PROFESSIONAL PRACTICE, LAW AND ETHICS

UNIT 2

DR.GUJJATI SUDHAKAR

CONTRACT LAWS

According to Oxford English Dictionary the word law means, "Rule made by authority for the proper regulation of a community or society or for correct conduct in life" Indian Contract Act of 1872 came into effect from 1st September, 1872. It extends to the whole of India except the state of Jammu and Kashmir.

The law of contract is the branch of law which determines the circumstances in which promise made by the parties to a contract shall be legally binding on them. All of us enter into a number of contracts everyday knowingly or unknowingly. Each contract creates some right and duties upon the contracting parties. Indian Contract Act deals with the enforcement of these rights and duties upon the parties.

DEFINITION, MEANING AND NATURE OF CONTRACT

The term Contract has been defined under Section 2(h) of Indian Contract Act, 1872 as, "an agreement enforceable by law is a contract". A Contract therefore, is an agreement the object of which is to create a legal obligation, i.e. a duty enforceable by law.

Two main elements

- **Agreement**- As per Sec 2 (e) "Every promise and every set of promises, forming the consideration for each other, is an agreement"
- **Legal Obligation**- An agreement to become a contract must give rise to a legal obligation that is duty enforceable by law.

ESSENTIALS OF VALID CONTRACT

1. Agreement: To form a contract there must be an agreement between the parties. Agreement is created by offer and acceptance. It is result of mutual exchange of promises between the parties. Eg: an agreement between the tenant and the owner.

2. Creation of Legal Relationship: Agreement made between parties must create legal relationship. Legal relationship consists of rights and obligations which can be claimed by parties in court of law.

3. Lawful Consideration: Agreement is a mutual exchange of promises between parties. Each party making apromise gets something in return of his promise. It constitutes a consideration for his promise.

4. Contractual Capacity: Parties making an agreement must have contractual capacity. Lack of contractual capacity would invalidate contract. Contractual capacity of the party means he or she must be legally competent for making a contact. The person to have contractual capacity must satisfy the following conditions:

- He must not be a minor.
- He must be of a sound mind and not lunatic, idiot or drunkard.
- He must not have been declared disqualified by law from contracting such as insolvent, convict and alien enemy etc.

5. Free Consent of The Parties: State of mind of parties is involved in making offer and giving acceptance for it. As soon as offer is accepted it becomes a binding promise having a legal consequences. Two or more persons are set to have consent if they agree upon same thing in the same sense. And their consent is said to be free if it has not been induced by anyone of the following factors;

- Coercion
- Undue influence
- Misrepresentation
- Fraud
- Mistake

6. Lawful Object of Agreement: Agreement is made for some object or purpose such object is formed on the basis of promises made by the parties. These promises are made either for doing or not doing anything.

7. Agreement, Not Declared Expressly Void: There are certain agreements which have been expressly declared void by the law. Thus an agreement made by parties should not fall in that category. If it is so it would also meet same fate and cannot be enforced in the court of law.

8. Certainty in The Meaning of Agreement: Agreement made by the parties must be certain or capable of being made certain in its meaning. It is because agreement would result in creating rights and obligations between the parties.

9. Other Legal Formalities: agreement to be enforced, needs to satisfy other conditions of being in writing, registered and duly stamped. Generally Indian contract act does not make any discrimination between written and oral agreement. Oral agreements are as good as written agreement.

TYPES OF CONTRACTS

A) On Basis of Formation:

1.) Express Contracts: These contracts results from express agreements. Express agreements are formed by making offer and giving acceptance in the words spoken or in writing. According to sec 9 of Indian Contract Act "in so far as the proposal and acceptance of any promise is made in words, the promise is said to be express. An express promise leads to the formation of express contract".

2.) Implied Contract: Implied contracts are formed on the basis of implied promises on the part of parties. Implied promises are those which are not made by the parties in writing or by the word of mouth. Rather these promises are inferred from the conduct of the parties or from the circumstances. In an implied contract, one of the party conduct himself or does some act which is being accepted by the other party either by his conduct or course of his dealing or circumstance.

3.) Quasi-Contract: Quasi contracts are based on the principle of justice and equity. Inspite of not having any contract between parties, the rights and obligations are created. These are resembling to rights and obligations as created by a formal contract. In such contracts, obligations between parties are created by operation of law rather than offer and acceptance.

B) On Basis of Performance:

1.) Executed Contract: Contract consists of legal obligations. On the complete discharge of these obligations, the contract is said to have been executed. In other words, both the parties have fulfilled their respective promises, which they have made in contract.

2.) Executory Contract: This contract is one that has not been yet performed. In other words, parties having made promises for doing or not doing anything have not fulfilled their respective promises.

C) On Basis of Validity:

1.) Valid Contract: Contract is said to be valid if it satisfies all conditions required for its enforceability. In other words, valid contract is enforceable in the court of law.

