SYLLABUS

Class – B.Com. II Sem.

Subject – Business Regulatory Framework

UNIT I	**Indian Contract Act 1872** Definition Kinds of Contracts - Valid – Void - Voidable Essentials of a Valid Contract Offer and Acceptance Communication of Offer Acceptance and its Revocation Agreement Consideration Capacity to Contract Free Consent Legality of Object and Consideration Agreements expressly declared Void Performance of Contract Discharge of Contract Breach of Contract Remedies for Breach of Contract, Quasi Contract.
UNIT II	**Indian Contract Act 1872** Contract of Indemnity and Guarantee Meaning and Definition of Guarantee Kinds of Guarantee Rights and Liabilities of Surety Discharge of Surety Bailment and Pledge Pledge - Essentials - Rights and Duties. Essentials of a valid Bailment Types of Bailment Rights and Duties of Bailor and Bailee Finder of Lost Goods

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.
- 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:

- General principles of the law of contract.
- Specific kinds of contracts viz:
  a. Indemnity and Guarantee
  b. Contracts of Bailment and Pledge
  c. Contract of Agency.

MEANING AND DEFINITION OF AN AGREEMENT SECTION 2(E):

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 Section 2(h):

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."

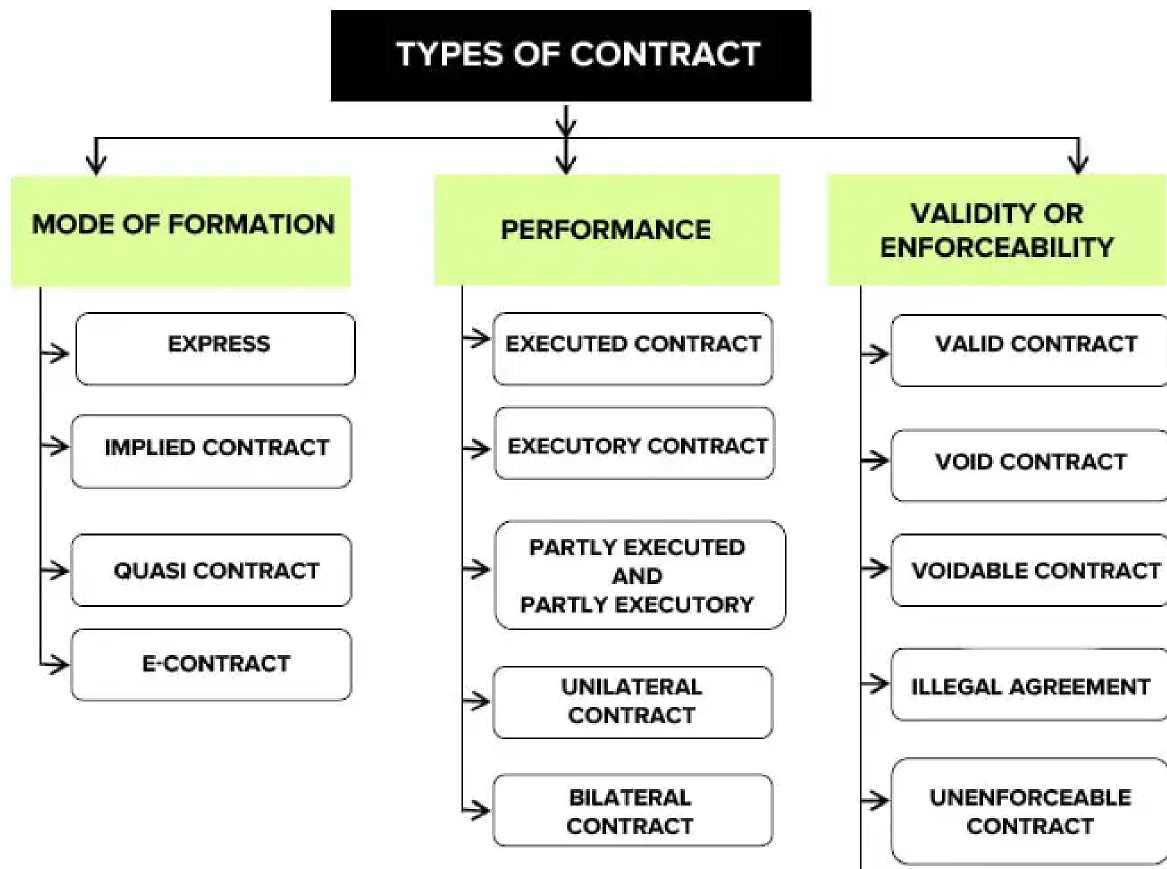
ESSENTIAL ELEMENTS OF A VALID CONTRACT:

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



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."
For example: *A threatens to kill B if he does not give him a loan of Rs. 50,000 for 25 years. B gives the loan. This is a voidable contract as consent of B is obtained by coercion.*

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.
For Example: *A agrees to sell 1000 tonnes of wheat to B @ Rs. 500 per tonne in case his ship reaches the port safely by 15th February. The ship fails to reach by the stipulated date. The contract between A and B is void.*

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.
For example: *If a document embodying a contract is understamped, the contract is unenforceable, but if the requisite stamp is affixed (if allowed), the contract becomes enforceable.*

5. **Illegal or unlawful contract:** An agreement which is expressly or impliedly prohibited or forbidden by law. It is *void ab initio*.

On the basis of Creation

1. **Express Contract:** An express contract is that which is made in writing or by the words of mouth.
For example: *A writes to B, 'I am prepared to sell my horse for a sum of Rs. 500. B accepts A's offer by a telegram. The contract will be termed as express contract.*

2. **Implied Contract:** An implied contract is one which arises out of acts or conduct of the parties or out of the dealings between them.
For example: *A takes a seat in a bus. There is an implied contract that he will pay the prescribed fare for taking him to his destination.*

3. **Quasi Contract:** Under certain circumstances, law itself creates legal rights and obligations against the parties. These obligations are known as quasi contracts.
For example: *A supplies B, a lunatic with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.*

On the basis of Execution

1. **Executed Contract:** When a contract has been completely performed, it is termed as executed contract, i.e., it is a contract where, under the terms of a contract, nothing remains to be done by either party.
For example: *X sells a radio set to Y for Rs. 300. Y pays the price. Both the parties have performed their respective obligations, and therefore, it is an executed contract.*

2. **Executory Contract:** Where one or both the parties to the contract have still to perform their obligations in future, the contract is termed as executory contract.
For example: *A agrees to paint a picture for B and B in consideration promises to pay A a sum of rupees one hundred. The contract is executor.*

3. **Unilateral Contract:** A unilateral contract is one sided contract in which only one party has to perform his promise or obligation to do or forebear.
For example: *A, a coolie, puts B's luggage in the carriage. The contract comes into existence as soon as the luggage is put. It is now for B to perform his obligation by paying the charges to the coolie.*

4. **Bilateral Contract:** A bilateral contract is one in which both the parties have to perform their respective promises or obligations to do or forbear.
For example: *A promises to sell his car to B after 15 day. B promises to pay the price on the delivery of the car. The contract is bilateral as obligations of both the parties are outstanding at the time of the formation of the contract.*

OFFER AND ACCEPTANCE

It is an established principle that an agreement arises only when an offer is made by one person and is accepted by the other person, to whom it is made. Thus, an offer and its acceptance is the starting point in the making of an agreement.

DEFINITION OF OFFER/ PROPOSAL

According to Section 2 (a) of the Indian Contract Act, 1872 defines a proposal as follows:
"When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal".

The person making the proposal is called the 'promisor or offeror'.
The person to whom the proposal is made is called the 'promisee or offeree'.

Example:
X says to Y, "I want to sell my car to you for Rs. 1,00,000". Here, "to sell car" is an offer or proposal. X who has made the offer is called offeror or promisor. Y to whom the offer has been made is called the offeree or promisee.

ESSENTIALS CHARACTERISTICS OF A VALID OFFER

- **The offer must be capable of creating legal relations:** An offer must intend to create legal relationship among the parties. If the parties have agreed that the breach of the agreement would not confer any right on either party to go to the court of law for enforcing the agreement, it will not be a valid offer.

- **The offer must be certain, definite and not vague:** The terms of the offer must be certain and unambiguous and not vague. If the terms of the offer are vague, no contract can be entered into because it is not clear as to what exactly the parties intended to do.

- **The offer must be communicated to the other party:** The offer must be communicated to the person to whom it is made. Thus, an offer accepted without its knowledge, does not confer any legal rights on the acceptor.

