IUNIT – 2

INDIAN CONTRACT ACT, 1872

Definition and meaning of contract :

A relationship created between two or more persons with their willingness in a serious manner to do or not to do something and which can be enforced in the

As per Sec 2(h) of the Indian Contract Act, (ICA) 1872. "An agreement enforceable by law is a contract" of law can be known as a “contract”.

Essential elements of a valid contract

1. **PROPOSAL**: Proposal is the first step in the formation of a contract. When one person tells other that he wants to do something and expects the consent of the other party to such act, it is called, a proposal. The proposal is also called an "offer". The person who makes a proposal is called the "promisor" [Section 2(c)]. He is also known as a Proposer or Offeror.
2. .**ACCEPTANCE**: According to Sec 2 (b) "When the person to whom a proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise". The acceptance should be given without any conditions. Any bargain makes it invalid. He can also be called an Acceptor or Offeree.
3. .**CONSIDERATION**: When the promisor makes a proposal to do something, he requires the promisee to do something for him, it is known as consideration in the promise. Consideration is very essential to convert a promise into an agreement.It is also referred as something in return or Quid- pro- quo.
   Note:
   - Adequacy of Consideration: Consideration need not be equivalent in value
   - Value of Consideration: Consideration must have tangible value.
   - Timing of Consideration: Consideration can be past present, or future
   - Source of Consideration: Consideration can come from the promisee or a third party.
   - Desire of Promisor: The act must be requested by the promisor.
4. **COMPETENT PARTIES** : The. Promisor or Promisee should be competent to contract according to the law of the nation so as to make their agreement enforceable by law. According to Sec 11, of the ICA "Every person is competent to contract, who is of the age of majority, according to the law to which he is a

subject and who is of sound mind and who is not disqualified from contracting by any law to which he is a subject".

5. **FREE CONSENT:** The consent of the parties to the agreement should be obtained with their free will and pleasure without using any force or fear (threat). According to Sec 13, "Two or more persons are said to consent when they agree upon a same thing in the same sense". It is also known as "Identity of minds" or 'consensus-ad-idem'. According to section 14, "The consent in an agreement is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake".
6. . **LAWFUL CONSIDERATION AND OBJECT**: Existence of consideration in every agreement is not sufficient. It must be a lawful consideration. Moreover the object of the agreement should also be lawful so as to enforce it in a Court of law. According to section 23 of the Indian Contract Act 1872, "The consideration or object in an agreement is said to be lawful unless :
    - It is forbidden by any law or
    - It is of such a nature that if permitted, it would defeat the provisions of any law or
    - It is fraudulent or
    - It involves or implies injury to the person or property of another or the court regards it as immoral or opposed to public policy"

7. **AGREEMENT NOT DECLARED AS VOID**: The Indian Contract Act 1872 has declared five agreements as void agreements. They are not enforceable in any Court of law in India even though they posses all the above seen requirements of a valid contract. They are known as Expressly Declared void Agreements. They are as under:

(a) Agreements in restraint of lawful marriage [Sec. 26],

(b) Agreements in restraint of lawful trade [Sec. 27],

(c) Agreements in restraint of legal proceedings [Sec. 28],

(d) Agreements the meaning of which is uncertain [Sec.29] and

(e) Agreements by way of wagers (betting) [Sec. 30]

8. **LEGAL FORMALITIES :** They, should be signed by the parties in the presence of ATLEAST two adult witnesses. If they involve financial transactions, proper stamp duty should be paid. If they involve transfer of immovable property, they should be registered with the Registrar of Immovable Properties. These are known as "legal formalities".

9. **CREATING LEGAL OBLIGATIONS** : According to Sir William Anson, a British Judge and an expert on Law of contracts, the agreements should be capable of creating legal obligations between the parties so as to be enforceable by law. One party should be empowered to take legal action, if the other party fails to fulfil his obligation under the agreement. It is known as creating legal Obligations.