2.) Void Contract: A contract ceases to be enforceable by law becomes void. Literally the word void

means not binding in law. It implies a useless contract which has no legal effect at all.

3.) Void Agreement: Agreement which is not enforceable by law is void agreement. In other words, if an agreement lacks any one of essentials of a valid contract accept free consent it becomes void. Void agreements do not have any legal consequence and it is null and void in the eyes of law.

4.) Voidable Contract: According to Sec 2(i) "An agreement which is enforceable by law at the option of one or more parties, but not at the option of other or others is a voidable contract.

5.) Illegal Contract: Every contract is formed on the basis of promise made by the parties in that contract. The contract is said to be illegal if its object is illegal.

6.) Unenforceable Contract: Sometimes, a contract maybe good in the eyes of law. But due to some technical reason it may not be allowed to be enforced in the court. Technical reasons such as contract not made in writing or is not registered or has no adequate stamp duty on it. Due to non-fulfillment of prescribed legal formalities these cannot be claimed in the court, once these reasons are rectified contracts may be allowed to be reinforced.

OFFER, ACCEPTANCE AND CONSIDERATION

I. OFFER:

Offer is one of the essential elements of a contract. According to **Sec 2(a) of Indian Contract Act 1872,** defines the term Offer or Proposal "When one person signifies to another his willingness to do or to abstain, from doing anything with a view to obtaining, the assent of that other to such act or abstinence, he is said to make a proposal"

Classification of Offer:

1.) Specific Offer: Sometimes an offer is made to a particular person, part or org., such offer is known as a specific offer. This specific offer can be accepted only by that particular person or org.

2.) General Offer: It is an offer which is made to a group of people or public at large. Such offer can beaccepted by any member of that group or public.

3.) Cross Offer: Two parties exchange identical offers with each other. They are ignorant about each other's offers.

4.) Counter Offer: Incomplete and conditional acceptance of an offer is known as a counter offer. In other words, the acceptor, instead of accepting the offer as such along with all its terms and conditions deviates from it. Such acceptance becomes a counter offer.

ESSENTIALS OF VALID OFFER:

1.) Offer must create a legal relationship and consequence: The whole concept of contract is based on legal relationships or obligations of legal consequences .Thus the formation of contract with starts with an offer, its acceptance followed by the legal relationships and its consequences means the party making an offer must have clear intention to establish the legal relationship with other party.

2.) Offer may be express or implied: The offer may be made either by the word of mouth or in writing. Such an offer is known as an express offer. On the other hand if the offer is inferred, or indirectly understood either from the conduct of parties or from the circumstances, such offer is known as implied offer.

3.) Offer may be specific or general: The offer being made to a particular individuals or orgs. Is known as specific offer. On the other, if an offer has been made to a group of people or public at large is known as general offer.

4.) Offer must be communicated: An offer is made with a view to create, legal relationships so it must be communicated to the person to whom it is made. Without communications the offer is incomplete and cannot be accepted.

5.) Offer must be distinguished from a mere expression of intention or invitation: Sometimes one party merely shows his intention for making an offer or invites other party for making it. Such intention or invitation for making an offer will not be considered as a valid offer.

6.) Offer maybe conditional: While making an offer the offeror may impose conditions for the acceptor, such conditional offer is valid subject to the following conditions:

a.) Offeror cannot impose any such condition the non-fulfillment of which would lead to acceptance of that offer.

b.) The terms and conditions imposed by the offeror must be mentioned in the offer in such a way that a person of a reasonable prudence may find indication for those conditions and those conditions must be reasonable eyesight.

REVOCATION OF OFFER:

Revocation of offer means withdrawal, cancellation or lapse of offer.

- By notice,
- By lapse of time,

- Death or insanity of offeror
- Non-fulfillment of prerequisite conditions,
    - by counter offer,
    - by compliance of prescribed mode or manner

II. ACCEPTANCE

According to **Sec 2(b) of Indian contract act 1872,** defines the term acceptance "as a proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal".

ESSENTIALS OF VALID ACCEPTANCE:

1.) Acceptance must be absolute and unconditional: Offer may be made for a specific quantity, volumeand price. It may also contain terms and conditions. It is necessary for the acceptor that he must give hisacceptance for the entire quantity and volume offered.

2.) Acceptance must be given in a prescribed mode or manner: While making an offer the offeror may prescribe a particular mode or manner of acceptance and the acceptor must abide by it. If the acceptor does not follow that particular mode for sending his acceptance, the offeror that further insist the acceptor to abide by it. But if it is still not followed the offeror can reject the acceptance.

3.) Time of acceptance: To make it valid acceptance, it must be given within stipulated period of time ifany. When no time is specified, acceptance must be given within reasonable period of time.

4.) Acceptance must be communicated: As the offer needs to be communicated, so does the acceptance. Acceptance to be legally effective must be communicated and brought to the knowledge of the offeror. Even if the acceptor has accepted the offer but if it is not communicated properly it would not result into an agreement.