- **The offer must be made with a view to obtaining the consent of the offeree:** If a person merely makes a statement without any intention to be bound by it, then it is not a valid offer. Merely making an enquiry does not constitute an offer.

- **The offer must be distinguished from an answer to a question:** The terms of an offer should be clear so that there is no confusion whether it is a valid offer or an answer to a question. An answer to a question cannot be taken as an offer.

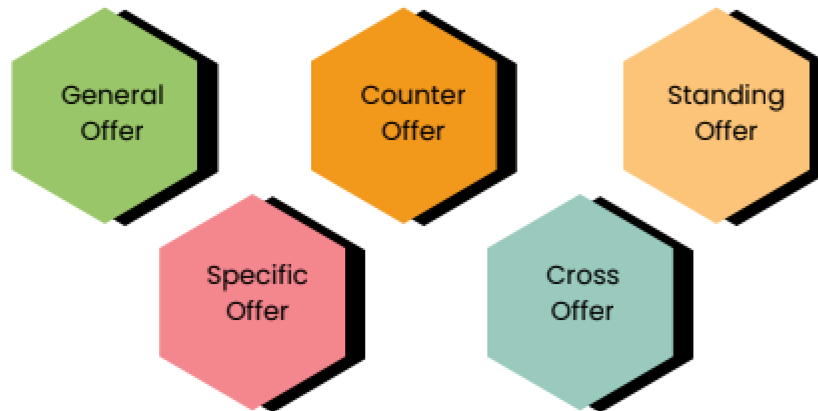
- **Invitation to an offer is not an offer:** Price lists, catalogues, display of goods in a show window, tenders, advertisements, prospectus of a company, an auctioneer's request for bids, etc., are instances of invitation to offer.
- **The offer must be distinguished from mere statement of intention:** The terms of an offer should be clear so that there is no confusion whether it is a valid offer or a mere statement of intention.

- **Special conditions attached to an offer must also be communicated:** In such cases the rule is that the party shall not be bound by the conditions unless conditions printed are properly communicated.

- **The offer may be positive or negative:** An offer to do something is a positive offer. And an offer not to do something is a negative offer.

- **The offer should not contain a term the non-compliance of which would amount to acceptance:** One cannot say while making the offer that if the offer is not accepted by a certain time, it will be presumed to have been accepted.

DIFFERENT KINDS OF OFFERS



- **Express offer:** An express offer is one which is made by words spoken or written.
- **Implied offer:** An implied offer is one which is made otherwise than in words. In other words, it is inferred from the conduct of the person or the circumstance of the particular case.
- **Specific offer:** A specific offer can be accepted only by that definite person or that particular group of persons to whom it has made.
- **General offer:** A general offer is one which is made to the world at large or public in general.
- **Standing or Open or Continuing offer:** An offer for a continuous supply of certain goods and services in any quantity at a certain price as and when required it will be termed as a standing or open offer.
- **Counter offer:** A Counter offer is rejecting the original offer and making a new offer. The new offer is the counter offer.
- **Cross offer:** Where identical offers are made by parties in ignorance of each other, the offers are said to be cross offers.

LAPSES OF OFFER [WHEN DOES AN OFFER COME TO AN END]

Section 6 of the Act deals with the various modes of revocation of an offer. Accordingly, an offer may come to an end in any of the following ways:

- **By communication of notice of revocation by the proposer:** The proposer can revoke or withdraw his offer at any time before the acceptor posts his letters of acceptance. A notice of revocation to be effective must be communicated to the acceptor.
- **By lapse of prescribed time:** An offer lapses if acceptance is not communicated within the time prescribed in the offer, or if no time is prescribed, within a reasonable time.
- **By non-fulfillment of a condition by acceptor:** A proposal comes to an end when the acceptor fails to fulfill a condition precedent to the acceptance of the proposal.
- **By the death or insanity of the offeror:** A proposal comes to an end by the death or insanity of the offeror if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.
- **By counter offer:** A proposal lapses if it has been rejected by the other party or a counter offer is made.
- **By subsequent illegality or destruction of subject matter:** An offer lapses if it becomes illegal after it is made or which the subject matter is destroyed or substantially impaired before acceptance.
- **By rejection:** An offer lapses if it has been rejected by the offeree. The rejection may be express i.e., by words spoken or written, or implied. Implied rejection is one; (a) where either the offeree makes a counter offer, or (b) where the offeree gives a conditional acceptance.