KINDS OF CONTRACT :

The contracts are basically classified based on

1.FORMATION

2.VALIDITY /LEGAL EFFECTS

3 PERFORMANCE

1.CLASSIFICATION ON THE BASIS OF FORMATION: The agreements can be classified into the following three types on the basis of their formation as under:

a.**Expressed Agreements**

: The agreements made by words spoken or words written are known as expressed agreements. Such agreements can be re-classified as under:

(i) Written agreements(Made by words written),

(ii) Oral agreements(Made by words spoken).

b.**Implied Agreements**: Agreements made without words spoken or words written but by the actions of the parties or relations existing between them are known as implied Agreements or "Tacit agreements". (Engaging an auto or taxi, ordering for tea in a hotel are the examples of these agreements).

c.**Constructive Agreements**: Some agreements come into existence on account of morality, civilization and good conscience of parties without any words or actions, such agreements are known as "Constructive agreements" or "Quasi contracts". (Responsibility of a finder of lost goods to find out the true owner and return them is an example of a quasi contract).

II.**CLASSIFICATION ON THE BASIS OF VALIDITY**: Agreements can be classified into the following six types on the basis of their validity in law as under:

a.**Valid Contracts**: The agreements possessing all the features required by law to make a valid contract are known as valid contracts. They can be enforced at the courts of law.

b. **Void Agreements**: Agreements lacking any important feature required by law to make them enforceable by law are known as Void Agreements. So such agreements can not be enforced in the courts of law.

c. **Voidable Agreements**: Agreements made without free consent of the parties or agreements in which the consent of a party is obtained by coercion, undue influence, fraud or misrepresentation are known as voidable agreements.

d. **Unenforceable Agreements**: Agreements possessing all the features of a valid contract as per law can be enforced at law. But the agreement between the parties should be capable of being placed before the court of law. Although oral and implied agreements are valid but they cannot be presented before a Court of Law easily. Therefore, agreements should be written in a proper manner on proper papers and other legal formalities should be fulfilled so as to be enforceable. Otherwise they will become Unenforceable Agreements

e.**Illegal contract** :An illegal contract is an agreement whose object or performance is prohibited by law, against public policy, or involves an unlawful purpose, making it void and unenforceable in court. Examples include agreements to commit a crime, such as trafficking illegal drugs, or contracts that violate existing laws or moral standards. As a result, courts will not enforce these contracts, and parties may face legal consequences like fines or imprisonment.

Determining Illegality (based on Indian law as an example)

Under the Indian Contract Act, 1872, an agreement is considered unlawful if its object or consideration falls into categories such as:

Forbidden by Law: The actions agreed upon are explicitly prohibited by existing statutes.

Defeats the Provisions of Law: The agreement's nature would undermine or negate the purpose of a particular law.

III. **CLASSIFICATION ON THE BASIS OF PERFORMANCE**: Agreements can be classified into three types on the basis of performance as under.

a.**Executed Contracts:** Agreements which are already performed by both the parties are known as Executed Contracts. The relation between the parties of such

agreements may continue on account of warranties or guarantees given by the sellers of goods.

b.**Executory Contracts:** Agreements formed but not performed by any party or agreements yet to be performed are known as Executory Contracts. They are also known as "Bilateral Contracts".

c.**Partly Executed and Partly Executory Contracts**: Agreements which are performed by one party but not by the other party are known as Partly Executed and Partly Executory Contracts or "Unilateral Contracts".

Proposal/Offer[sec2(a)]

It is the first step in the formation of a contract. When one person tells other that he wants to do something and expects the consent of the other party to such act, it is called proposal.

ESSENTIALS OF VALID OFFER

- **It should be given Voluntary:** proposal should be voluntary, it should not be given on demand or instigation from the other party. Hence an answer given to a question or a reply given to an enquiry will not become a valid proposal. Even when a person quotes the price of any article, to another, on enquiry from the other, it will not become a proposal It should not be an answer to a question or a reply to an enquiry.
- **It should be communicated to the other party**: The proposal should be communicated or brought to the knowledge of the offeree so as to bind him. It should be made with willingness of the proposer. Therefore, drafting a letter of proposal and posting it will not become communication. It should reach the other party so as to complete the process of communication.
- **proposal may be positive or negative** : As per the legal definition, a proposal may be made asking a person to do something or to abstain from doing anything. Therefore, it may be positive or negative. Both the types of proposals are valid.
- **Proposal may be expressed or implied :** A proposal can be made either in words spoken or in words written. Such proposal is called" an expressed proposal". It can also be made by the actions of the parties. Such proposal is known as implied proposal. All the types of proposals are valid.
- proposal may be specific or general: when a proposal is made to a particular person in his name. It is called "a specific proposal". It should be accepted only by that person to create an agreement. When a proposal is made to a group of persons or to the public in general, it is called "a general proposal", It can be accepted by any one from the group of public. Both these types of proposals are valid.
- **Proposal should be definite but not uncertain: As** per section 29 of the Indian Contract Act, 1872, agreements, the meaning of which is uncertain are void. Therefore, an indefinite proposal or a proposal which is not having definite meaning becomes invalid. Hence the words like reasonable, satisfaction, modern style, something etc., should not be used in proposals. Such indefinite words make the proposal uncertain and invalid.