5.) Acceptance may be expressed or implied: The acceptor may give his assent for the proposed act bythe word of mouth or in writing. Such acceptance is known as express acceptance. If the acceptance is directly understood either from conduct of the party or from circumstance, it is known as implied acceptance.

6.) Acceptance must be made before offer is revoked: Acceptance implies mental readiness of the person for proposed act or abstinence. Therefore, it must be given before the offer lapses or is

withdrawn or cancelled. Once the offer is dead due to any reason if it is dead for ever, and to revive it, such offer is to be made afresh.

7.) Acceptance is not implied from silence if the party: Acceptance of offer is not implied from silence. The offeror cannot impose condition on offered that his silence will amount to acceptance. Silence on thepart of offered regarding the offer in no case may amount to acceptance.

REVOCATION OF ACCEPTANCE:

- Failure of acceptor
- Death or insanity of acceptor
- No reasonable time and manner
- By rejection
- By supervising impossibility

III. CONSIDERATION

According to Sec 2(d) of this act ," When at the desire of promisor, promise or other person has done or abstained from doing, does or abstains for doing or promises to do or to abstain from doing something, such act, abstinence or promise is called consideration for the promise"

ESSENTIALS OF VALID CONSIDERATION:

1.) **Form of consideration**: The consideration will always be in the form of some act or abstinence or apromise for doing or not doing something.

2.) **Consideration must be moved or given at the desire of promisor**: In agreement there are two parties i.e. promisor and promise. The consideration is generally given by the promise to promisor. According to this rule any act or promise will be valid consideration if such act has been done or promise is made at the desire or request of the promisor.

3.) **Consideration may be past, present or future**: Promisor makes a promise and consideration is given to him for his promise. If these two act of making promise and getting consideration are done simultaneously, the consideration is known as present consideration.

4.) **Consideration may be moved or given by promise or any other person:** Generally in every agreement consideration is given by promise to the promisor. But it is not necessary. Any other person

on behalf of promise may give consideration. Such consideration will also be valid.

5.) **Consideration need not be adequate**: According to Indian Contract Act it is not necessary that the value of promise should be equal to the value of consideration. Even if the value of consideration is less than the value of promise, the contract is valid.

6.) **Consideration must be real and not be illusory**: Consideration given must be real and must have some value in the eyes of law. It must not be illusory, factious, fraudulent, uncertain and illegal.

7.) **Consideration must be lawful:** Agreement to be enforced in the court must be made for lawful consideration. Any act which is illegal, immoral and against public policy will not constitute valid consideration for the contract.

CAPACITY OF PARTIES:

Contractual capacity is an essential ingredient of a valid contract. According to Sec 10 of this act, parties making an agreement must have contractual capacity. Contractual capacity means they must be legally competent for making a contract. To have a Contractual capacity, one must fulfill the following conditions:

1.) Age

2.) Soundness of mind

3.) Legal Disqualification

1.) Minor: A minor is a person, male or female, who has not completed the age of 18 years. In case a guardian has been appointed to the minor or where the minor is under the guardianship of the court of wards, the person continues to be a minor until he completes his age of 21 years. According to Indian Contract Act, only a major person is competent to contract. Thus, contract with or by a minor is altogether void. The word "Void" when used in relation to a minor, it should be understood as "void against the minor".

2.) Soundness of mind: According to Sec 12 of this act, "A person is said to be a sound mind for the purpose of making contract, if at the time, when he makes it he is capable of understanding it and forming a rational judgement as to its effects upon his interests".

- **Lunatics**: A lunatic is a person who is mentally affected due to some mental strain or other personal experience. He suffers from intermittent intervals of sanity and insanity. He can enter

into a contract only during the period when he is of sound mind.

- **Idiot**: An idiot is a person who is permanently of unsound mind. He does not exhibit minor understanding of even minor objects or things. An idiot cannot enter into a valid contract.
- **Drunken Person**: A person who takes any intoxicants like alcohol or drugs etc. he is temporarily incompetent of entering into a contract. Thus, so long as one remains under the influence of intoxicants or drugs, he has no contractual capacity. Thus agreement made by such person are void.

3.) Legal Disqualification:

- **Alien enemy**: A person who lives in and is a citizen of a foreign country is known as an alien. He may be a friend or an enemy to the citizen of our country. Alien friend can make an agreement with Indian citizen. But if war is declared between the two countries, the citizens of those countries become alien enemies to each other. And agreements made with alien enemies are void.
- **Foreign sovereign**: Ambassadors, high commissioners or foreign diplomatic staff do represent their country. Therefore they have been provided some immunities. They can make an agreement with Indian citizens and can enforce those agreements against Indian citizens in India. But Indian citizens to sue upon them for the rights arising out of an agreement has to seek prior permission from central govt.
- **Corporations**: A corporation is an artificial person created by law, Eg: A company registered under Companies act. A corporation exists only in contemplation of law and has no physical shape or form. The Indian contract act does not speak about the capacity of a corporation to enter into a contract. But if properly incorporated, it has a right to enter into a contract. It can sue and can be sued in its own name. There are some contracts into which a corporation cannot enter without its seal.
- **Insolvent:** Generally, when the assets of person fall short of liabilities and liabilities cannot be paid fully, such state of affair is called insolvency. The person is declared as an insolvent by the court. He has to hand over his property to the official receiver. He cannot enter into contracts relating to his property. It is only when the court issues order of discharge in favour of that person he becomes competent.
- **Married women**: they have no right to make agreements regarding joint property of husband and wife, unless she is authorised to do so by husband. She is free to make any agreement to deal with their personal property such as bank balance in her name and jewelleries etc. on the failure of husband, to fulfill the basic necessities of her life, she becomes an agent of her husband by necessity. For the

