

Lesson 1: Indian Contract Act, 1872

1. Meaning of Contract

- The law relating to contract is governed by the Indian Contract Act, 1872.
- As per Section 2(h) of Indian Contract Act, 1872: "Contract" as an agreement enforceable by law.
- "Contract" consists of two distinct parts:
 1. There must be an agreement.
 2. Such an agreement must be enforceable by law. To be enforceable, an agreement must be coupled with an obligation.
- A contract is a combination of the two elements: (1) An agreement; (2) An obligation.

2. Essential elements of a Valid Contract

- An offer or proposal by one party and acceptance of that offer by another party resulting in an agreement – consensus-ad-idem.
- An intention to create legal relations or intent to have legal consequences.
- Agreement is supported by a lawful consideration.
- Parties to the contract are legally capable of contracting.
- Genuine consent between the parties.
- Object and consideration of the contract is legal and is not opposed to public policy.
- Terms of the contract are certain.
- Agreement is capable of being performed i.e. it is not impossible of being performed.

3. Restitution

Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind to that extent it is void.

4. Agreement

Definition of Agreement	As per Section 2(e) of Indian Contract Act, 1872 defines an "Agreement" as "Every promise and every set of promises forming the consideration for each other is an agreement."
Agreements which are not Contracts	<ul style="list-style-type: none">▪ Agreements relating to social matters.▪ Domestic arrangements between husband and wife.

5. Agreement that restrained of Trade

Prima facie every restraint of trade is void but certain exceptions to this general rule are recognised. If partial and reasonable restraint falls under following exceptions, the contract will be enforceable:

1. Where the seller of the goodwill of a business undertakes not to compete with the purchaser of goodwill, the contract is enforceable.
However, the restraint appears to be reasonable as to territorial limits and the length of time.
2. As per Section 11(2) of the Indian Partnership Act permits contracts between partners to provide that a partner shall not carry on any business other than that of the firm while he is a partner.
3. As per Section 36(2) and Section 54 of Indian Partnership Act provide that partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within specified period or within specified limits. The agreement shall be binding if the restrictions are reasonable.

6. Wagering Agreement

- Wagering agreements are nothing but ordinary betting agreements.
- Essence of gaming and wagering is one party is to win and the other to lose upon a future event which at time of Indian Cricket Team wins the test match, "X" will pay "Y" INR 1000 and if it loses, "Y" will pay Rs. 1000 to "X". This is a wagering agreement and nil can be recovered by winning party under the agreement.
- Wagering agreements are void.
- In a wagering contract there must be mutuality in the sense that the gain of one party should be loss to the other on the happening of an uncertain event which is the subject matter of the contract.

Note: Literal meaning of the word "wager" is a "bet".

7. Void Agreement

- Agreement by or with a minor or a person of unsound mind or a person disqualified to enter into a contract.
- Agreement made under a mistake of fact, material to the agreement on the part of the both the parties.
- An agreement of which the consideration or object is unlawful.
- If any part of a single consideration for one/more objects/anyone/ any part of any one of several considerations for a single object is unlawful, the agreement is void.
- An agreement in restraint of marriage.
- An agreement in restraint of trade.
- An agreement in restraint of legal proceedings.
- Agreements the meaning of which is not certain or capable of being made certain.
- Agreement by way of wager.
- An agreement to enter into an agreement in the future.
- An agreement to do an act impossible in itself.
- An agreement made without consideration subject to three exceptions provided to Section 25.

8. Quantum Merit

- ***“Quantum Meruit”*** means **“as much as earned”** or **“reasonable remuneration”**.
- The law implies reasonable compensation for the services rendered by a party if there are circumstances showing that these are to be paid for.
- Claim on ***“quantum meruit”*** arises when one party abandons the contract or accepts the work done by another under a void contract.
- **General Rule:** Where a party to a contract has not fully performed what the contract demands as a condition of payment, he cannot sue for payment for that which he has done. The contract has to be indivisible and the payment can be demanded only on the completion of the contract.
However, where one party who has performed part of his contract is prevented by the other from completing it, he may sue on ***“quantum meruit”*** for the value of what he has done.