- **Proposal should create legal Obligations**: The proposal should be capable of creating serious or legal obligations between the parties. Otherwise it cannot give raise to a valid promise. The friendly proposals, social proposals and domestic proposals will not create legal obligations. So such proposals become invalid.

ACCEPTANCE [sec2(b)]

When the person to whom a proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

NOTE :

- **The acceptance should be given by the promisee** : As per the legal definition, "The person to whom a proposal is made should signify his assent thereto to express his acceptance. That means the promisee only should give the acceptance. If it is given by any third party it becomes invalid and no obligation is created. So no agreement comes into existence.
- **The acceptance should be communicated :** As a proposal becomes valid when it is communicated, the acceptance also becomes valid when it is communicated. The promisor cannot bind the promisee under the contract unless his proposal was accepted by the promisee and he receives its communication**.**
- **Acceptance should be Unconditional** : While a proposal is allowed to be conditional or unconditional, the acceptance should not be conditional. The promisee should either accept the proposal as it is or reject it, if he accepts a proposal after making any changes or imposing any conditions, it becomes invalid. Such acceptance is known as a bargain or conditional acceptance or qualified acceptance. It is also called a "COUNTER OFFER".
- **Acceptance may be expressed or implied :** Acceptance can be given either by words spoken or in words written. Such acceptance is called an" Expressed acceptance" It can also be given by the actions of the promisee. It is called an " Implied acceptance". When the promisee does what the promisor has desired him to do, it becomes an implied acceptance.
- **It should be given within the fixed time:** When the promisor fixes a time for communicating the acceptance, the promisee should give his acceptance within that time, otherwise it becomes invalid. If no time is fixed by the promisor, the acceptance should be given within a reasonable time.
- **It should be Communicated in a reasonable mode:** Sometimes the promisor prescribes a particular mode of communication of acceptance. In such cases the promisee should communicate his acceptance in that particular mode only, otherwise It may be rejected by the promisor. When no particular mode is prescribed, it should be communicated through a reasonable mode.
- **Silence is no acceptance:** the proposal. It should not be taken as acceptance under any circumstances in law. Although silence is considered as half acceptance in Indian traditions, it is not recognised by the law. Moreover, silence

cannot be prescribed as a mode of acceptance also. Such proposals become invalid.

- **Mental acceptance is no acceptance:** Sometimes the promisee may accept a proposal mentally and he may write it in the form of an endorsement on the proposal or inform it to any other person but not to the offeror. It is called mental acceptance". It is invalid and no agreement comes into existence between promisor and promisee in such cases.

CONTINGENT CONTRACTS

An Agreement between two persons to do or not to do something if some future event happens or does not happen is called a “contingent contract”.
According to sec 31 – “ It is a contract to do or not to do something if some event collateral to such contract does or doesn’t happen”.

FEATURES

- The performance both the parties of contract should be made conditional.
- It should be based on happening or non happening a particular event.
- The event should be an uncertain future event.
- It should not be controllable by the parties.
- The even should have Collateral connection with main contract.
- The event may be positive or negative.
- All the features of valid contract must be present.

E.g. Mr. A, a farmer agrees to supply 100 bags of paddy to Mr. B a rice miller if there are good rains in the season. This is a Contingent contract based on an uncertain future event connected with main contract.

