SYLLABUS

Class – B.Com. I Sem.

Subject – Business Law

UNIT – I	Indian Contract Act 1872- Definitions, Nature of Contract, Offer & Acceptance, Capacity of Parties to Contract, Free Consent and Consideration, Expressly declared void agreement, Performance of contracts.
UNIT – II	Breach of Contract, Remedies for breach of Contract, Indemnity and Guarantee Contracts. Special Contracts- Bailment, Pledge and Agency.
UNIT – III	Limited Liabilities Partnership Act, 2008, Negotiable Instrument Act, 1881- Definition, Promissory note, Bill of Exchange and Cheques, Holder and Holder in Due Course. Crossing of Cheque, Types of Crossing, Dishonor and Discharge of Negotiable Instruments.
UNIT – IV	Consumer Protection Act, 1986- Main Provisions. Consumer Disputes, Redressal Machinery.
UNIT – V	Foreign Exchange Management Act 2000 (FEMA) - Objective and Main Provisions, Introduction to Intellectual Property Right Act- Copyright, Patent and Trademark.

Unit-I
Subject: Indian Contract Act

The Indian Contract Act 1872
The law of contract in India contained in Indian Contract Act 1872, which is based on English common Law. It extends to whole of India except the state of Jammu and Kashmir. It came into force on the first Sep. 1872. The Act lays down general principles governing all contracts, but not the rights and duties of the parties. The rights and duties are decided by the parties themselves.

Scheme of the Act: - The scheme can be divided into two main groups:
1. General principles of the law of contract.
2. Specific kinds of contracts -
   a. Indemnity and Guarantee
   b. Contracts of Bailment and Pledge
   c. Contract of Agency.

Meaning and Definition of an Agreement:
An Agreement consists of an offer by one party and its acceptance by other. In other words, an agreement comes into existence only when one party makes a proposal to the other party and that other party gives acceptance.

Agreement = Proposal + Acceptance of proposal

According to Section 2(e) of Indian Contract Act 1872 "Every promise and every set of promises, forming the consideration for each other is an obligation."

Meaning and Definition of a Contract:
A contract is a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognize as duty. In other words, a contract is an agreement the object of which is to create a legal obligation. The contract consists of two elements:
1. An agreement and
2. Legal Obligation i.e. enforceability by law.

Contract = an Agreement + enforceability by law.

According to Section 2(h) of the Indian Contract Act 1872 "An agreement enforceable by law is a contract."

Essential Elements of a valid Contract:
1. **Offer and Acceptance:** There must be a "lawful offer" and a "lawful acceptance" of the offer, thus resulting in an agreement.
2. **Intention to create legal relation:** There must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. Social agreements do not contemplate legal relations, and so they do not give rise to a contract.
3. **Lawful Considerations:** An agreement is legally enforceable only when each of the parties to it, give something and get something. This something is the price for the promise and is called "Consideration". Only those considerations are valid which 'Lawful'
4. **Capacity of parties:** The parties to an agreement must be competent to contract, otherwise it cannot be enforced by a court. To be competent, the parties must be on majority age and of sound mind and must not be disqualified from contracting by any law to which they are subject.
5. **Free Consent: "Consent "**means that the parties must have agreed upon the same thing in the same sense. Consent is not enough for making a contract. That to must be free. It is said to be free when it is not caused by-
   1. Coercion, or (i) undue influence, or (iii) fraud, or (IV) misrepresentation, or (v) mistake.

6. **Lawful object:** For the formation of a valid contract, it is also necessary that the parties to an agreement must agree for a lawful object. The object must not be fraud or illegal or immoral or must not imply injury to the person or property of other.
7. **Writing and Registration:** Generally the contracts may be oral or written. But in special cases, it lays down that the agreement must be in writing or registered to be valid.
8. **Certainty:** Any agreement can be enforced if its meaning is certain or capable of being made certain agreements the meaning of which is not certain, are void.
9. **Possibility of performance:** The terms of the agreement must also be capable of performance physically as well as legally.
10. **Not expressly declared void:** The agreement must not have been expressly declared void under the act. There are some types of agreements which have been expressly declared to be void.

Kinds or classification of Contracts

A. On the basis of Enforceability

1. **Valid Contract:** A valid contract is an agreement enforceable by law. An agreement becomes enforceable by law when all the essential elements of a valid contract (as per section 10 of the act) are present.
2. **Voidable Contract:** "An agreement which is enforceable by law at the option of one or more of the parties, but not at the option of one or more of the other, is a voidable contract."
3. **Void Contract:** Void means not binding in law. It is valid at the time of making it but becomes void subsequently due to change in circumstances.
   Void Agreement:" An agreement not enforceable by law is said to be void" Thus a void agreement does not give rise to any legal consequences and is void ab initio.
4. **Unenforceable contract:** It is one which is valid in it, but is not capable of being enforced in a court of law because of some technical defect such as absence of writing, registration requisite stamp.
5. **Illegal or unlawful contract:** An agreement which is expressly or impliedly prohibited or forbidden by law. It is *void ab initio*.

B. On the basis of Creation:

1. **Express Contract:** It is one in which parties make oral written declaration of the terms and conditions of the contract.
2. **Implied Contract:** It is one in which evidence of contract is gathered from acts and conduct of the parties and not from written or spoken words of parties.
3. **Constructive or Quasi Contract:** It is not a contract made intentionally by the parties by exchange of promises. It is a contract imposed by the law. The basis of this contract is that no one can be allowed to enrich himself at the cost of the other.

C. On the basis of Execution

1. **Executed Contract:** When both the parties to a contract have completely performed their share of obligations and nothing remains to be done by either party under the contract.
2. **Executory Contract:** When either parties have still to perform their share of obligation in to or there remains something to be done under the contract on both sides.

D. On the basis of performance in relation to parties

1. **Unilateral Contract:** When one party has to perform his obligation, and the other party has performed his obligation at the time of formation of the contract or before it .This is why it is also called one-sided contract.
2. **Bilateral Contract:** When the obligations of both the parties are outstanding at the time of formation of contract. it is similar to Executory contract. It is also called contract with executory consideration.

Capacities of Parties

Meaning of Capacity to Contract

Capacity or competence to contract means legal capacity of parties to enter into a contract. In other words, it is the capacity of parties to enter into a legally binding contract.

Who are Competent to Contract?

Every person is legally competent to contract if he fulfills the following three condition :

i. He has attained the age of majority;
ii. He is of sound mind; and.
iii. He is not disqualified from contracting by any other law to which he is subject.

1) MINORS

Any person, who has not attained the age of majority prescribed by law, is known as minor.

Section 3 of the Indian Majority Act prescribes the age limit for majority and says a minor is a person who has not completed eighteen years of age. But the same Act also mentions that in the following two cases a person attains majority only after he completes his age of twenty one years :

(i) Where a Court has appointed guardian of a minor's person or property or both (under the Guardians and Wards Act, 1890); or
(ii) Where the minor's property has been placed under the superintendence of a Court of wards.