supplyof such basic necessities she can make agreements binding on the property of her husband.

- **Convict**: A convict is incapable of entering into a contract during the continuance of sentence of imprisonment. However, he can enter into a valid contract after the expiration of his term of imprisonment. A convict can also, enter into, or sue on, a contract when on parole, bail or when he has been pardoned by the court.

FREE CONSENT

Sec 13 Indian Contract act, "two or more persons are set to consent when they agree upon the same thing in the same sense." Sec 14 of this act states that, consent is said to be free when it is not caused by:

- Coercion: Application of physical force
- Undue influence: Use of mental pressure
- Misrepresentation: Innocent false representation
- Fraud: Cheating or deceiving
- Mistake: Wrong impression about anything

ELEMENTS OF FREE CONSENT:

- **Coercion**: it implies use of some kind of physical force by doing some act forbidden by law to seekconsent of other party.
- **Undue Influence**: It implies unfair use of dominating position to cause the consent of other party for a contract. In undue influence some kind of mental and moral pressure is brought upon a party to cause hisconsent.
- **Misrepresentation**: While making a contract, one of the party may make any statement regarding the subject matter of a contract. Such statement, if turns to be untrue amounts to misrepresentation. It is amisstatement of material facts.
- **Fraud:** An intentional misrepresentation of the facts amounts to fraud. Fraud is always committed with a view to deceive to cheat another person. Thus, when one person does anything or makes false statement knowing to induce other for causing this consent, it is known as fraud.
- **Mistake**: It may be defined as a wrong impression or erroneous opinion in the mind of a person

about anysubject matter, event or it may consent something.

LEGALITY OF OBJECT

Every contract is made for object or purpose. The object of a contract is formed on the basis of promises made by the parties. The contract to be legally valid, must contain lawful object. When the contract is made for doingsomething illegal defeating provisions of the law such contract is not valid in the eyes of law.

According to sec 23 of this act the unlawful acts are:

- Forbidden by law
- Prohibited by special legislation
- It would defeat the provisions of any law
- It is fraudulent
- Involves enquiry to person/property if another
- Courts to public policy
- Opposed to public policy
- Trade with alien enemies
- Interference with course of justice
- For supervising prosecution

DISCHARGE/TERMINATION OF CONTRACT

Discharge of a contract implies termination of the contractual relationship between the parties. On the termination of the relationship the parties are released from their obligations in the contract. And in this way contract comes to an end.

Modes of Discharge in Contract:

- By performance
- By mutual agreement
- By supervising impossibility
- By operation of law
- By lapse of time

- By material alteration
- By breach of contract

BREACH OF CONTRACT

A formation of contract results in creating contractual obligations between the parties. These contractual agreements are to be fulfilled by the parties on the due date as per terms and conditions of a contract. When the party does not fulfill his obligation or refuses to fulfill it or disables himself from fulfilling him it is known of breach of contract.

Breach of contract is of 2 types:

- **Actual breach**: This contract takes place when the promisor fails to perform his obligation or refuses to do so on the due date of performance.
- **Anticipatory breach**: This contract the promisor either refuses to perform or makes himself unable to perform a promise before the due date of performance. Anticipatory breach of contract takes place before the date of actual performance.

REMEDIES BREACH OF CONTRACT:

- **Rescission**: When a party makes breach of contract by not fulfilling his obligation, the aggrieved party has a right to rescind such contract. To exercise this right, the aggrieved has to file a suit for rescission of a contract. On granting rescission, the aggrieved party gets released from his obligation in that contact. He is no more liable to perform his promise.
- **Suit of Damages**: On making a breach of contract by a party, the aggrieved party may suffer monetary loss. In the event of breach he may be put in a disadvantageous position or in a position of discomfort. In such case, the aggrieved party has a right to claim for compensation.
- **Suit for Specific Performance**: When, breach of contract takes place and aggrieved party suffers a loss. These losses may be of such a nature that damage granted for these by the court maybe inadequate. It is because such losses cannot be measured in terms of money. In such cases, the aggrieved party is entitled to claim for order of specific performance.
- **Suit for Injunction**: In a contract if the party has made a promise for not doing something, and that party takes a breach of contract by doing that thing. To prevent such party from doing that

act an order of injunction may be claimed by an aggrieved party. It is an order passed by court of law, directing upon the party and refraining him from performing what he has promised not to perform.

