be in accordance with the sample as well as description is treated as an implied condition and breach of the same gives the right to the buyer to repudiate the contract of sale of goods.

When goods are sold under the contract of sale of goods, the Sale of Goods Act enumerates certain implied conditions, breach of any would provide the right to repudiate the contract. Following are the conditions: –

1. the bulk shall correspond with the sample in quality;
2. the buyer shall have a reasonable opportunity of comparing the bulk with the sample
3. the goods shall be free from any defect rendering the un-merchantable, which would not be apparent on reasonable examination of the sample. It can be concluded that this condition is applicable where the defects are latent as the section states that which (defects) could not be discoverable by an ordinary examination of the goods. The buyer can repudiate the contract if the defects are found after sometime due to potential existence of the defect but not presently evident.

Also, section 16 of the act mentions that there is no implied condition as to the quality or fitness of the goods for any particular purpose. However, section 16 also clarifies that the condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller to select the best goods and the seller has ordinarily been

dealing in those goods. This implied condition will also not apply if the goods have been sold under a trademark or a patent name. An implied condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In case of eatables, there an implied condition that the eatables shall be wholesome.

IMPLIED WARRANTIES

The Sale of Goods Act enumerates an implied Warranty that the buyer shall have complete possession of the goods sold to him and shall enjoy quite possession of the such goods. In case of any kind of disturbance, the buyer can sue the seller for the breach of Warranty and can claim damages arising out of such breach.

Section 14 of the Sale of Goods Act also provides for implied warranties. section 14 also provides for an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time the contract is entered into.

The Sale of Goods Act also makes provisions for an implied warranty as to quality or fitness for a particular may be annexed or attached by the usage of trade. If goods sold are of dangerous nature and as per the usage of trade the seller has to disclose the dangerous nature of goods and if the seller does not disclose, the buyer can sue the seller for breach of implied warranty.

THE RULE OF CAVEAT EMPTOR

Section 16 of the Sale of Goods Act states that, "*subject to the provisions of this Act or any other law for the time being in force, there is not implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale",* brings the common law rule of Caveat Emptor, which means 'let the buyer beware'. When the sellers display their goods in the open market, it is for the buyer to make a proper selection or choice of the goods. The buyer alone shall be responsible for checking the quality and suitability of goods before a purchase is made. The said rule owes its origin to the fact that in the early times most of the sales used to took place in the market.

However, the rule of caveat emptor has certain exceptions to it.

1. when a buyer brings the purpose of buying goods to the knowledge of the seller, relies on seller's skill and goods are of a description which is in the course of seller's business, it becomes the duty of the seller to deliver reasonably fit goods to the buyer;
2. Where the goods are sold by sample and the goods do not match with the sample;
3. Where the goods have been sold by both sample and description and the goods match

with sample but do not match with the sample; and

4. When the goods have been sold by making some fraud or misrepresentation.

Rights of Unpaid Seller against Goods

An unpaid seller has certain rights against the goods and the buyer. In this article, we will refer to the sections of the Sale of Goods Act, 1930 and look at the rights of an unpaid seller against goods namely rights of lien, rights of stoppage in transit etc.

Rights of Lien

Seller's Lien (Section 47)

According to subsection (1) of Section 47 of the Sale of Goods Act, 1930, an unpaid seller, who is in possession of the goods can retain their possession until payment. This is possible in the following cases:

1. He sells the goods without any stipulation for credit
2. The goods are sold on credit but the credit term has expired.
3. The buyer becomes insolvent.

Subsection (2) specifies that the unpaid seller can exercise his right of lien notwithstanding that he is in possession of the goods acting as an agent or bailee for the buyer.

Part-delivery (Section 48)

Further, Section 48 states that if an unpaid seller makes part-delivery of the goods, then he may exercise his right of lien on the remainder. This is valid unless there is an agreement between the buyer and the seller for waiving the lien under part-delivery.

Termination of Lien (Section 49)

According to subsection (1) of Section 49 of the Sale of Goods Act, 1930, an unpaid seller loses his lien:

- If he delivers the goods to a carrier or other bailee for transmission to the buyer without reserving the right of disposal of the goods.
- When the buyer or his agent obtain possession of the goods lawfully.
- By waiver.