2) PERSONS OF UNSOUND MIND

A person is said to be of sound mind for the purpose of making a contract (a) if he is capable of understanding the contract at the time of making it, and (b) if he is capable of making a rational judgment as to the effect upon his interests.

Types of Persons of Unsound Mind and their Contracts:

1. Idiot
2. Lunatic
3. Delirious persons
4. Drunken or intoxicated persons
5. Hypnotized persons
6. Mental decay

3) PERSONS DISQUALIFIED BY OTHER LAWS

There are certain persons who are disqualified from contracting by the other laws of our country. They are as under:

1. Alien enemy
2. Foreign sovereigns, diplomatic staff etc.
3. Corporations and companies
4. Insolvents
5. Convicts

Rules /effects as to or Nature of Minor's Agreements:

1. **Void ab-initio: -** Minor's agreement is absolutely void from very beginning, i.e. void ab- initio. It is nullity in the eye of law. An agreement with minor, therefore, can never be enforced by law.

2. **Minor can be a promise or beneficiary: -** A minor can enforce such agreements in which he is a beneficiary or promise and does not create any obligation on his part.
3. **No ratification:-** A minor cannot be ratify even after attaining the age majority because void agreement cannot be ratified.
4. **Restitution/ Compensation possible: -** If a minor has received benefits under an agreement from the other party, the Court may require the minor to restore the benefit (so far as may be), to the other party at the time of rescission of the agreement. The minor may be asked to restore the benefit to the extent he or his estate has been benefited.
5. **Contract by parent/ guardian/ manager: -** A minor's parent/ guardian/ manager can enter into contract on behalf of the minor provided:
   i. The parent/ guardian/ manager acts within the scope of his authority; and
   ii. The contract is for the benefit of the minor.
6. **No liability of parents: -** The parents (guardian) of a minor are not liable for agreements made by their minor ward. However, they can be held liable if the minor makes agreement as their authorized.
7. **Minor as an agent: -** A minor is not entitled to employ an agent; he can be an agent himself for someone else. As an agent he ca represent the principal, and bind him for his acts done in the course of agency. But the minor is not responsible to the principal for his acts.
8. **Minor and insolvency: -** A minor cannot be declared insolvent because he is not competent to contract.
9. **Minor as joint Promisor: -** A minor can be a joint promisor with a major, but the minor cannot be held liable under the promise to the promises as well as to his co-promisor. But the major promise cannot escape liability. The major joint promisor can be forced to perform the promise.
10. **Minor shareholder: -** A minor can become a shareholder or member of a company if (a) the shares are fully paid up and (b) the articles of association do not prohibit so.
11. **Liability for necessaries of life: -** A minor is incompetent to contract. A minor, therefore, is not personally liable for the payment of price of necessaries of life supplied to him or to his legal dependents. However, the person who has furnished such supplies is entitled to be reimbursed from the property of the minor.
12. **Minor Partner:** - According to the Partnership Act, 1932, a minor cannot make a contract of partnership though he may be admitted to its benefits with the consent of all the partners. A minor partner cannot be made personally liable for any obligation of the firm, but his share in the firm's property can be made liable.
13. **No estoppels against minor:** - The term 'estoppels' means prevention of a claim. When a minor enter into contract, representing that he is a major, but in reality he is not, then later on he can plead his minority as a defence and cannot be estopped (prevent) from doing so.

Definition of Consideration

Consideration is one of the essential elements of a valid contract. The term "Consideration" means something in return i.e. quid –pro-quo. Consideration must result in a benefit to the promiser, & a detriment or loss to the promisee or a detriment to both. Without consideration a contract is void or nude i.e. nudum pactum

Section 2(d) of the Indian Contract act, 1872 defines Consideration as follows:

" When, at the desire of the promiser ,the promisee or any other person has done or abstained from doing, or does or abstains from doing ,or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise."

ESSENTIAL ELEMENTS OF A VALID CONSIDERATION

- **It must move at the desire of the promisor:** Consideration must have been done at the desire or request of the promisor & not at the desire of a third party or without the desire of the promisor.

- **It may move from the promise or any other person:** An act constituting consideration may be done by the promise himself or any other person. Thus, it is immaterial who furnishes the consideration & therefore may move from the promisee or any other person. This means that **even a stranger to the consideration can sue on a contract, provided he is a party to the contract (Case Chinayya V/s Ramayya)**
- **It may be Past , Present or Future:**
  - Past Consideration: The consideration which has already move before the formation of agreement.
  - Present consideration: The consideration which moves simultaneously with the promise.
  - Future Consideration: The consideration which is to be moved after the formation of agreement.
- **It must be of some value:** The consideration need not be adequate to the promise but it must be of some value in the eye of the law.
- **It must be real & not illusory:** Ex. A promise to put life into the B's dead wife & B promises to pay Rs 10,000. This agreement is void because consideration is physically impossible to perform.
- **Must be Something other than the promisor's Existing obligation:** Consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.
- **It must not be illegal, immoral or opposed to public policy.**

A CONTRACT WITHOUT CONSIDERATION IS VOID

The general rule is **"An Agreement made without consideration is void".** Sec 25 & 185 deals with the **Exceptions** to this rule. These cases are:

1) Love & Affection: A written & registered agreement based on natural love & affection between near relatives is enforceable even if it is without consideration.

Ex: X, for natural love & affection, promises to give his son, Y, Rs 1000. X puts his promise to Y in writing & registers it. This is a contract.

2) Compensation for voluntary services: A promise to compensate wholly or partly, a person who has already voluntarily done something for the promisor, is enforceable even without consideration.

Ex: A finds B's purse & gives it to him. B promises to give Rs 50 to A. This is a contract.

3) Promise to pay a Time barred debt: A promise by a Debtor to pay a time-barred debt if it is made in writing & is signed by the debtor or by his agent is enforceable.

4) Completed gifts: There need not be consideration in case of completed gifts.

5) Agency: No consideration is necessary to create an Agency.

6) Contribution to Charity

STRANGER TO A CONTRACT

Though a stranger to consideration can use because the consideration can be furnished or supplied by any person whether he is the promises or not, but a stranger to a contract cannot sue because of the absence of privity of contract (i.e. relationship subsisting between the parties to a contract.

Free Consent

MEANING OF CONSENT

Two or more persons are said to consent when they agree upon the same ting in the same sense at the same time.

MEANING OF FREE CONSENT

Sec. 14 describes the cases when the consent is not free. It lays down that consent is not free if it is caused by coercion, undue influence, fraud, misrepresentation, etc. if the consent is not free, the agreement is avoidable at the option of the party whose consent was not free.

1) **COERCION**

Coercion simply means forcing a person to enter in to a contract. Sec. 15 defines coercion as, "Committing or threatening to commit, any act forbidden by the Indian Penal Code, or unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever with the intention of causing any person to enter into an agreement".