- **Suit upon Quantum Meruit**: In a contract maybe in the process of performing his promise before he completes it, the promise makes a breach of contract. Quantum Meruit is a Latin dictum, which means "as much as earned or merited". That means under Quantum Meruit aggrieved party can also claim for the reasonable cost of work done by him in the contract.

CONTRACT OF INDEMNITY

Contract of Indemnity defined (Section 124): A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a"contract of indemnity." There are two parties in this form of contract. The party who promises to indemnify/ savethe other party from loss is known as **'indemnifier'**, whereas the party who is promised to be saved against theloss is known as **'indemnified' or indemnity holder**.

- **Example 1:** A may contract to indemnify B against the consequences of any proceedings which C may take against B in respect of a sum of ` 5000/- advanced by C to B. In consequence, when B who is called upon to pay the sum of money to C fails to do so, C would be able to recover the amount from A as provided in Section 124.

- **Example 2:** X, a shareholder of a company lost his share certificate. He applied for the duplicate. The company agreed to issue the same on the term that X will compensate the company against the loss where any holder produces the original certificate. Here, there is contract of indemnity between X and the company.

Explanation

To indemnify means to compensate or make good the loss. Thus, under a contract of indemnity the **"existence of loss"** is essential. Unless the promisee has suffered a loss, he cannot hold the promisor liable on the contractof indemnity. However, the above definition of indemnity restricts the scope of contracts of indemnity in as much as it covers only the loss caused:

- **By the conduct of the promisor himself, or**
- **By the conduct of any other person.**

Thus, loss occasioned by the conduct of the promise, or accident, or an act of God is not covered. A contract of indemnity like any other contract may be **express** or **implied**. A contract of indemnity is like any other contract and must fulfill all the essentials of a valid contract like consideration, free consent, competency of contract, lawful object etc.

Example: A asks B to beat C promising to indemnify him against the consequences. The promise of A cannot be enforced. Suppose, B beats C and is fined Rs.1000, B cannot claim this amount from A because the object of the agreement is unlawful. A contract of Fire Insurance or Marine Insurance is always a contract of indemnity. But there is no contract of indemnity in case of contract of Life Insurance.

Rights of Indemnity holder when sued (Section 125): The promisee in a contract of indemnity, acting within the scope of his authority, is **entitled to recover** from the promisor/indemnifier—

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

CONTRACT OF GUARANTEE

Contract of guarantee: A contract of guarantee is a contract to perform the promise made or discharge the liability of a third person in case of his default. Three parties are involved in a contract of guarantee

Creditor- Person to whom the guarantee is given

Surety - Person who gives the guarantee,

Principal debtor - Person in respect of whose default the guarantee is given,

Example 1: When A requests B to lend `10,000 to C and guarantees that C will repay the amount

within the agreed time and that on C falling to do so, he will himself pay to B, there is a contract of guarantee.Here, B is the creditor, C the principal debtor and A the surety.

Example 2: Where 'A' obtains housing loan from LIC Housing and if 'B' promises to pay LIC Housing in the eventof 'A' failing to repay, it is a contract of guarantee.

Example 3: X and Y go into a car showroom where X says to the dealer to supply latest model of Wagon Rto Y. In case of Y's failure to pay, X will be paying for it. This is a contract of guarantee because X promises to discharge the liability of Y in case of his defaults.

Explanation

Guarantee is a promise to pay a debt owed by a third person in case the latter does not pay. Any guarantee given may be oral or written. From the definition, it is clear that in a contract of guarantee there are, in effect three contracts

- A principal contract between the principal debtor and the creditor
- A secondary contract between the creditor ad the surety.
- An implied contract between the surety and the principal debtor whereby principal debtor is under an obligation to indemnify the surety; if the surety is made to pay or perform.

The right of surety is not affected by the fact that the creditor has refused to sue the principal debtor or that he has not demanded the sum due from him.

Consideration for guarantee [Section 127]: What constitutes consideration in a case of guarantee is an important issue and is laid down in Section 127 of the Act. As per Section 127 of the Act, "anything done, or anypromise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee."

Example 1: B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guaranteethe payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

Example 2: A sell and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested.This is a sufficient consideration for C's promise.

Example 3: A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them indefault of B. The agreement is void.

Essentials of a valid Guarantee

- Existence of a principal debt.
- Benefit to principal debtor is sufficient consideration, but past consideration is no consideration for a contract of guarantee.
- Consent of surety should not be obtained by misrepresentation or concealment of a material fact.
- Can be oral or written.
- Surety can proceeded against without proceeding against the principal debtor first.
- If the co-surety does not join, the contract of guarantee is not valid.