ACCEPTANCE

An acceptance is the manifestation by the offeree of his willingness to be bound by the terms of the offer. **According to Section 2 (b) of the Act, "*When the person to whom the offer is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise*".**
Example: *X offers to sell his car to Y for Rs. 1,00,000. Y agrees to buy the car for Rs. 1,00,000. Y's act is an acceptance of X's offer.*

ESSENTIAL AND LEGAL RULES FOR A VALID ACCEPTANCE

- **The acceptance must be communicated:** An acceptance to be valid must be communicated to the proposer. If the person to whom the proposal is made remains silent and does nothing to show that he has accepted the proposal, no contract is formed.
- **Acceptance must be absolute or unqualified:** Acceptance, in order to be binding, must correspond with all the terms of the offer. Offer must be accepted in toto. A qualified and conditional acceptance amounts to marking of a counter offer which puts an end to the original offer and it cannot be revived by subsequent acceptance.
- **Acceptance may be express or implied:** Acceptance given by words is known as express acceptance. But an acceptance given by conduct is said to be implied. Implied acceptance may arise from (a) doing of a particular act as prescribed in the offer, and (b) by accepting a benefit offered by the offeror.
- **The acceptance must be given in some usual and reasonable manner:** It is another important legal rule of an acceptance that where no mode is prescribed, acceptance must be given in some usual and reasonable manner.
- **The acceptance must be given before the lapse of offer:** A valid contract can arise only when the acceptance is given before the offer has elapsed or withdrawn.
- **The acceptance cannot be implied from silence:** The offeror does not have the legal rights to say that if no answer is received within a certain time, the offer shall be deemed to have been accepted.
- **Acceptance means acceptance of all the terms of the offer:** When an offer is accepted, it would mean acceptance of all the terms of offer. The acceptance of offer cannot be partial at all.
- **If acceptance has been given conditional there will be no contract:** When an acceptance by a person is made conditional i.e., 'subject to a formal contract' or 'subject to approval by certain person – such as solicitors etc', no contract will arise till a formal contract is entered into or consent of such persons is obtained.

COMMUNICATION AND REVOCATION OF OFFER AND ACCEPTANCE

When the contracting parties are facing each other, there is no problem of communication, because there is instantaneous communication of offer and acceptance.

Mode of Communication [Sec. 3]

Section 3 of the Act refers to the two modes of communication:
1. Communication by act, and
2. Communication by omission.

Act includes by conduct or by words, written or oral. So communication can be by letter, telegram, telephone etc. Omission includes conduct or forbearance on the part of one person which has the effect of communication.

When is Communication Complete [Sec. 4]

Communication of Offer - The communication of an offer is complete when it comes to the knowledge of the person to whom it is made.
Communication of Acceptance Communication of an acceptance is complete: as against the proposer, when it is put in course of transmission to him so as to be out of the power of the acceptor to withdraw the same; and as against the acceptor, when it comes to the knowledge of the proposer.
Communication of Revocation - Revocation means "taking back" or "withdrawal". It may be a revocation of offer or acceptance. The communication of a revocation is complete:
as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; and as against the person to whom it is made, when it comes to his knowledge.

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 conditions:

- He has attained the age of majority;
- He is of sound mind; and.
- 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

CONSIDERATION

Consideration is one of the essential element 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.**

DEFINITION OF CONSIDERATION

Section 2(d) of the Indian Contract act, 1872 defines Consideration as follows:
"When, at the desire of the promise 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