The essential elements of coercion are

(1) Committing or threatening to commit any act forbidden by Indian Penal Code.
(2) Unlawful detaining or threatening to detain any property.
(3) The act of coercion may be directed at any person and not necessarily at the other party to the agreement.
(4) The act of coercion must be done with the object of inducing or compelling any person to enter into an agreement.

2) **UNDUE INFLUENCE** : It is kind of moral coercion.

Sec. 16(1) defines undue influence as, "A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of other and uses that position to obtain an unfair advantage over the other".

(a) Where he holds a real or apparent authority over the other e.g., in the relationship between master and servant.
(b) Where he stands in fiduciary relation to the other. It implies a relationship of mutual trust and confidence.
(c) Where a contract is made with a person whose mental capacity is affected by reason of age, illness, or mental or bodily distress.

Any innocent or unintentional false statement or assertion of fact made by one party to the other during the course of negotiation of a contract is called a misrepresentation.

3) **MISREPRESENTATION**

As per Sec. 18, misrepresentation is a wrong statement of fact made innocently, i.e., without any intention to deceive the other party. It may be caused.

(1) By positive statement.
(2) By breach of duty.
(3) By mistake regarding the subject matter of the agreement.

Essential of misrepresentation

(1) There must be a representation or omission of a material fact.
(2) The representation or omission of duty must be made with a view to inducing the other party to enter into contract.
(3) The representation or omission of duty must have induced the party to enter into contract.
(4) The representation must be wrong but the party making the representation should not know that it is wrong.

4) **FRAUD**

Fraud is the international misrepresentation or concealment of material facts of an agreement by a party to or by his agent with an intention to deceive and induce the other party to enter into an agreement.

Sec. 17 defines fraud as, any of the following acts committed by a party to a contract (or with his convenience or by his agent) with intention to deceive another party thereto (or his agent) or to induce him to enter into the contract.

(1) The suggestion that a fact is true when it is not true by a person who does not believe it be true.
(2) The active concealment of the fact by a person having knowledge or belief of the fact.
(3) A promise made with out any intention to perform it.
(4) Any other act fitted to deceive.
(5) Any such act or omission as the law specifically declares to be fraudulent.

5) **MISTAKE**

Acc. To Sec. 20 mistake means erroneous belief concerning some fact. The parties are said to consent when they agree upon the same thing in the same sense. If they do not agree upon the agreement in the same sense, there will be no contract.

When the consent of one or both the parties to a contract is caused by misconception or erroneous belief, the contract is said to be induced by mistake.

Mistake may be of following types:

(1) Mistake of law,
- (a) Mistake of law of the country.
- (b) Mistake of foreign law.
- (c) Mistake of private rights of the parties

(2) **Mistake of fact**,
- (A) Bilateral Mistake :
- (1) Mistake as to subject mater :
- (a) Mistake regarding existence
- (b) Mistake regarding identity
- (c) Mistake regarding title.
- (d) Mistake regarding price
- (e) Mistake regarding quality
- (f) Mistake regarding quantity
- (2) Mistake as to the possibility of performance
- (a) Physical impossibility
- (b) Legal impossibility
- (B) **Unilateral Mistake** :
- (1) Mistake as to identify of the person contracted with.
- (2) Mistake as to the nature of contract.

Distinction between an Agreement and a Contract

Basis of distinction	Agreement	Contract
1. Definition	Every promise and every set of promises forming consideration for each other is an agreement	An agreement enforceable by law is a contract.
2. Creation	An agreement is created by acceptance of an offer.	Agreement and its enforceability together create a contract.
3. legal rights and obligations	An agreement may not create legal rights and obligations of the parties	A contract creates legal rights and obligation between the parities.
4. Necessity	No contract is required to make an agreement.	Valid agreement is necessary for making a contract.
5. Legally binding	An agreement is not a concluding or legally binding contact.	A contract is a concluding or legally binding on the parties.
6. Concept	Agreement is a wider concept and includes contacts.	Contract is a narrow concept and it is only a specific of agreement.

DISTINCTION BETWEEN VOID AGREEMENT AND VOID CONTRACT

Basis of distinction	Void Agreement	Void Contract
1. Definition	An agreement not enforceable by law is said to be void. [Sec. 2(g)]	A contract which cases to be enforceable by law becomes void when it ceases to be enforceable [Sec. 2(j)]

2. Time when becomes void	It is void from very beginning.	It becomes void subsequently due to change in law or change in circumstances.
3. Restitution	Generally no restitution is granted, however, the Court may on equitable grounds grant restitution in case of fraud or misrepresentation by minors.	Restitution may be granted when the contract is discovered to be void or becomes void.
4. Description in the Act	Such agreement have been mentioned as void in the Act. Agreements without consideration, agreements with lawful object or consideration and some other agreements have expressly been declared to be void.	There is no mention of cases of void contracts in the Act. They are created by circumstances and law Courts decide whether they have become void or not.

DISTINCTION BETWEEN VOID AGREEMENT AND VOIDABLE CONTRACT

Basis of distinction	Void Agreement	Voidable Contract
1. Definition	An agreement not enforceable by law is said to be void.	A contract enforceable by law at the option of the aggrieved party, is a voidable contract.
2. Period of validity	It is void from the beginning i.e. void ab initio	It is valid till it is avoided by the aggrieved party to the contract.
3. Legal existence	It is nullity, hence, does not exist in the eye of law.	It has its existence in the eye of law till it is repudiated.
4. Change in status	Status of void agreement does not change with the change in circumstances.	Status of such contract change when the aggrieved party elects to avoid it within a reasonable time. It becomes void when the aggrieved party elects to rescind it.
5. Causes	Any agreement is void when it is made with incompetent parties or for unlawful objects and consideration, or without consideration, or without consideration or it is expressly declared to be void under the law.	A contract is voidable when the consent of the party is caused by coercion or undue influence or fraud or misrepresentation.
6. Transfer of title	The party obtaining goods under void agreement cannot transfer a good title to the third party.	The party obtaining goods under voidable agreement can transfer a good title to the third party if the third party obtains it in good faith and for consideration and the aggrieved party has not avoided the contract before such transfer.
7. Restitution	Parties do not have right to restore the benefits passed on to the other unless the parties were unaware of the impossibility of performance at the time of agreement or the party to the agreement was minor.	Generally, right restitution is available if the party elects to avoid the contract.
8. Damages	No party as a right to get compensation for damages because such agreement	If a party rightfully rescinds (i.e. puts and end) the contract, he can claim compensation,

	has no legal effect.	he can claim compensation of damages sustained by him due to non-fulfilment of the promise.