9. Contingent Contract

Contingent contract is a contract to do or not to do something if some event collateral to such contract does or does not happen.

Instances of Contingent Contract: Contract of insurance and contracts of indemnity and guarantee.

For example: “X” contracts to sell “Y”; 10 bales of cotton for INR 10,000 if the ship by which they are coming returns safely.

Rules regarding Contingent Contracts:

- Contracts contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event has happened. If the event becomes impossible, the contract becomes void.

For Example: A contracts to pay B a sum of money when B marries C, C dies without being married to B. The contract becomes void.

- Contracts contingent upon the non-happening of an uncertain future event can be enforced when the happening of that event becomes impossible and not before.

For Example: A contracts to pay B a certain sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

- If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies.

For Example: "A" agrees to pay "B" Rs. 1,000; if "B" marries "C". "C" marries "D". The marriage of "B" to "C" must be considered impossible even if it is possible that "D" may die and "C" may afterwards marry "B".

- Contracts contingent on the happening of an event within a fixed time become void if, at the expiration of the time, such event has not happened, or if, before the time fixed, such event becomes impossible.

For Example: "A" promises to pay "B" a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year and becomes void if the ship is burnt within the year.

- Contracts contingent upon the non-happening of an event within a fixed time may be enforced by law when the time fixed has expired and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen.

For Example: "A" promises to pay "B" a sum of money if a certain ship does not return within the year.

- Contingent agreements to do or not to do anything if an impossible event happens, are void, whether the impossibility of the event is known or not known to the parties to the agreement at the time when it is made. The agreement is void.

For Example: "A" agrees to pay INR 1,000 to "B" if two straight lines should enclose a space.

10. Quasi Contract

Nature of Quasi-Contracts	A quasi-contract rests on the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another.
Types of Quasi-Contracts	<ul style="list-style-type: none"> ▪ Necessaries supplied to person incapable of contracting or to anyone whom he is illegally bound to support. ▪ Suit for money had and received. ▪ Quantum Meruit. ▪ Obligations of a finder of goods. ▪ Obligation of person enjoying benefit of a non-gratuitous act.

11. Contract of Indemnity and Guarantee

Meaning of Indemnity	A contract of indemnity is a contract by which one party promises to save the other party from loss caused to him by the conduct of the promisor himself or by the conduct of any other person.
Meaning of Contract of Guarantee	<p>A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default.</p> <ul style="list-style-type: none">▪ Surety: The person who gives the guarantee.▪ Principal Debtor: The person for whom the guarantee is given.▪ Creditor: The person to whom the guarantee is given.
Distinction between Indemnity and Guarantee	<ul style="list-style-type: none">▪ In a contract of indemnity there are only two parties i.e. the indemnifier and the indemnified. In a contract of guarantee, there are three parties i.e. the surety, the principal debtor and the creditor.▪ In a contract of indemnity, the liability of the indemnifier is primary. In a contract of guarantee, the liability of the surety is secondary and the liability of the principal debtor is primary.▪ In the case of a guarantee, there is an existing debt or duty, the performance of which is guaranteed by the surety whereas in the case of indemnity, the possibility of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.

12. Contract of Bailment and Pledge

Bailment	Meaning	<p>A bailment is a transaction whereby one person delivers goods to another person for some purpose upon a contract that they are when the purpose is accomplished to be returned or otherwise disposed of according to the directions of the person delivering them.</p> <p>Bailor: The person who delivers the goods. Bailee: The person to whom goods are delivered.</p> <p>Note: <i>Bailment is a voluntary delivery of goods for a temporary purpose. The ownership of the goods remains with the bailor, the bailee getting only the possession.</i></p>
	Gratuitous Bailment	<p>A gratuitous bailment is one in which neither the bailor nor the bailee is entitled to any remuneration. Such a bailment may be for the exclusive benefit of the bailor.</p> <p>Note: <i>A gratuitous bailment terminates by the death of either the bailor or the bailee.</i></p>