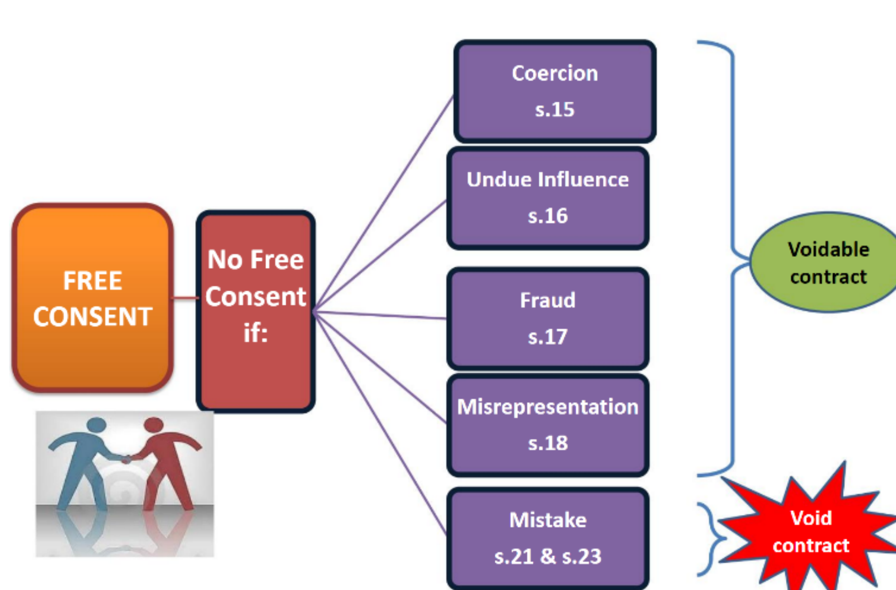
FREE CONSENT

MEANING OF CONSENT-Two or more persons are said to consent when they agree upon the same thing in the same sense at the same time.

MEANING OF FREE CONSENT- If the consent is there but it is not free or real, then the contract will be voidable at the option of the contracting parties whose consent is not free. The word "free consent" is defined in Section 14 of the Contract Act as follows –
"Consent is said to be free when it is not caused by

- Coercion, as defined in Section 15;
- Undue influence as defined in Section 16;
- Fraud, as defined in Section 17;
- Misrepresentation, as defined in Section 18;
- Mistake, subject to the provisions of Sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake".



- **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".

- **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".

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

- **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-
  - By positive statement.
  - By breach of duty.

- By mistake regarding the subject matter of the agreement.

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.

Essential of misrepresentation

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

➢ **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.**

- The suggestion that a fact is true when it is not true by a person who does not believe it be true.
- The active concealment of the fact by a person having knowledge or belief of the fact.
- A promise made without any intention to perform it.
- Any other act fitted to deceive.
- Any such act or omission as the law specifically declares to be fraudulent.

➢ **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 :

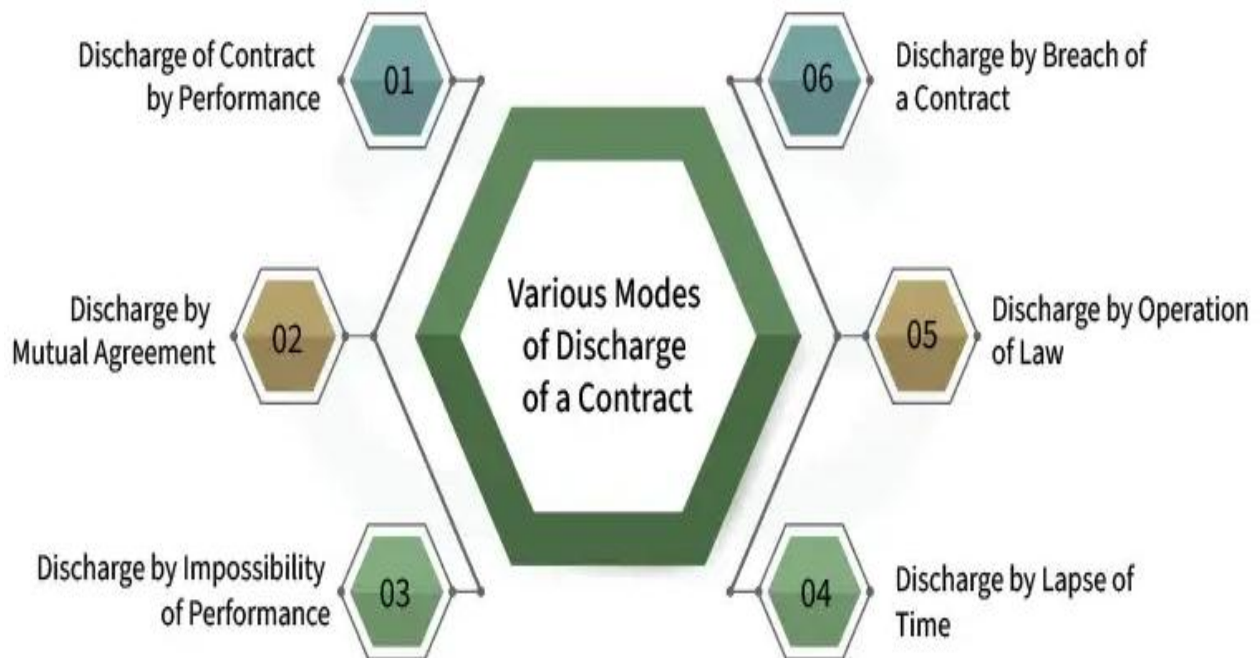
(1) Mistake as to subject matter
(a) Mistake regarding existence
(b) Mistake regarding identity
(c) Mistake regarding title.
(d) Mistake regarding price
(e) Mistake regarding quality
(f) Mistake regarding quantity
(2) Mistake as to the possibility of performance
(a) Physical impossibility
(b) Legal impossibility