Rules Governing The Various Kinds of Contingent Contracts

- **Contracts Contingent on an event happening (Sec 32)**
  -From the previous E.g. Mr. A need not supply paddy to Mr. B if there are no rains is the season. The contract becomes void.
- **Contracts Contingent on the even not happening (Sec 33)**
  -IF Mr. A Agrees to supply 100 bags of paddy to Q if there is no cyclone. If cyclone takes place, the agreement become void.
- **Contracts Contingent on the future conduct of a living person (Sec 34)**
  -A agrees to pay B a sum of money if B marries C. If C marries someone else (e.g., D), the event (B marrying C) becomes impossible, even though C might become available again due to D’s death. Then the contract be void.
- **Contracts Contingent on happening of specified event within fixed time (Sec 35)**

- a contract based on certain or definite event cannot be called a Contingent contract. But if definite event can be made uncertain by adding time factor . Then the contract becomes a Contingent contract .
- -Mr. S Agrees to Marry Ms. T if his wife dies with in 6 months only, it becomes a Contingent contract by nature. Death is a certain event but the time period of 6 months make it uncertain.

- **Contracts Contingent on impossible event becomes void (Sec 36)**
  - Mr. A Agreed to pay ₹1000 to Mr. B if he can make two parallel line cross each other. This agreement is void because of impossibility.