	Duties of Bailee	<p>The bailee must take as much care of the goods bailed to him as a man of ordinary prudence would take under similar circumstances of his own goods of the same bulk, quality and value as the goods bailed. If he takes this much care he will not be liable for any loss, destruction or deterioration of the goods bailed.</p> <p><i>Example: "A" (Bailee) agree to keep the property safe from all perils and answers for accidents or thefts. However, "A" will not be liable for loss happening by an act of God or by public enemies.</i></p> <p><i>Note: The degree of care required from the bailee is the same whether the bailment is for reward or gratuitous.</i></p> <p>The Bailee is under a duty not to use the goods in an unauthorised manner or for unauthorised purpose</p> <p><i>Note: If he does so, the bailor can terminate the bailment and claim damages for any loss or damage caused by the unauthorised used.</i></p> <p>He must keep the goods bailed to him separate from his own goods.</p> <p>He must not set up an adverse title to the goods.</p> <p>It is the duty of the bailee to return the goods without demand on the expiry of the time fixed or when the purpose is accomplished. If he fails to return he shall be liable for any loss, destruction or deterioration of the goods even without negligence on his part.</p> <p>The bailee must return to the bailor any increase or profits which may have accrued from the goods bailed in the absence of any contract to the contrary.</p> <p><i>Example: "A" leaves a cow in the custody of "B" to be taken care of and the cow gets a calf, "B" is bound to deliver the cow as well as the calf to A.</i></p>	
	Duties of Bailor	<ul style="list-style-type: none"> ▪ Bailor must disclose all the known faults in the goods and if he fails to do that he will be liable for any damage resulting directly from the faults. ▪ In the case of bailment for hire, a still greater responsibility is placed on the bailor. He will be liable even if he did not know of the defects. ▪ It is the duty of the bailor to pay any extraordinary expenses incurred by the bailee. ▪ The bailor is bound to indemnify the bailee for any cost or costs which the bailee may incur because of the defective title of the bailor of the goods bailed. 	
	Termination of Bailment	<ul style="list-style-type: none"> ▪ Where the bailee wrongfully uses or dispose of the goods bailed, the bailor may determine the bailment. ▪ Bailment is terminated when subject matter of bailment is destroyed or by reason of change in its nature becomes incapable of use for the purpose of 	

		<p>bailment.</p> <ul style="list-style-type: none">▪ A gratuitous bailment can be terminated by the bailor at any time even before the agreed time subject to limitation that where termination before the agreed period causes loss in excess of benefit, the bailor must compensate the bailee.▪ A gratuitous bailment terminates by the death of either the bailor or the bailee.						
Rights To sell Property by Finder of Lost Goods	<ul style="list-style-type: none">▪ Where the owner cannot with reasonable diligence be found, or▪ When found, he refuses to pay the lawful charges of the finder and if the thing is in danger of perishing or losing greater part of its value, or when the lawful charges of the finder for the preservation of goods and the finding out of the owner amounts to two-thirds of the value of the thing.							
Pledge	<table><tr><td>Meaning</td><td>Pledge or pawn is a contract whereby an article is deposited with a lender of money or promisee as security for the repayment of a loan or performance of a <i>promise</i>. The bailor or depositor is called the “Pawnor” . The bailee or deposittee the “Pawnee”</td></tr><tr><td>Essential Ingredients of a pledge</td><td>Following are the essential ingredients of a pledge:<ul style="list-style-type: none">▪ The property pledged should be delivered to the pawnee.▪ Delivery should be in pursuance of a contract.▪ Delivery should be for the purpose of security.▪ Delivery should be upon a condition to return.</td></tr><tr><td>Pledge by Non-Owners</td><td>A valid pledge may be created by the following non-owners:<ul style="list-style-type: none">▪ Where a mercantile agent with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent is as valid as if he were expressly authorised by the owner of the goods to make the same. However, the pledge is valid only if the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not the authority to pledge.▪ A seller, left in possession of goods sold, is no more the owner, but pledge by him will be valid, provided the pawnee acted in good faith and had no notice of the sale of goods to the buyer.▪ When the pawnor is not the owner of the goods but has a limited interest in the goods which he pawns.</td></tr></table>	Meaning	Pledge or pawn is a contract whereby an article is deposited with a lender of money or promisee as security for the repayment of a loan or performance of a <i>promise</i> . The bailor or depositor is called the “Pawnor” . The bailee or deposittee the “Pawnee”	Essential Ingredients of a pledge	Following are the essential ingredients of a pledge: <ul style="list-style-type: none">▪ The property pledged should be delivered to the pawnee.▪ Delivery should be in pursuance of a contract.▪ Delivery should be for the purpose of security.▪ Delivery should be upon a condition to return.	Pledge by Non-Owners	A valid pledge may be created by the following non-owners: <ul style="list-style-type: none">▪ Where a mercantile agent with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent is as valid as if he were expressly authorised by the owner of the goods to make the same. However, the pledge is valid only if the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not the authority to pledge.▪ A seller, left in possession of goods sold, is no more the owner, but pledge by him will be valid, provided the pawnee acted in good faith and had no notice of the sale of goods to the buyer.▪ When the pawnor is not the owner of the goods but has a limited interest in the goods which he pawns.	
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13. Law of Agency