DISTINCTION BETWEEN VOID AND VOIDABLE CONTRACT

Basis of distinction	Void Contract	Voidable Contract
1. Definition	A contract which ceases to be enforceable by law become void, when it ceases to be enforceable.	A contract which is enforceable by law at the option of the aggrieved party is a voidable contract.
2. Period of validity	It remains valid till it does not cease to be enforceable.	It remains valid if the aggrieved party does not elect to avoid it within a reasonable time.
3. Will of the party	Its validity is not affected by the will of any party. It is decided by the Law Court.	Its validity is affected by the will of the aggrieved party. Aggrieved party has option to treat it either binding or repudiate it.
4. Causes	Contracts become void due to change in circumstances or in the law of land.	Contract is voidable when the consent of the party is caused by coercion, undue influence, fraud or misrepresentation. Sometimes, it may be voidable under the provisions of the Secs. 39, 53 and 55.

DISTINCTION BETWEEN VOID AND ILLEGAL AGREEMENT

Basis of distinction	Void Agreement	Illegal Agreement
1. Definition	An agreement not enforceable by law is void.	An agreement which is expressly or impliedly prohibited by law, is illegal.
2. Effect on collateral agreement	The agreement collateral to the void agreement is not necessarily void.	The agreement collateral to an illegal agreement is always void.
3. Scope	All void agreements need not necessarily be illegal agreements. Hence, the scope is wider than that of the illegal agreements.	All ill agreements are void.
4. Restitution	The Court may grant restitution of money advanced if is minor or if the parties were unaware of the impossibility of performance of the agreement.	Restitution of money is not granted in case of an illegal agreement.

DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE

Basis of distinction	Coercion	Undue influence
1. Definition	Coercions the committing or threatening to commit, any act forbidden by the I.P.C. or unlawful detaining or threatening to detain any property with the intention of causing any person to enter into an agreement.	Undue influence is an influence which arises where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
2. Relations	In case of coercion, relation between	In case of undue influence, in the relation

	the parities is immaterial.	between the parties the parties must be such that one of them is in a position to dominate the will of other.
3. Intention	Coercion is applied with the intention of causing any person to enter into an agreement.	It is exerted with the intention to obtain an unfair advantage over the other party.
4. Nature of force	It involves physical force.	It involves moral force.
5. Kind of act	It involves criminal act.	It does not involve criminal act.
6. Direction	The coercion may be directed against any person including a stranger.	Under influence is used against the weaker party only.
7. Who exercise	It can be exercised by any person. Even a stranger to contract can exercise it.	It is employed by the person who is in a position to dominate the will of the other.
8. Remedies	A contract caused by coercion, may be avoided by the aggrieved party's contract. [Sec. 19]	In case of undue influence, the aggrieved party may avoided the contract or the Court, may set aside the contract absolutely or conditionally. [Sec. 19 A]

DISTINCTION BETWEEN FRAUD AND MISREPRESENTATION

Basis of distinction	**Fraud**	**Misrepresentation**
1. Meaning	A fraud is an international misrepresentation or concealment of material fact to include the other party to enter into a contract.	An innocent or unintentional misrepresentation of material facts by one party fact by one party include the other party to enter into a contract.
2. Intention	Fraud is committed with an intention to deceive	There is no such intention.
3. Belief in the facts	The person committing of a fraudulent act does not believe it to be true.	The person making misrepresentation believes in its facts to be true.
4. Suit for damage	The aggrieved party has right to sue the other party for damages.	The aggrieved party cannot sue for damages.
5. Defence	A party cannot set up a defense that the aggrieved party had means of discovering the truth except in case of fraud by concealment or by silence.	In case of misrepresentation the other party always set up a defense that the aggrieved party that the aggrieved party had means of discovering the truth.

DISTINCTION BETWEEN COTANGENT TRACT AND WAGERING AGREEMENT

Basis of distinction	**Contingent contract**	**Wagering agreement**
1. Meaning	A contingent contract is contract in which the promisor undertakes to perform the contract upon the happening or non-happening of an event, which is collateral to the contract.	A wagering agreement is one in which one person agrees to pay certain amount of money to the other on happening or non-happening of a specific event.
2. Nature of event	The event is collateral to the contract, i.e. not a part of promise or consideration of the contract.	Even is the sole determining factor.
3. Reciprocal promise	There is no reciprocal promise is	The wagering agreement consist

	a contingent contract.	of reciprocal promise.
4. Interest in the subject matter	The parties are interested in the subject-matter of such contracts. Therefore, the happening or non-happening of the event is material for them.	The parties to wagering agreement have no other interest in the subject matter of the agreement except the winning or losing the money at stake.
5. Validity	A contingent contract is valid contract.	A wagering agreement void agreement. In the State of Maharashtra and Gujarat it is illegal.
6. Nature of contract	All contingent contracts are not wagering agreements because all contingent contracts are not void.	All wagering agreements are contingent agreements because their performance is dependent upon uncertain future events.

UNIT-II

DISCHARGE OF CONTRACT

When the rights and obligations arising out of a contract are extinguished, the contract is said to be discharged or terminated. A contract may be discharged by any of the following ways:

1. By performance – Actual or Attempted.
2. By mutual consent or agreement.
3. By subsequent or supervening impossibility or illegality.
4. By lapse of time.
5. By operation of law.
6. By breach of contract.

1.Discharge by Performance-

Performance of a contract is the most popular manner of discharge of a contract. The performance may be either Actual performance or Attempted performance.

A**. Actual performance:-**When each party fulfils his obligations arising out of the contract within the time and in a manner prescribed , it is called the actual performance and the contract comes to an end.

B. **Attempted performance or Tender:-**When the promisor offers to perform his obligation, but is unable to do so because the promise does not accept the performance, it is called " **Attempted Performance**" or "**tender**". Thus tender is not actual performance but is only an offer to perform the obligation under the contract. **A valid tender of performance is equivalent to performance.**

Essentials of a valid tender:-if it fulfils the following conditions:-

1. It must be unconditional. If A who is a debtor of company B, offers to pay if shares are allotted to him at par. IT is not a tender.
2. It must be made at proper time and place:- A is tenant of B. H offers him rent at a marriage party. B is not bound to accept as tender is not made at a proper place.
3. It must be of the whole obligation contracted for and not only of the part:- e.g. deciding of his own to pay in the installments and offering the first installment was held invalid tender as it was not of the whole amount due .
4. If the tender related to the delivery of goods, it must give a reasonable opportunity to the promise for inspection of goods so that he may be sure that the goods tendered are of contract description.
5. It must be made by a person who is in a position and is willing to perform the promise.
6. It must be made to the proper person i.e. the promisee or his authorized person.
7. If there are several joint promisees, an offer to any one of them is a valid tender (but the actual payment must be made to all joint promisees, and not to any one of them.)
8. In case of tender of money, exact amount should be tendered in the legal tender money.

Effect of refusal to accept a valid tender: The effect of refusal to accept a properly made "**offer of performance**" is that the contract is deemed to have been performed by the promisor. And the promise can be sued for breach of contract. Thus we can say that "**a valid tender discharges the contract."**

2. Discharge by Mutual Consent or Agreement:

A contract is created by means of an agreement, it may also be discharged by another agreement between the same parties.-

A. Novation: "Novation occurs when a new contract is substituted for an existing contract, either between the same parties or between different parties, the consideration mutually being the discharge of the old contract." If the parties are same, then small changes in the in the terms of contract is called "alteration" and not "Novation". For being "Novation", the changes must be of significant nature.