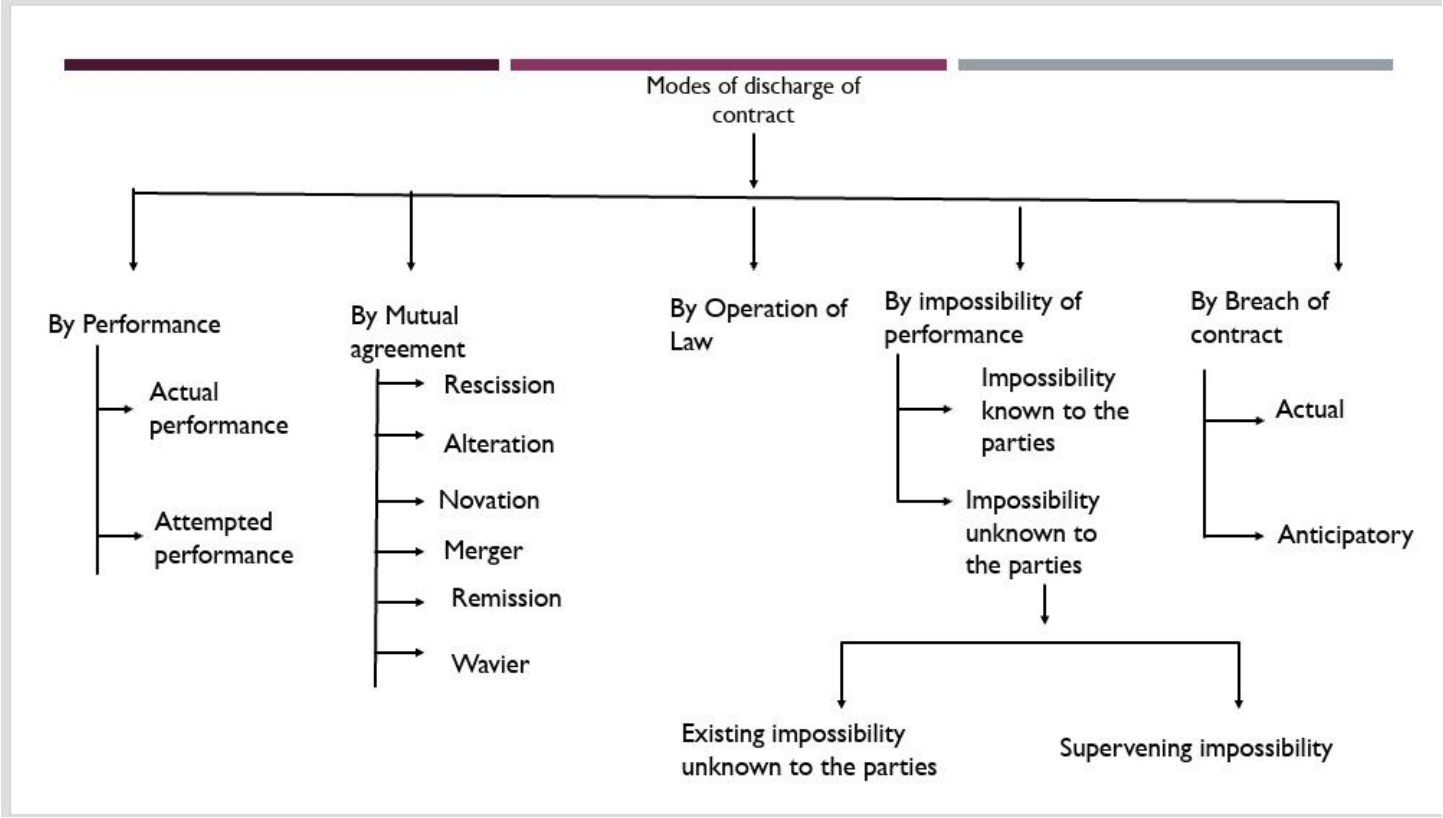
DISCHARGE OF CONTRACTS

The parties of a contract get discharged from their respective obligations when contracts comes to an end. It is also known as "Discharge of contract".
There are 5 possible modes of discharge of contracts, which are under
1. Discharge by Performance.
2. Discharge by Mutual agreement.
3. Discharge by Operation of law.
4. Discharge by impossibility of performance.
5. Discharge by Breach of contract.

1. Discharge of contract by Performance
   - **Actual performance:** when the parties fulfill their obligations in accordance with the terms and conditions of the contract, it is known as actual performance.
   - **Attempted performance / Offer of performance/Tender of performance:** when one party tries to perform his obligation under a contract But the other party does nit give him opportunity to perform the contract.

2. Discharge of contract by Mutual agreement
   - **By Rescission**: Parties withdrawing from the contract by Mutual consent with our performing it.
   - **By Alteration:** Mutually agreeing to alter time or place of performance of contract.
   - **By Novation:** Parties agreeing to change the subject matter or one of the Parties of the Contract.

   - **By Merger**: Merging of an existing contract with a new and bigger contract discharges the older contract
   - **By remission:** when one part accepts part performance in full discharge of a contract.
   - **By wavier**: when one party who has already performed his obligation, excusing the other party from total performance



3.DISCHARGE BY OPERATION OF LAW: Some agreements become automatically discharged without performance by the parties or without any mutual agreement between them, when the provisions of any law come into operation. It is known as discharge by operation of law. It may be either a natural law or a national law.
It happens in the following circumstances
a) By death of any one or more parties.
b) By insanity of one or more parties.
c) By insolvency of any one or both parties
d) By lapse of time

4.DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE: The parties to a contract will be
discharged from performance of their obligations under the contract, if the performance becomes impossible. Whether the impossibility is excusable or not should be verified as per the rules of law.

Therefore, the impossibility of performance is broadly classified into two types as under:

(a). **Impossibility known to the parties:** When two persons enter into a contract knowing that it is impossible to perform, the agreement becomes a foolish transaction. It is not enforceable in any Court of law because it is void-ab-initio.

(b).**Impossibility unknown to the parties**: When two persons enter into a contract to do something which is impossible but they believe that it is possible, such impossibility is known as impossibility unknown to parties. The agreement becomes void even in such cases.
This type of impossibility is re-classified into two types as under: (i). Existing unknown impossibility (ii) Supervening unknown impossibility.

5.DISCHARGE BY BREACH OF CONTRACT: When a party did not perform his obligation without any valid reason such as operation of law or impossibility of performance of, it becomes a breach of contract. It may result in a loss to the other party. Therefore the other aggrieved party will have certain remedies against the party causing breach of contract. Some of the remedies are
(a) Rescission
(b) Specific performance
(c) Injunction
(d) Quantum meruit and
(e) damages.

TYPES Of BREACH: Breach of contract is of two types, which are as under:

a. Actual Breach: When one party fails to perform a contract on its due date or during the performance without prior intimation to the other party, it is called "Actual breach".

b.Anticipatory breach: When one party to a contract informs other party about his inability to perform the contract before due date for performance, it is called "Anticipatory Breach".

REMEDIES FOR BREACH OF CONTRACT

MEANING OF BREACH OF CONTRACTS: When a party did not perform his obligation without any valid reason such as operation of law or impossibility of performance it becomes breach of contract. It may result in a loss to the other party. Such party is known as an "Aggrieved party ". Therefore, the aggrieved party will have certain remedies against the party causing breach of contract.
Some of the remedies are as under

1.Suit for Rescission: When one party informs other party about his inability to perform the contract, the other party can close the contract, by filing a suit for rescission or by giving a legal notice to the other party. Then the other party will not have any chance to revoke his notice of anticipatory breach on the due date. This remedy is suitable in case of anticipatory breach only.