Contract of Indemnity	Contract of Guarantee
It refers to a Contract by which one party promises to save the other from loss caused by conduct of the promisor or another person.	It refers to a Contract to perform the promise or discharge the liability of a third person in case of his default.
In contract of indemnity, the liability of the promisor is primary.	In contract of guarantee, the primary liability is of principal debtor and the liability of surety is secondary.
Contract between the indemnifier and the indemnity holder is express and specific.	Contract between surety and principal debtor is implied and between creditor and principal debtor is express.
In contract of indemnity there are two parties indemnifier and the indemnity holder.	In contract of guarantee there are three parties i.e. creditor, the principal debtor and surety.
In Contract of indemnity there is only one	In contract of guarantee there are three

agreement i.e. the agreement between indemnifier and indemnity holder.	agreements i.e. agreement between the creditor and principal debtor, the creditor and surety and surety and principal debtor.
Contract of indemnity protects the promise from loss.	Contract of guarantee is for the surety of the creditor.
In Contract if indemnity, the promisor cannot file the suit against third person until and unless the promisee relinquishes his right in favour of the promisor.	In contract of guarantee, the surety does not require any relinquishment for filing of suit. The surety gets the right to file suit against the principal debtor as and when the surety pays the debt.

CONTRACT OF AGENCY

Agency can be defined as the relationship between two persons, wherein a person has the authority to act on behalf of another, bind him/her into a legal relationship with the third party. There are two parties in a contract of agency – principal and agent. Contract of Agency is based on the fact that one person cannot perform all the transactions and so he can appoint another perform or act on his behalf. Any person who employs another person to perform an act and who is being represented by another person in dealing with the third party is the Principal. A person employed by the Principal, to act on his behalf, represent him in the dealings with the third party and also to bring him into a contractual relationship with the third party, is called an Agent.

Characteristics of the Agency

- **Legal Binding**: The crux of the contract of agency is that the principal is legally bound by the acts performed by the agent.
- **Consideration is not mandatory**: There is no legal requirement of consideration, to support the relationship between the principal and agent.

- **Capacity of Principal**: One who is legally competent to contract is eligible to employ an agent, i.e. he should have attained the age of 18 years and of sound mind.
- **Authority to contract**: Authority to contract is the basic requirement to become an agent. So a minor can also act as an agent, though he is not having the capacity, however, he can have the authority to act as agent. This is due to the fact that an agent initiates a contractual relationship amidst the principal and third party, and so the contractual capacity of the agent is irrelevant.

Creation of Agency

1. **Express Agency**: One can enter into the contract of agency through an express agreement, i.e. oral or written. In a written contract of agency, the power of attorney is transferred in the name of the agent, conferring him the authority and power to act on behalf of the principal, subject to the terms and conditions specified in the contract. When the purpose of creation of agency is to transfer the immovable property, it is required to be registered,
2. **Implied Agency**: When something is not directly or clearly stated, it is said to be implied. Therefore, the implied agency is created by way of conduct, the situation of the parties, i.e. principal and agent, or necessity of the case.

- **Agency by Estoppel**: Suppose a person by his conduct informs another person that a particular person is his agent and the person who is signified as an agent is present and hearing at the time when it is intimated. Now, if the third person enters into a contract with that person thinking that he is the agent. This is the case of agency by estoppel, where the agent will be precluded from refusing his authority.
- **Wife as an agent**: When a legally married couple lives together, the wife is supposed to have the authority of his husband to pledge his credit, in order to afford the basic necessities of life, according to their standard of living. However, it has certain exceptions, if the husband proves that:

    a) He has explicitly warned the dealer not to give the goods on credit to his wife, or

    b) He has explicitly forbidden his spouse to pledge his credit, or

c) He has already supplied the mentioned stuff in sufficient quantity to his wife or

d) He is providing sufficient allowance to his wife.

- **Agency of Necessity**: There may be certain circumstances that compel the parties to enter into a contract of agency. Suppose a person is entrusted with property or goods of another person, he is obligated to take reasonable care of it as well as to incur necessary expenses so as to preserve and protect such property.
- **Agency by Ratification**: Agency can also be created by ensuing ratification. When a person who does not have any authority claims to act as an agent or a legally employed agent performs an act which is beyond his authority, then the principal is not legally bound by the contract entered into on his behalf. However, he may ratify the act performed by the agent and accept the liability. This results in an agency by ratification. In such a case, the parties i.e. the principal and agent will be in the same position if the acts were performed with authority.

CONTRACTS OF SALE

Contracts of sale are those contracts which act as proof of the transfer of ownership of any object from one person to another in exchange for a price. The Sale of Goods Act India came up amidst the British Raj. The Sale of Goods Act 1930 was a law enacted in colonial, pre-Independence India for the benefit of merchants in India. The act relates to contracts for the sale of goods for all the states of India except for Jammu & Kashmir. Contracts of sale include the agreement on the part of the buyer as well as that of the seller.