Novation cannot be compulsory, it can only be with the mutual consent of all the parties.

B. Alteration:-It means that change of one or more of the material terms of a contract. A material alteration is one which alters the legal effect of the contract. e.g. change in the amount of money, change in the rate of interest etc.

Note that a material alteration made in a contract by one party without the consent of the other will make the whole contract void and no person can maintain an action upon it.

C. Rescission. A contract may be discharged before the date of performance, by agreement between the parties to the effect that it shall no longer bind them. Such an agreement amounts to "**Rescission**" or cancellation of the contract, the consideration being the abandonment by the respective parties of their rights under the contract. Example A promises to deliver some goods to B on say 14th Nov. 2006. But before the date of performance i.e. 14th Nov. 2006, A and B mutually agree that the contract will not be performed. The contract stand discharged by rescission.

If there is non performance of a contract by both the parties for a long time without complaint, it amounts to an implied rescission.

Note: In rescission, the existing contract is cancelled by mutual consent without substituting a new contract in its place.

D. Remission. It is defined as "Acceptance of lesser amount than what was contracted for or a lesser fulfillment of the promise made"

E. Waiver. It means deliberate giving up of a right which a party is entitled to under a contract whereupon the other party to the contract is released form his obligation. Example A promises to stitch a Shirt for B if B sings a song in A's party and accepting it B sings a song in A's party. Then later on B says there is no need to stitch shirt for me, to which A gives his consent. Thus the contract is terminated.

3. Discharge by Subsequent or Supervening Impossibility or Illegality.

Impossibility at the time of contract. If you contract for something impossible, the agreement is void *ab initio* the promisor knows about the impossibility after using reasonable efforts, the promisor is bound to compensate the promisee for any loss he may suffer because of non performance of the promise, even if the agreement being void *ab initio*

Subsequent impossibility. Impossibility is found out after the contract is made, " A contract to do an act which, after making the contract, becomes impossible or unlawful, becomes void when the act becomes impossible or unlawful."

Conditions for It…

(i) the act should have become impossible.
(ii) The impossibility should be by reason of some event which the promisor could not prevent.
(iii) the impossibility should not be self induced by the promisor or due to negligence.

To be impossible, it is sufficient that it becomes impracticable or extremely hazardous or useless from the point of view of the object and purpose which the parties had in view,

If the performance of a contract becomes impossible by reason of supervening impossibility or illegality of the act, it s logical to absolve the parties from further performance of it as they never did promise to perform an impossibility.

4. DISCHARGE BY LAPSE OF TIME.

In some circumstances, the laps of time may also discharge a contacts, e.g. the period of limitation for simple contracts is three years the under limitation Act and therefore on default by a debtor, if the creditor does not file a suit of recovery against him within three years of default, the debt becomes time barred and the creditor will not get the help of the law. This in effect discharges the contract. 'Where times is of essence`, if the contract is not performed on time, the contract comes to an end, and the party not at fault need not perform his obligation and may sue the other party for damages.

5. DISCHARGE BY OPERATION OF LAW: -

A contract is discharged by operation of law in the following cases:-

(A) Death: Sometimes a contract is of a person nature and involves personal skills, of promiser, of promisor, In such cases the contract is discharged on the death of the promisor. In such cases the contract is discharged on the death of the promisor.

(B) Insolvency: When a person is adjudged in solvent the he is released from his all liabilities in current order of adjudication. His rights (Assets) and liabilities are transferred to the official assignee or official receiver, on the case may be.

(C) Merger of rights: Sometimes, inferior right of a person under the some or other contract, in such a case the inferior, right is vanished and is not required to be enforced, Foe example an ordinary debt can be merged. In to rights, of ownership in such case the inferior right need not to be enforced because this right have merge in to a superior right of mortgage or ownership.

(D) Loss of evidence of contract:-

There the evidence of the existence of the contract is lost or vanished. The contract is discharged for example document of contract is lost or destroyed and not other evidence is available the contract is discharged.

6.DISCHARGE BY BREACH OF CONTRACT:-

A contract is sometimes discharged, by its breach generally, Breach of contract means refused. Or future of any one party to perform his contractual obligation under the contract specifically a breach of contract occurs when a party to a contract does any of the other following things.

(1) Fails or refuses to perform his obligation under the contract.
(2) Disable himself from performing his past of the contract.
(3) Maker the performance of contract impossible by his own acts.

INDEMNITY AND GUARANTEE CONTROL

The contract of indemnity and guarantee are special kinds of contracts. These contract are therefore also required to fulfill all the essential of a valid contract.

Indemnity Contract: Indemnity contract is a type of contingent contract. The term 'Indemnity` Simply means 'Making Somebody Safe` or 'Paying Somebody back`.

Section 124 of contract Act defines that ''A contract by which one party. Promises to save the other from loss caused to him by the conduct of the promise himself by the conduct of any other person, is called a conduct of indemnity".

The party who gives indemnity or who promises to compensate for or to make good the loss, is called. Indemnifier and the party for whose protection or safety the indemnity is given or the party whose loss is made good is called 'Indemnified' or 'indemnity holder'.

Important features of an indemnity contract –

1. Two party.
2. Promises for pay compensation of loss/damage.
3. Loss/damage may be the own or other person.
4. Creation of liabilities.
5. It must be faith.
6. All essential features of valid contract.
7. Compensation for actual loss/damage.
8. It may be express or implied.

Loss/damage may be caused by some event, or accident, or some natural phenomenon or disaster.

Rights of Indemnified (Indemnity-Holder) –

1. Rights to claim for all damages/losses.
2. Rights to claim for all costs which is related to contract.
3. Rights to claim for all sums which his may have paid for contract.

Liabilities/Duties of Indemnified –

1. Liabilities to pay all damages/losses.
2. Liabilities to pay all costs related to contract.
3. Liabilities to pay all sum which is received by sell for contract from indemnified.

Guarantee Contract

The object of the contract of guarantee is to enable. A person to obtain an employment, or a loan, or some goods or service on credit,

According to section 126 of the contract Act "A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default."

The person who gives the guarantee is called the '**Surety' or 'guarantor'** & the person in respect of whose default the guarantee is given is called the **principal debtor** or he is the party on whose behalf. Guarantee is given and the person to whom the guarantee is given is called the **'Creditor'.**

Essential features of a Guarantee Contract –

1. Three parties
2. Three agreement
3. Concurrence of the three parties
4. Control may be experts or implies
5. It may be oral or written
6. Liability of surety is secondary is dependent on principal debtor's default.
7. Guarantee must be in the knowledge of debtor.
8. All essential of a valid contract.
9. Guarantee must not be obtained by means of misrepresentation.
10. Existence of a primary liability.

DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND GUARANTEE

S.No.	Different Basis	Indemnity Contract	Guarantee Contract
1.	Nature of Contract	Promises to save the other from loss.	One party promises to discharge the liability of the third party in case of his default.
2.	No. of Parties	Only to parties are there	There are three parties.
3.	No. of contracts	There is only one contract	There are three contract between debtors, creditors and surety.
4.	Nature of Liability	The liability of the indemnifier is primary and independent.	The liability of the surely is secondary and dependent.
5.	Arising of Liability	Indemnifier's liability arises only on the happening of a contingency.	Arises only after the default of debtor in payment.
6.	Existence of debt or duty	There is no existence debt or duty in this contract.	There is always some existing debt or duty in this contract.
7.	Request by the debtor	It is not necessary for the indemnifier to act at the request indemnified.	The surely generally gives guarantee to the request of the debtor.
8.	Right to sue	The indemnifier cannot sue the third party for loss in his own name.	It surely has discharged. The debt after the default of the principal debtor, he becomes entitled to sue the debtor in his own name.

Kinds of Guarantee –

1. **Specific or Simple Guarantee:** When a guarantee is given in respect to a single debt or specific transaction is to come to an end when the guarantee debt is paid or the promise is duly performed. It is called a specific or simple guarantee.
2. **Continuing guarantee:** Section 129, of the contract Act defines a guarantee which towards to a series of transaction, is called a continuing guarantee, thus, a continuing guarantee is not confined to a single transaction but keeps on moving to several transaction continuously.

Revocation of Guarantee – Revocation of guarantee means cancellation of guarantee already accrued, it may be noted that the specific guarantee cannot be revoked if the liability has already secured. However a continuing guarantee can be revoked and on the revocation of such a guarantee. The liability of the surely or guarantor comes to an end for the future transaction. The surety continues to be liable for the transactions which have taken place up to the time of revocation. A continuing guarantee may be revoked in any of the following ways-
A Guarantee may be revoked in any of the following ways-

1. By notice of revocation.
2. By death of surely.
3. By discharge of surely in various circumstances

A. By novation (Sec.62)
B. By variance in terms (Sec. 133)
C. By release/discharge of principal Debtor (Sec.-134)
D. When the creditor events in to an agreement with the principal debtors (Sec.13..)
E. By creditor act or omission impairing surety's eventual remedy (Sec. 139)
F. By loss of security "(Sec. 141)
G. By invalidation of contract (Sec.142,143,144)

Nature and Extent of Surety's Liability –

1. The liability of surety is co- extensive.
2. The liability of surety arises the same moment when default is made by the principal debtor.
3. The surety is free to restrict limit his liability.
4. Sometimes the surely is liable though the principal debtors is not liable.
5. If there is a condition precedent for the surety's liability; the surety will be liable, only when that condition is fulfilled first.
6. In a continuing guarantee liability of surety extends to a series of transaction over a period of time.
7. The surely will not be liable if the creditor has obtained guarantee either by misrepresenting a material fact regarding the transaction or by keeping silence to material circumstances.
8. A discharge of principal debtor by operation of law does not discharge the surely from liability.

Discharge of surety from liability –

The following are the modes or circumstances under which a surety is discharge from his liability –

1. By revocation
   a) Notice by surety
   b) Death of surety
   c) Notation.
2. By conduct of the creditor
   a) Variance (change) in terms of the contract
   b) Release or discharge or the principal debtor.
   c) Certain arrangements made by the creditors with the principal debtors without the consent of surety,
   d) Creditors act or omission impairing surety's eventual (ultimate) remedy.
   e) Loss of security.

3. By invalidation of conduct of guarantee
   a) Guarantee obtained by misrepresentations
   b) Guarantee obtained by concealment
   c) Failure of co-surety to join a surety

RIGHT THE SURETY

I.Right against the Principal debtor

1. Right of subrogation
2. Right of indemnity

II. Right against the Creditor

1.Right to security
2. Right to claim set off

III. Right against the Co-Sureties

1. Equal contribution
2. Liability of co-securities bond in different sums
3. Right to share benefits of securities.

Bailment and pledge

Bailment

the world 'bailment' is derived from the French world the French world 'baillier' which means 'to deliver Etymologically, it means any kind of handling over'. In legal sense, it involves change of possession of goods from one person to another for some specific purpose.

Definition of Bailment

Sec. 184 defines Bailment as the delivery of goods by one person to another for some purpose, upon a contract, that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor' and the person the person to whom they are delivered is called the 'bailee'.

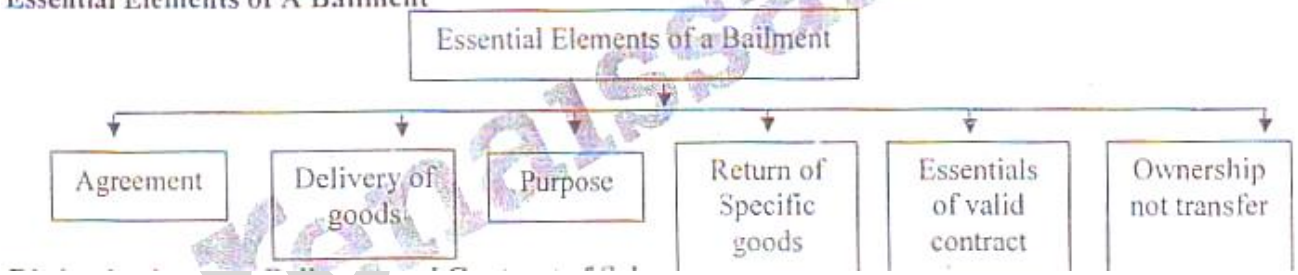
Examples

(a) A delivers a piece of cloth to B, a bailor, to be stitched into a suit. There is a contract or bailment between A and B.
(b) A sells certain goods to B who leaves them in the possession of A . The relationship between B and A is that of bailor and bailee.

Consideration in a contract of bailment

In a contract of bailment, the consideration is generally in the form money payment either by the bailor or the bailee, as for example, when A gives his bicycle to B for repair, or when A gives his car to B on hire. Such consideration in money form, however, is not necessary to support the promise on the part of the bailee to return to goods. The detrainment suffered by the bailor, in parting with possession of the goods, is a sufficient consideration to support the contract of bailment.