2.Suit for Specific Performance: When a party gives a notice of anticipatory breach or causes an actual breach, the other party can file a suit for specific performance of the contract. Thus the Court of law passes an order to perform the contract without fail at any cost.

3.Suit for Injunction: When a party has agreed not to do something under a contract but he is doing it or attempting to do it, then the other party can file a suit and obtain a stay order. It is also called "injunction". In such cases the party is restrained from doing what he had agreed not to do.

4.Suit for Quantum Meruit (as much as earned): When a party stops other party from doing a work after it is partially performed, he should pay consideration for the work already done, otherwise the other party can file a suit for Quantum Meruit or as much as merited or earned. This remedy is available only in the contracts which are partially performed.

5.Suit for Damages: Claiming Monetary compensation for the loss suffered by the aggrieved party on the breach of a contract, is known as 'Damages'. Every party who is put to loss on account of breach of contract will have a legal right to claim damages. However the Court of law awards damages only when a loss is shown and it is assessable in terms of money. No damages can be claimed for inconvenience or unreasonable delay or hurting the feelings of the other party.

Types of Damages: The damages claimable on breach of contracts can be classified into five types as under:

(a). Ordinary Damages.
(b) Special Damages
(c). Vindictive Damages
(d). Nominal Damages, and
(e). Remote Damages

a. **Ordinary damages:** The amount of damages should be equivalent to the actual loss. Separate agreement also not necessary, because it is general legal right given by the ICA, 1872 under sec 73.

b. **Special damages:** The amount of such damages is fixed between the parties at the time of entering into the contract.

c. **Vindictive damages**: when the reputation or goodwill of a person or his family or business is damaged due to breach of a contract, any amount of vindictive damages.

d. **Nominal Damages** :sometimes one party claims damages in a court of law on the breach of agreement caused by the other party, even thought he suffered no loss.

e. Remote damages: Damages can be claimed only for the loss suffered due to direct reasons but not for indirect or distant reasons. Any such claims is Remote damages.

SPECIAL CONTRACTS

Contract of indemnity and guarantee:

Under the Indian Contract Act, 1872, an **Indemnity** is a contract where one party (the indemnifier) promises to save another (the indemnified) from financial loss, involving two parties with primary liability.
In contrast, a **Guarantee** is a contract where a third party (the surety) promises to perform the obligation or discharge the debt of a principal debtor to a creditor in case of the principal debtor's default, involving three parties with a secondary liability for the surety.

Contract of Indemnity (Sections 124-125, Indian Contract Act, 1872)

- **Definition**: A promise by one party to another to indemnify them against loss caused to the latter by the promisor's own conduct or the conduct of any other person.
- **Parties**: Two parties: the Indemnifier (who promises to compensate) and the Indemnified (or indemnity-holder, who is protected from loss).
- **Nature of Liability:** The indemnifier's liability is original and primary.
- **Purpose**: To protect the indemnified party from potential financial losses due to specific events.

Contract of Guarantee (Sections 126-147, Indian Contract Act, 1872)

- **Definition**: A contract to perform a promise or discharge the liability of a third person in case of their default.

- **Parties**: Three parties: the Creditor (the person to whom the debt is owed), the Principal Debtor (the person whose debt is being guaranteed), and the Surety (the person who gives the guarantee).
- **Nature of Liability:** The surety's liability is secondary and collateral; it arises only when the principal debtor defaults on their obligation.
- **Purpose**: To provide assurance to the creditor that the principal debtor's obligations will be met.

Key Differences

- **Number of Parties:** Indemnity involves two parties, while a guarantee involves three. Nature of Liability: IN indemnity, the liability is primary and original. In a guarantee, the surety's liability is secondary, arising only upon the principal debtor's default.
- **Contracts Involved:** An indemnity is a single contract between the indemnifier and indemnified.A guarantee involves three contracts: the primary contract between the creditor and principal debtor, and the secondary contract of guarantee between the creditor and the surety.
- **Consideration**: In a contract of guarantee, anything done or any promise made for the benefit of the principal debtor can serve as sufficient consideration for the surety.