Elements of the Sales of Goods Act India 1930

While trying to understand the Sale of Goods Act, it is imperative to understand the key terms used in the Act. These include the two parties (i.e., the buyer and the seller), the mercantile agent, goods, price, and the transfer of general property.

1. Two Parties

There are two parties in the Sale of Goods Act 1930 are the buyers and the sellers.

- Buyer is the person who is willing to or has agreed to buy a good.
- Seller is the person who is willing to or has agreed to sell a good.

There has to be an agreement between these two parties for there to be a sale as per the Sale of Goods Act 1930.

2. **Mercantile Agent**

Rather than the buyer and supplier negotiating between themselves, a third party agent can be used to coordinate the specifics of the contract on behalf of these parties. This third party agent is called the mercantile agent, and they come in the form of brokers, auctioneers, and others.

3. Goods

The primary purpose of establishing a buyer and a seller is so that there is an agreement about the good which is supposed to be for sale. These goods need to be clearly defined in the sale contract as per the Sales of Good Act. The Act only recognises movable property like growing crops, stocks, shares, vehicles, among others. Immovable property such as land is not under the jurisdiction of this particular Act.

4. Price

The price must most certainly be included in the contract; otherwise, the contract is deemed redundant. A sale is defined by the exchange of ownership of a good between two parties at a specific price, and thus it is a critical element of the Sale of Goods Act India. A transfer of ownership of goods can only be done with the payment or promise of fulfilment of the price mentioned in the contract. The price mentioned in the contract should be pre-decided by the parties.

5. Transfer of General Property

The transfer of general property is differentiated from the transfer of specific property. General property refers to any property owned by a seller, whereas specific property refers to the property the seller is transferring the ownership of to someone else through a sales contract. The Sale of Goods Act 1930 looks only at the transfer of general property.

Types of Goods: ‘Goods’ form the subject into the following types:

1. Existing Goods: Goods which are physically in existence and which are in seller's ownership and/ or possession, at the time of entering the contract of sale are called 'existing goods' where seller is the owner, he has the general property in them. Where seller is in possession say, as an agent or a pledgee, he has a right to sell them. There are two types of existing goods:

(a) Specific Goods: Goods identified and agreed upon at the time of making of the contract of sale are called specific goods'. It may be noted that in actual practice the term 'ascertained goods is used in the same sense as 'specific goods. **For example:** A agrees to sell to B a particular radio bearing a distinctive number, there is a contract of sale of specific or ascertained goods.

(b) Unascertained Goods: The goods which are not separately identified or ascertained at the time of the making of a contract are known as unascertained goods. They are indicated or defined only by description.

2. Future Goods: Goods to be manufactured, produced or acquired by the seller after the making of the contract of sale are called 'future goods'. **For example;** A agrees to sell to B all the milk that his cow may yield during the coming year then, this is a contract for the sale of future goods.

3. Contingent Goods: Goods, the acquisition of which by the seller depends upon an uncertain contingency are called 'contingent goods'. Obviously they are the types of future goods and therefore a contract for the sale of contingent goods also operates as an agreement to sell and not a 'sale' so far as the question of passing of property to the buyer is concerned. **For example;** A agrees to sell to B a specific rare painting provided he is able to purchase it from its present owner. This is a contract for the sale of contingent goods.

CONDITIONS

A condition can be termed as one of the crucial term in agreement of sale which is mention by the buyer to the seller which can me implied or expressed. The buyer can cancel the proposal in case of non- compliance with the condition mentioned by the seller. Condition may be expressed or implied. If there is a breach of conditions then there is a right to aggrieved party to treat the contract as repudiated. In case if the buyer had paid, then he is also having the right to recover the price and

can also claim the damages for breach. For ex. If the buyer expressly mentions that good should be delivered before stipulated date, then that date will be taken as condition as buyer expressly mentioned it at the time of contract.

Types of Conditions:

- **Expressed Condition:** The term defines the statement as a condition which says that something should be exist or should be there for the fulfillment of contract. These condition are generally imperative to the functioning and are done only when both the parties are agree on the said or expressed condition.
- **Implied Condition:** In this type of contract there are several conditions which are implied to the parties in different kind of contracts of sale. The conditions exists even if they have not been there in contracts.

WARRANTIES

As the term warranties is an additional stipulation over the main purpose of contract. If there is a breach of warranty then the aggrieved or suffered party cannot repudiate the contract and claim the contract. In other words warranty is a stipulation which is not essential to the main purpose of contract and if it will get breach then buyer can only claim the damages.

Kind of Warranties

- **Expressed warranty:** In this the warranty generally both the parties are interested in contracts and warranty is accepted by both the parties expressly.
- **Implied warranty:** In this type of warranty the parties generally assumes that the warranties have been incorporated at the time of contract of sale. The warranties which are implied are not specifically mentioned in the contracts.