Essential Elements of A Bailment



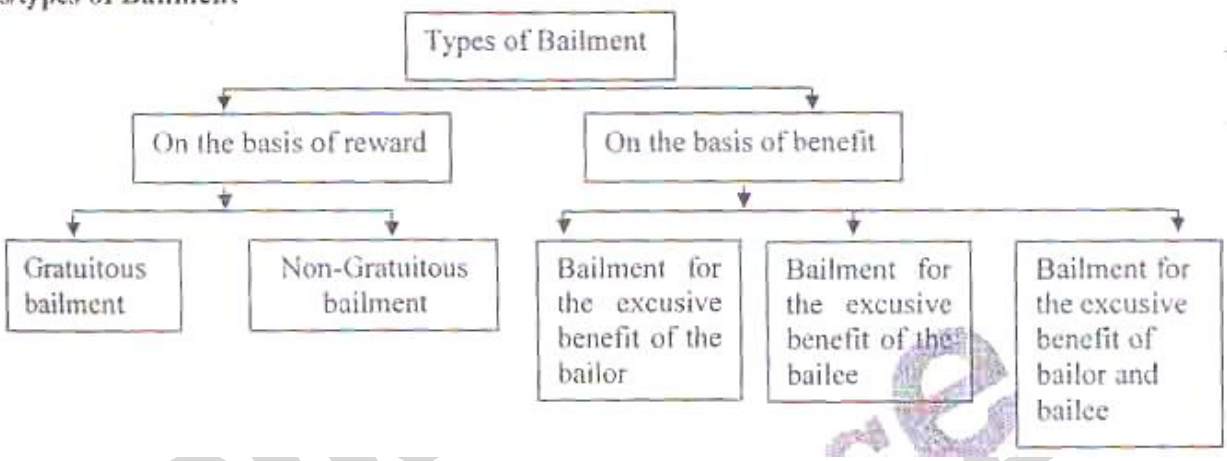
Distinction between Bailment and Contract of sale

A contract of bailment differs from a contract of sale in the following respects:

S. No.	Basics of distinction	Bailment	Contract of sale
1	Transfers of ownership/possession	There is only a transfer of possession of goods from the bailor to the bailee.	There is a transfer of ownership of goods from the seller to the buyer.
2	Consideration not to be passed	The consideration need not be passed between bailor and bailee.	The consideration in terms of price must be passed between seller and buyer.
3	Return of goods	The bailee must return the goods to the bailor on the fulfillment of the purpose for which the bailment is made.	There is no question of such return of goods in contract of sale.

Kinds/types of Bailment

Kinds/types of Bailment



DUTIES OF A BAILOR

- Duty to disclose defects [Section 151]
- Duty to bear expenses [Section 158]
- Duty to indemnity the bailee in case of premature termination of gratuitous bailment [Section 159]
- Duty to indemnity the bailee against the defective title of bailor [Section 164]
- Duty to receive back the goods [Section 164
- Duty to bear the risk of loss [Section 152]

DUTIES OF A BAILEE

- Duty to take care of the goods bailed [Section 151&152]
- Duty not to make any anauthrosed use of goods [Section 154]
- Duty not to mix bailor's goods with his own goods [Section 155 to 157]
- Duty to return the goods [Section 160 & 161]
- Duty to return accretion to the goods [Section 163]

Rights of a Bailor

- Right to claim damage in case of negligence [Section152]
- Right to terminate the contract in case of unauthorized use [Section 153]

- Right to claim compensation in case of unauthorized use [Section 154]
- Right to claim the separation of goods in case of unauthorized mixture of goods which cannot be separated [Section 157]
- Right to demand return of goods [Section 160]
- Right to claim compensation in case of unauthorized retention of goods [Section 161]
- Right to demand accretions to goods[Section 163]

RIGHTS OF A BAILEE

- Right to claim damage [Section 150]
- Right to claim reimbursement of expenses [Section 158]
- Right to be indemnified in case of premature termination of gratuitous bailment [Section 159]
- Right to recover loss in case of bailor's defective title [Section 164]
- Right to recover loss in case of bailor's refusal to take the goods back [Section 164]
- Right to deliver goods to any one of the joint bailors [Section 165]
- Right to deliver goods to bailor in case of bailor's defective title [Section 166]
- Right to particulars lien [Section 170]

RIGHTS OF BAILOR AND BAILEE AGAINST WRONGDOERS

Rights of Bailor and Bailee against Wrongdoer [Section 180] If a third party wrongfully deprives a bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the baiolee may bring a suit against a third person for such deprivation or injury.

Apportionment of Relief or Compensation Obtained by Such Suits [Section 181] Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

Example X delivered a TV to Y for repairs. Z forcefully takes possession of TV from Y's shop. In this case, either X or Y may sue Z. If Y files the suit, he shall hand over the amount received after deducting his repairs charges to X.

TERMINATION OF BAILMENT

I. Termination of every Contract of Bailment (whether Gratuitous or not)

Every contract of bailment comes to end under the following circumstances:

(a) On the Expiry of Fixed Period
(b) On fulfillment of the Purpose
(c) Inconsistent Use of Goods
(d) Destruction of the subject Matter of Bailment

II. Termination of Gratuitous Bailment

A contract of gratuitous bailment is terminated in the following circumstances also.

(a) Before the Expiry of fixed Period
(b) On Death of Bailor/Bailee

Meaning of Lien

Lien means the right of a person having possession of goods belonging to another to retain those goods until the satisfaction of sum claimed by the person in possession of the goods. If may be noted thet the possession of goods must be lawful and continuous. For example, X took Y's godown on rent of Rs.5,000 p.m on an agreement that X cat at any time deposit or take out his goods from the godown. After six months, X stopped paying the rent. Y auctioned X's goods and claimed lien. Y cannot claim lien because it was agreed that X can take out his goods whenever he wanted.

Type of Lien

(a) Particular Lien [Section 170] A particular lien is right to retain only those goods in respect of which some charges are due.

Example:- X gives a piece of cloth to Y, a tailor, to make a coat. Y promises X to deliver the coat as soon as it is finished. Y is entitled to retain the coat till he is paid for (if he has not allowed any credit period) but is not entitled to retain the coat (if he has allow one month's credit for the payment.)

(b) General Lien [Section 171] A general lien is a right to retain all the goods as a security for the general balance of account until the full satisfaction of the claims due whether in respect of those goods or other goods. The general lien is available to other person only when there is an express contract to that effect.

Example: - X deposited US 64 units and shares of Reliance Industries Ltd. as security with Citi Bank and took a loan against the shares of Reliance Industries Ltd. Citi Bank may retain both the securities until its claim are fully satisfied.

S. No.	Basic of distinction	Particular lien	General lien
1	Goods 9in respect of which lien available	It is available against those goods in respect of which some charges are due.	It is available against all goods whether in respect of which claims are due or not.
2	Purpose	It is available only for non-payment of remuneration for the service.	It is available for a general balance of account.
3	To whom available in the absence of contract to contrary	It is available to every bailee to whom the goods have been bailed.	It is available only to specific bailees like bankers, factors, Wharfingers, attorneys of High Court policy brokers.
4	Rendering of service	It is available only when some service involving the exercise of labour of skill has been rendered.	It is available even when no such service has been rendered.
5	Purpose of delivery of goods	The purpose of delivery of goods is to confer an additional value as the goods bailed.	The purpose of delivery of goods is to deposit the goods as security.

FINDER OF GOODS

Finder of goods is the person whom finds some goods which do not belong to him.

Example if X finds a purse or a diamond ring or a watch, which does not belong to him, he will be called as a finder of goods.