SALE OF GOODS ACT, 1930

DEFINITION AND MEANING OF CONTRACT OF SALE OF GOODS:-

According to Sec. 4(1) of the Sale of Goods Act, 1930, "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part owner and another".

FEATURES OF CONTRACT OF SALE OF GOODS:

1. **The parties:** The parties are called the sellers and Buyer.
2. **Subject matter:** As per section 2(7) of the Sale of Goods Act, 1930." Goods means every kind of movable property other than actionable claims and money. It includes stocks and shares, growing crops, grass and things attached to land or forming part of land and agreed to be severed for the purpose of sale".
3. **Transfer of property:** The seller should transfer the ownership of the goods to the buyer. so that the buyer becomes owner of goods after sale. It is known as transfer of property.

4. **Consideration**: The buyer should pay value of the goods to the seller in the form of money. It is called price. Agreement to exchange goods for other goods is not a contract of sale.
5. **Absolute or Conditional:** When the seller transfers the ownership in goods to the buyer immediately, it is called an absolute contract of sale of goods or SALE. If he agrees to transfer the ownership at a later date or in future, it is called a conditional contract of sale or **AN AGREEMENT TO SELL.**
6. **Features of valid contract:** All other features of a valid contract should exist in a contract of sale of gods also so as to be enforced in a Court of law, such as proposal, acceptance, free consent, lawful consideration and objects etc.

Conditions and warranties:
When a contract of sale of goods is made between seller and buyer, the seller puts forth certain details about the goods are subject matter of the contact. Which are considered as stipulations.

Out of all for the stipulations the most important Stipulations are considered as conditions and less important stipulations are considered as warranties. The conditions must and should be fulfilled by the seller if not buyer will reject the contract. Warranties breach cannot be viewed seriously as conditions breach.

The conditions and warranties relating to a contract of Sale of Goods are classified into two types, namely **Expressed conditions and warranties and implied conditions and warranties.** The stipulations agreed between the parties either in words spoken or in words written are known as Expressed conditions and warranties. On the other hand the conditions and warranties prescribed by the Sale of Goods Act 1930 are known as Implied conditions and warranties. The seller should fulfil both expressed and implied stipulations.

Implied conditions

1.**Implied Condition as to Title or ownership (sec. 14)**: A person should not sell goods under a contract of sale of goods unless he is the owner of the good.
2.**Implied Condition as to Description (sec. 15):** The goods sold under any description should satisfy the description so made by the seller.

3.**Implied condition as to Sample (sec. 17):** Goods sold by showing a sample should tally with the sample so shown by the seller

4.**Implied condition as to Description and Sample (sec. 15(2)**): If goods are sold by description and sample such goods should satisfy both the conditions

5.**Implied condition as to Quality and Fitness (sec. 16)**: There is no implied condition as to quality and fitness of goods to the purpose of the buyer. Therefore, the buyer should be careful regarding quality and suitability to his purpose. This is known as the rule of "Buyer Beware".

WARRANTIES AS PER LAW

1.**Implied Warranty regarding quite possession:** The buyer should be allowed to possess the goods quitely without any disturbance from seller.

2.**Implied warranty regarding Freeness from encumbrances:** The goods sold should not have been already mortgaged or pledged or hypotheticated to others

3.**Implied warranty regarding sale of dangerous goods:** Goods likely to cause danger to the buyer should not be sold under a contract of sale of goods.

4.**Implied warranty annexed by trade custom or usage:** Incase of ready made garments, if they are not suitable to the person for whom they are purchased, such goods are to be exchanged.

TRANSFER OF PROPERTY AND DELIVERY OF GOODS

After the contract of sale of goods is made between a seller and a buyer, they will have to perform the contract to be discharged from the obligations arising under the contract. The seller will have to transfer the ownership of the goods to buyer and deliver the goods physically. The buyer will have to pay the price. These two things put together can be termed as performance of a contract of sale of goods.

RULES OF TRANSFER OF PROPERTY IN GOODS

The transfer of property in goods or ownership of goods is the most important feature of a contract of sale of goods. The moment or point of time at which the buyer becomes owner of goods should be ascertained carefully because **"the risk prima face passes with ownership"** (Section 25). The owner of goods should bear the loss of destruction. He can only take action against trespassers, who cause any damage to the goods. He can only claim insurance amount from the Insurance Company if the goods are insured. The Sale of Goods Act has given the following rules in this regard.