Further, subsection (2) states that an unpaid seller, who has a lien, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Right of Stoppage in Transit

This right is an extension to the right of lien. The right of stoppage in transit means that an unpaid seller has the right to stop the goods while they are in transit, regain possession, and retain them till he receives the full price.

If an unpaid seller has parted with the possession of the goods and the buyer becomes

insolvent, then the seller can ask the carrier to return the goods back. This is subject to the provisions of the Act.

Duration of Transit (Section 51)

Goods are in the course of transit from the time the seller delivers them to a carrier or a bailee for transmission to the buyer until the buyer or his agent takes delivery of the said goods.

Some scenarios of the transit ending:

- The buyer or his agent obtain delivery before the goods reach the destination. In such cases, the transit ends once the delivery is obtained.
- Once the goods reach the destination and the carrier of bailee informs the buyer or his agent that he holds the goods, then the transit ends.
- If the buyer refuses the goods and even the seller refuses to take them back the transit is not at an end.
- In some cases, goods are delivered to a ship chartered by the buyer. Depending on the case, it is determined that if the master is functioning as an agent or carrier of the goods.
- If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent, the transit ends.
- If a part-delivery of the goods has been made and the unpaid seller stops the remaining goods in transit, then the transit ends for those goods. This is provided that there is no agreement to give up the possession of all the goods.

How Stoppage is Affected (Section 52)

There are two ways of stopping the transit of goods:

1. The seller takes actual possession of the goods
2. If the goods are in the possession of a carrier or other bailee, then the seller gives a notice of stoppage to him. On receiving the notice, the carrier or bailee must re-deliver the goods to the seller. The seller bears the expenses of the re-delivery.

Effect of Stoppage

Even if the unpaid seller exercises his right of stoppage in transit, the contract stays valid. The buyer can ask for delivery of the goods after making the payment.

Pledge by the Buyer (Section 53)

Unless the seller agrees, the right of lien or stoppage is unaffected by the buyer selling or pledging the goods. The principle is simple: the second buyer cannot be in a better position that the seller (first buyer). However, if the buyer transfers the document of title or pledges the goods to a sub-buyer in good faith and for consideration, then the right of stoppage is

defeated.

There are two exceptions to make note of:

a. The seller agrees to resale, mortgage or other disposition of the goods

If the seller agrees to the buyer selling, pledging or disposing of the goods in any other way, then he loses his right to lien.

b. Transfer of the document of title of goods by the buyer

When the seller transfers the document of title of goods to the buyer and the buyer further transfers it to another buyer who purchases the goods in good faith and for a price, then:

- If the last mentioned transfer is by way of sale, the original seller's right of lien and stoppage is defeated.
- If the last mentioned transfer is by way of a pledge, the original seller's right of lien or stoppage can be executed subject to the rights of the pledgee.

Right of Resale (Section 54)

The right of resale is an important right for an unpaid seller. If he does not have this right, then the right of lien and stoppage won't make sense. An unpaid seller can exercise his right of resale under the following conditions:

- ***Goods are perishable in nature***: In such cases, the seller does not have to inform the buyer of his intention of resale.
- ***Seller gives a notice to the buyer of his intention of resale***: The buyer needs to pay the price of the goods and ask for delivery within the time mentioned in the notice. If he fails to do so, then the seller can resell the goods. He can also recover the difference between the contract price and resale price if the latter is lower. However, if the resale price is higher, then the seller keeps the profits.
- ***Unpaid seller resells the goods post exercising his right of lien or stoppage:*** The subsequent buyer acquires a good title to the goods even if the seller has not given a notice of resale to the original buyer.
- ***Resale where the right of resale is reserved in the contract of sale***: If the contract of sale specifies that the seller can resell the goods if the buyer defaults, then the seller reserves his right of sale. He can claim damages from the original buyer even if he does not give a notice of resale to him.
- ***Property in the goods has not passed to the buyer:*** The unpaid seller can exercise his right of withholding delivery of goods. This is similar to the right of lien and is called quasi-lien.