Definition of Agent	<p>An agent is a person who is employed to bring his principal into contractual relations with third-parties. An agent is a mere connecting link between the principal and a third-party. However during that period, an agent is acting for his principal.</p>
Creation of Agency	<p>A contract of agency may be express or implied but consideration is not an essential element in this contract.</p> <ul style="list-style-type: none"> ▪ <u>Express Agency:</u> A contract of agency may be made orally or in writing. The usual form of written contract of agency is Power of Attorney which gives him the authority to act on behalf of his principal in accordance with the terms and conditions therein. ▪ <u>Implied Agency:</u> Implied agency may arise by conduct, situation of parties or necessity of the case. <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>Estoppel arises when you are precluded from denying the truth of anything which you have represented as a fact, although it is not a fact.</p> </div> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>Where a husband and wife are living together, the wife is presumed to have her husbands' authority to pledge his credit for the purchase of necessities of life suitable to their standard of living. However, the husband will not be liable if he shows that:</p> <ul style="list-style-type: none"> ▪ he had expressly warned the trade man not to supply goods on credit to his wife; or ▪ he had expressly forbidden the wife to pledge his credit; or ▪ his wife was already sufficiently supplied with the articles in question; or ▪ she was supplied with a sufficient allowance. </div> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>A person who has been entrusted with another's property may have to incur unauthorised expenses to protect or preserve it. Such an agency is called an agency of necessity.</p> </div> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>Ratification is effective if following conditions are satisfied:</p> <ul style="list-style-type: none"> ▪ The agent must expressly contract as agent for a principal who is in existence and competent to contract. ▪ The principal must be competent to contract not only at the time the agent acted but when he ratified the agents act. ▪ The principal at the time of ratification has full knowledge of the material facts, and must ratify the whole contract, within a reasonable time. ▪ Ratification cannot be made so as to subject a third- </div>