1.In case of Sale of Specific Goods (Section 20): The goods are known as specific goods when they are selected by the buyer from the stocks of the seller. In such cases the ownership of the goods passes to the buyer provided the seller is ready to sell them and all formalities are completed. However, the goods must be put in deliverable state and their price should have been ascertained by the seller.
2.In case of Sale of Ascertained Goods (Section 18): The goods are known as ascertained goods if they are separated from the stocks of the seller for the purpose of delivery to the buyer as per the Purchase order of the buyer. In this case also the property in Such goods passes to the buyer as soon as they put the deliverable state.
3.In case of sale of Unascertained Goods (Section 23): Goods are known as unascertained goods if they are not separated from the stocks of the seller even after they are sold away. The property in such goods will not pass to the buyer. In case of destruction of such goods, the seller should bear the loss.
4.Intention of the Parties (Section 19): While deciding whether the property in goods has passed from the seller to buyer or not, the intention of the parties should also be taken into consideration. It should be ascertained from the terms and conditions of the contract agreed between the parties.
5.In case of goods delivered to a carrier (Section 23): When the goods are delivered by a seller to a transport company for the purpose of delivery to the buyer, the property in such goods generally passes to the buyer provided the Lorry Receipt or Railway Receipt is prepared in the name of the buyer. On the other hand, if the seller reserved the right of transfer by preparing the L/R or R/R in his own name or in the name of his agent, the property in goods will not pass to the buyer.

6. Goods sent on Sale or Return basis: When the goods are sent on approval basis so as to sell them or return them if not sold, the property in such goods will not pass to the buyer until he sells them to a customer or uses them.

II. RULES OF DELIVERY OF GOODS: The performance of a contract of sale of goods includes two important things namely
(A) Delivery of goods by the seller to the buyer and
(B) Payment of price of goods by the buyer to the seller.

1. Cost of delivery: The seller should bear all the expenses relating to packaging, weighing, measuring, counting, marking, etc. which is known as cost of delivery
2. **expenses of transportation** including delivery such as, carriage, cartage, freight, etc. should be borned by the buyer unless agreed otherwise.

3. **Application for delivery:** The seller need not deliver the goods unless the buyer applies for delivery or requests the seller to deliver goods at a specified place.
4. **Risk of delivery:** The risk of destruction of the goods in transit falls upon the buyer unless the seller agrees to bear the risk or the property in goods is not transferred to the buyer.
5. **Place of delivery**: The buyer should take delivery of goods from the place where the goods were lying or kept at the time of entering into the contract. In case of future goods or goods under production they should be taken delivery from the place of production.

6. Time of delivery: The seller should give delivery of goods within a reasonable time or within the fixed time agreed between the parties. Time for verification should be allowed.

7. Examination of Goods: The buyer should be given a reasonable opportunity to examine the goods before taking delivery. Such as counting, measuring, weighing etc.

8. **Unconditional Delivery**: The goods should be delivered in full quantity agreed. The buyer need not accept if wrong quantity is delivered or the goods are delivered in parts. However, if the goods are agreed to be delivered in instalments each instalment may be considered as a separate delivery.

9.**Modes of delivery:** Goods can be delivered in any of the following three modes:

a. Actual delivery (Hand to hand delivery in case of easily portable goods)

b. Symbolic delivery (in case of heavy goods, the goods are shown to the buyer)ac. Constructive delivery (delivery through a transport co., or Warehouse keeper is known as constructive delivery.

III. RULES OF PAYMENT OF PRICE: The price of goods should be paid by the buyer to the seller immediately on delivery of goods unless agreed otherwise. If the parties agree mutually, the price may be either paid before delivery or the buyer may be given time to pay the price at a future date. The consideration in a contract of sale of goods is known as price. It is to be paid in cash only or partly in cash and partly in kind. It can be fixed in any of the following four ways:

a.It may be fixed between the seller and buyer at the time of entering into contract.

b. It may be agreed to be fixed by a third party selected by seller and buyer.
C.The parties may agree to pay as per the market rate prevailing on the date of delivery.
d. The parties may agree to pay in accordance with the quota price fixed by the government.