Difference between Condition and Warranty:

Conditions	Warranties
In this the stipulation can be consider as the basis of contract	In this the stipulations is additional to the main contracts

If the condition get breach then it leads to termination of contracts	If the warranty got breach then the injured party will get the compensation only
If the buyer get agree so the condition can be treated as warranty	Warranty cannot be treated as condition
The injured party can refuse to accept the goods as well as claim damage in case of breach of condition	Only damages can be claimed by injured party in case of breach of warranty

PERFORMANCE OF A CONTRACT

The performance of a contract is a simple transaction where the seller delivers the goods and the buyer pays. If there is something more complex, then this is stated in the contract as special terms.

Delivery means voluntary transfer of possession of goods from one person to another.

- **Seller**: Delivers goods and receives consideration.
- **Buyer**: Accepts and pays for the goods.
- **Terms**: Contract can have terms of delivery and payment.

Delivery of Goods: Delivery of goods may be defined as a voluntary transfer of possession of goods from the seller to the buyer.

Types of Delivery

- **Actual Delivery:** The goods are handed over by the seller to the buyer or to his authorized agent; it has the effect of putting the goods in the possession of the buyer. Example: Amar sold 10 tins of oil to Akbar and delivered the same to him. In this case, there is the actual delivery of oil from Amar to Akbar.
- **Constructive or Delivery by Attornment:** A third party (Bailee) who is in possession of the goods of the seller at the time of sale acknowledges to the buyer that he holds the goods on his behalf. **Example**: A sells to B 10 bags of wheat lying in C's godown. A gives an order to C, asking him to transfer the goods to B. C assents to such order and transfer the goods in his books to B. this is delivery by attornment.
- **Symbolic Delivery:** The goods are too bulky and unwieldy such as large machinery, where a symbolic passing of documents or keys and the like demonstrate the transfer of goods.

Rules for Delivery of Goods

1. Part delivery of goods: Goods being delivered as part of the whole; if the part is severed from the whole then the transfer is not of the whole but only partial.

Example

(a) Whole: You buy 100 bags of cement, and you are at the moment delivered only ten—but you are the owner of the whole.

(b) Partial: You want only 100 bags of cement, but you pay only for ten and take ten; the rest of the 90 bags are not part of the sale of goods.

2. Buyer to apply for delivery of goods: Unless the buyer places his demand there is no sale of goods, unless there is a contract to that effect. It is a logical impossibility to supply you something that you have not asked for.

Example

(a) Suddenly there arrives a truck with 100 bags of cement to your doorstep. You only wonder who placed the order.

(b) On the other hand, if you have a contract for regular supply of 100 bags of cement at the beginning of every month then it is a standing order and you will receive it until you expressly cancel it.

3. Place for the delivery of goods: The place for the delivery of goods may be specified in the contract itself. And where the place is so specified, the goods must be delivered at the specified place during the business hours and on a working day.

4. Time of delivery: The transfer of goods happens in time. The contract of delivery has terms, e.g., forthwith, as soon as possible directly, immediately, reasonable time, etc. Depending on your order you get the supply of cement: as you have a particular schedule that is agreed upon.

5. Goods in the possession of the third party: Sometimes, at the time of sale, the goods are in the possession of a third person. In such cases, the effective delivery takes place only when such a person acknowledges to the buyer, that he holds the goods on his (buyer's) behalf.

6. Cost of delivery of goods: Seller pays till it is made deliverable; buyer pays for obtaining delivery unless there is a specific agreement about delivery and reception. **Example:** Your company forwards coal as an export with the agreement of Free On Board, that is, you pay until it is put on board; it implies that the buyer will pay for rest of its journey by sea or air as the case may be.

7. Delivery of wrong quantity of goods: Seller is liable to deliver agreed quantity. Wrong quantity is of three kinds:

- **Short delivery**: quantity delivered less than what is agreed. **Example:** Short delivery is when you get 50 bags of cement instead of 100.
- **Excess delivery**: the delivered quantity overshoots the order. **Example:** Excess delivery is when you get more than 100 bags of cement while your order is just for 100.
- **Delivery of mixed goods**: apart from the goods of contracted description other types too are included in the delivery. **Example:** Mixed delivery is when along with your order for conventional cement of 100 bags, you get also white cement, waterproofing cement, etc.

8. Delivery of goods by installments: As a matter of fact, the delivery of goods by instalments is not considered as a proper delivery and the buyer is not bound to accept the goods delivered to him by instalments unless otherwise agreed. The pattern of delivery shall be determined by the contract. **Example**: If your cement supplier who supplies your total purchase of thousand bags of cement in ten instalments, and then becomes erratic in supply or sends defective goods, does not follow the agreed schedule, etc., which tantamount to a repudiation of the contract, then you may stop the instalments.

9. Delivery to carrier or wharfinger: The seller is authorised or obliged as per the contract to deliver goods to the carrier surface, sea, or air transporter; there may also exist a third person wharfinger, for the safe custody goods. **Example:** Your iron ore is loaded on board of a sea carrier by the seller and is also insured for its safety. If it is lost before its boarding, the seller has the right to sue the insurance company.