		<p>party to damages, or terminate any right or interest of a third person.</p> <ul style="list-style-type: none"> Only lawful acts can be ratified.
Irrevocable Agency	<p>Revocation of an agency by the principal is not possible in the following cases:</p> <ul style="list-style-type: none"> Where the authority of agency is one coupled with an interest, even the death or insanity of the principal does not terminate the authority. When agent has incurred personal liability, the agency becomes irrevocable. When the authority has been partly exercised by the agent, it is irrevocable in particular with regard to obligations which arise from acts already done. 	
Classes of Agents	<ul style="list-style-type: none"> Special Agent: A special agent is one who is appointed to do a specified act or to perform a specified function. He has no authority outside this special task. Any act of the agent beyond that authority will not bind the principal. <i>Note: Third party has no right to assume that the agent has unlimited authority.</i> General Agent: A general agent is appointed to do anything within the authority given to him by the principal in all transactions or in all transactions relating to a specified trade or matter. <i>Note: Third party is not affected by any private restrictions on the agents' authority. Third-party may assume that such an agent has power to do all that is usual for a general agent to do in the business involved.</i> 	
Sub-agent	<ul style="list-style-type: none"> A person who is appointed by the agent and to whom the principal's work is delegated to known as sub-agent. Sub-agent is the agent of the original agent. 	
Mercantile Agent	<p>A mercantile agent as "a mercantile agent having in the customary course of business as such agent authority either to sell goods or consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods".</p> <div> <p>Factor is a mercantile agent employed to sell goods which have been placed in his possession or contract to buy goods for his principal.</p> <p>Broker is a mercantile agent whose ordinary course of business is to make contracts with other parties for the sale and purchase of goods and securities of which he is not entrusted with the possession in lieu of commission called brokerage.</p> </div>	

14. Del Credere Agent

Del Credere Agent is a mercantile agent who is in consideration of an extra remuneration guarantees to his principal that the purchasers who buy on credit will pay for the goods they take.

Note: Del Credere Agent is bound to pay his principal the sum owned by third-party in the event of a third-party failing to pay.

15. Termination of Agency

An agency comes to an end or terminates:

- By the performance of the contract of agency.
- By an agreement between the principal and the agent.
- By expiration of the period fixed for the contract of agency.
- By the death of the principal or the agent.
- By the insanity of either the principal or the agent.
- By the insolvency of the principal and in some cases that of the agent.
- By the destruction of the subject-matter.
- By the renunciation of his authority by the agent.
- By the revocation of authority by the principal.

16. Joint Venture Agreements

Joint Venture Agreements	<ul style="list-style-type: none">▪ Joint Venture Agreement forms the basis of the understanding between and among the parties.▪ Joint Venture Agreements relied upon to ensure all parties understand their roles, rights, responsibilities and remedies in the conduct of the venture.
Factors to be kept for Drafting a foreign collaboration agreement	<ul style="list-style-type: none">▪ Capability of the collaborator and the requirements of the party are clearly indicated.▪ Clear definitions of technical terms are given.▪ Specify if the product shall be manufactured /sold on exclusive or non-exclusive basis.▪ Terms and conditions regarding nature of technical know-how, disclosure of drawings, specifications and other documents, furnishing of technical information in respect of processes with flow charts etc. plant outlay list of equipment, machinery and tool with specification have to be provided.▪ Provisions for making available the engineers and/or skilled workers of the collaborator on payment of expenses relating to their stay per diem etc are given.▪ Details regarding specification and quality of the product to be manufactured are given.▪ Quality control and trademarks to be used are specified.▪ Responsibility of the collaborator in establishing or maintaining assembly plants should be clearly determined and provided for.▪ Rate of royalty, mode of calculation and payment etc.▪ Use of information and industrial property rights should also be provided for in the agreement.▪ A clause on force majeure should be included.▪ A clause that the collaborating company has to train the personnel of Indian Company within a specified period should be incorporated. Such clause should specify the terms and conditions of such assistance, place of training, period of training and fees payable.▪ A comprehensive clause on arbitration containing a clear provision as to the kind of arbitrator and place of arbitration should be included.

17. E-Contract

Meaning	Electronic contracts are not paper based but rather in electronic form are born out of the need for speed, convenience and efficiency.
Ingredients of E-Contract	<p>Unlike every other contract, an electronic contract requires the following ingredients:</p> <ul style="list-style-type: none">▪ An offer needs to be made.▪ The offer needs to be accepted.▪ There has to be lawful consideration.▪ There has to be an intention to create legal relations.▪ The parties must be competent to contract.▪ There must be free and genuine consent.▪ The object of the contract must be lawful.▪ There must be certainty and possibility of performance.