Rights of a Finder of Goods

- Right to lien [Section 168]
- Right to sue for reward [Section 168]
- Right to sell [Section 169]

Duties of a Finder of Goods [Section 171]

Finder of goods is subject to the same responsibility as a bailee. The duties of a finder of goods are as follows:-

- Duty to take reasonable care
- Duty not use for personal purpose
- Duty not to mix with his own goods
- Duty to find the owner

PLEDGE

Meaning of pledge (or pawn) [Section 172]

The bailment of goods as security for payment of a debt or performance of a premise is called pledge (or pawn).

Example X borrows of Rs. 1,00,000 from Citi Bank and keeps his shares as security for payment of a debt. It is a contract of pledge.

Meaning of A pawner (or pledgor) [Section 172)

The person who delivers the goods as security for payment of a debt or performance of promise is called the pawnor or pledgor. In aforesaid example X is pawnor

Meaning of Pawnee (or pledge) [Section 172)

The person to whom the goods are delivered as security for payment of a debt or performance of promise is called the Pawnee or Pledgee. In the aforesaid example. Citi Bank is the Pawnee.

Rights of Pawnee

- **Right** of retainer [Section 173]
- **Right** to claim reimbursement of extraordinary expenses [Section 173]
- **Right** to sue pawnor [Section 176]
- **Right** to sell [Section 176]
- **Right** against true owner [Section

Rights of a Pawnee

- **Duty** to take reasonable care of the goods pledged
- **Duty** not to make unauthorized use of goods
- **Duty** not to mix pawnor's goods with his own goods
- **Duty** to return goods
- **Duty** to return accretion to the goods

Rights of Pawnor

- Right to get pawnee's duties duly enforced
- Right to redeem [Section 177]

Duties of Pawnor

- Duty to comply with the terms of pledge
- Duty to compensate the Pawnee for extraordinary expenses [Section 185]

Distinction between Pledge and Bailment

Basic of distinction	Pledge	Bailment
1.Purpose	Pledge is bailment of goods for a specific purpose i.e. repayment of a debt or performance of a duty.	Bailment is for a purpose of any kind
2.Right to use	Pawnee cannot use the goods pledged	Bailee can use the goods as per terms of bailment
3.Right to sell	Pawnee can sell the goods pledge after giving notice to the pawnor in case of default by the pawnor.	Bailment can either retain the goods or sue the bailor for his dues.

Distinction between pledges and Hypothecation

Hypothecation is also one of the modes of providing security. However, it is different from pledge in the following respects:

Basic of distinction	Pledge	Hypothecation
1. possession of goods	Borrower transfer the possession of goods.	Borrower is not transfer the possession of goods.
2. Right to deal with the goods.	Borrower has no right to deal with the goods pledged.	Borrower has a right to deal with the hypothecated.

AGENCY CONTRACT

Meaning of Agency: Agency is relation between an agent his principal created by an agreement.

Section 182 of the Contract Act defines an Agent as "A person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or whom is so represented is called the principal".

Essential Features of Agency

1. The principal
2. The agent
3. An agreement
4. Consideration not necessary
5. Representative capacity
6. Good faith
7. The competence of the principal

Modes or Methods or Creation of Agency

1. **Agency by express agreement:** A contract of agency may be made by express words, whether written or oral.
2. **Agency by implied agreement:** "An authority is said to be implied when it is to be inferred from the circumstances of the case.
   (a) **Agency by estoppels** : When a principal by his conduct or act cause a third person to believe that a certain person is his authorized agent the agency is aid to be an agency by estoppels.
   (b) **Agency by necessity** : It mean the agency which comes into existence when certain circumstances compel a person to act as an agent for an other without his express authority.
   (c) **Agency by holding out** : When a principal by his active conduct or act and without any objection permits another to act as his agent, the agency is the result of principal's conduct as to the agent.
3. **Agency by ratification** : Ratification means confirmation of an act which has already been done. Sometimes, an act is done by a person on behalf of another person but without another person's knowledge and authority. If he accepts and confirm the act, he is said to have ratified it.
4. **Agency by operation of law** : In certain circumstances the law treats a person as an agent of another person. For example, (a) when a partnership is formed, every partner automatically becomes agent o another partner. (b) when a company is formed its promoters are treated as its agents by operation of law.

RIGHTS AND DUTIES OF AGENT

Rights of an Agent

1. Right to retain money received on principal's account.
2. Right to receive remuneration.
3. Right of lien on principal's property.
4. Right to be indemnified.
5. Right to compensation for injury caused by principal's neglet.

Duties of an Agent

1. To follow the direction of the principal.
2. To conduct the business of agency with reasonable skill and diligence.
3. To render accounts on demand
4. To communicate with the principal.
5. Not to deal on his own account
6. To pay the amounts received for the principal

7. Not to delegate his authority
8. Not to act in excess of authority
9. Duty on termination of agency by principal's death or insanity.
10.

TERMINATION OF AGENCY

Termination of agency means revocation (cancellation) of authority of the agent the modes of termination of agency may be classified are as :

(a) Termination of Agency by the act of the Parties.

1. By revocation o authority by the principal
2. By renunciation (giving up) of business of agency by the agency
3. By mutual agreement

(b) Termination of agency by Operation of Law

1. Completion of business of agency
2. Death or insanity of principal or agent
3. Insolvency of the principal
4. Destruction of subject matcer
5. Expiry of time
6. Agency subsequently becoming unlawful.
7. Termination of sub agent's authority

revocable agency

when the authority of agent cannot be revoked by the principal it is said to be an irrevocable agency. An agency is irrevocable in the following cases :

1. If the agency is coupled with interest : when an agent himself has a special interest in the property which forms the subject matter of the agency, such agency is said to be coupled with interest.
2. Where the agent has partly exercised his authority
3. When the agent has incurred a personal liability.

DISTINCTION BETWEEN SUB-AGENT AND SUBSTITUTED AGENT

Basic of distinction	Sub-agent	Substituted Agent
1. Appointment	A sub-agent is appointed by the agent, i.e. original agent.	A substituted agent is named by the agent and appointed by the principal.
2. Delegation of Authority	Original agent delegates some of his authority to the sub-agent	Original agent does not delegate his authority to the substituted agent.
3. Control	A sub-agent acts under the control o the agent.	A substituted agent acts under the direction and control of the principal.
4. Privity of contract with principal	There is no privity of contract between sub-agent and the principal. Therefore, both of them cannot directly sue on each other.	There is a privity of contract between substituted agent and the principal. Therefore, both of them can sue each other directly.
5. Liability of the agent	`agent is liable to the principal for the acts of the sub-agent.	Agent is not responsible to the principal for the acts of the substituted agent.
6. Accountability	The sub-agent may be held accountable to the principal only for his wrongful acts or fraud.	A substituted agent is a accountable to the principal for each and every act.
7. Claim for remuneration	A sub-agent has no right to claim remuneration from the principal.	A substituted agent can claim remuneration from the principal.
8. Improper appointment	A sub-agent may be improperly appointed.	A substituted can never be improperly appointed.