(B) Unilateral Mistake:

(1) Mistake as to identify of the person contracted with.
(2) Mistake as to the nature of contract.

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. **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.**

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. Following are the methods of discharging a contract by mutual agreement-

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 old contract.

B. **Alteration-** Changes in one or more material terns of a contract.

C. **Rescission-** Cancellation of the contract

D. **Remission-** The acceptance of the lessor sum than what was contracted for or lessor fulfillment of the promise

E. **Waiver-** Giving up of a right which a party is entitled to under a contract.

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.

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:-

- **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

- **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.
- **Merger of rights**: Sometimes, inferior right of a person under the same or other contract, in such a case the inferior, right is vanished and is not required to be enforced, For 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.
- **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 act

BREACH OF CONTRACT

A contract can be said to be breached or broken when either of the parties fails or refuses to perform his obligations, or his promise under the contract. Therefore, it can be said that when a binding agreement is not honoured by one or more **parties by non-performance of his promise, the agreement can be said to be breached.**

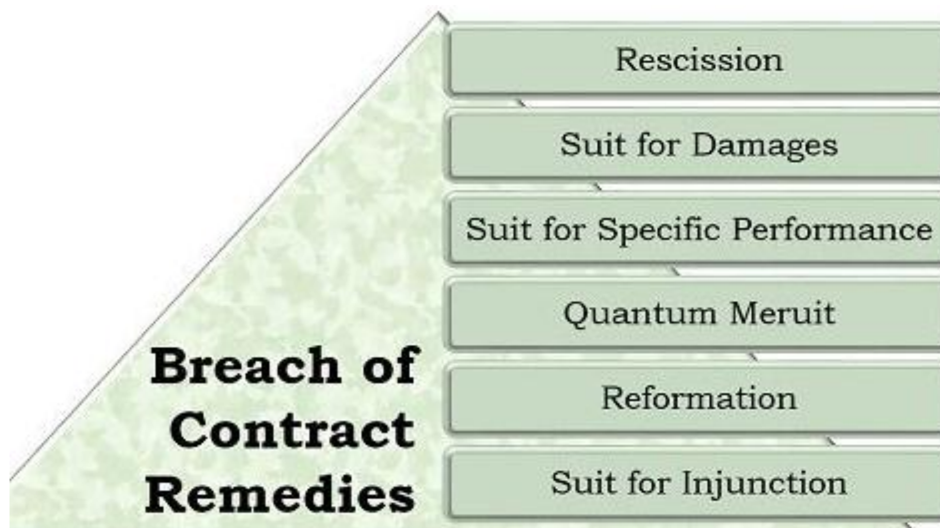
Introduction- Parties to a contract are legally expected to perform their respective obligations; so naturally, the law frowns upon a breach by either party. Therefore, as soon as one party commits a breach of the contract, the law grants to the other party three remedies. He may seek to obtain:

- Damages for the loss sustained, or
- A decree for specific performance, or
- An injunction.

TYPES OF BREACH OF CONTRACT-

a. **Actual breach:** When one party refuses to fully perform the terms of the contract-
    a. At the time of performance due
    b. During the performance
b. **Anticipatory breach**: Anticipatory breach is when a party-
    a. Removal of an essential part of the contract by promisor before the actual due date
    b. Act of any party making the performance impossible

REMEDIES TO A BREACH OF CONTRACT



QUASI CONTRACTS

Under the Law of Contracts, the contractual obligations are voluntarily undertaken by the contracting parties. However, under certain circumstances, a person may receive a benefit to which the law regards another person as better entitled or for which the law considers he should pay to the other person, even though there is no contract between the parties. Such relationships are called quasi-contracts.

DEFINITION

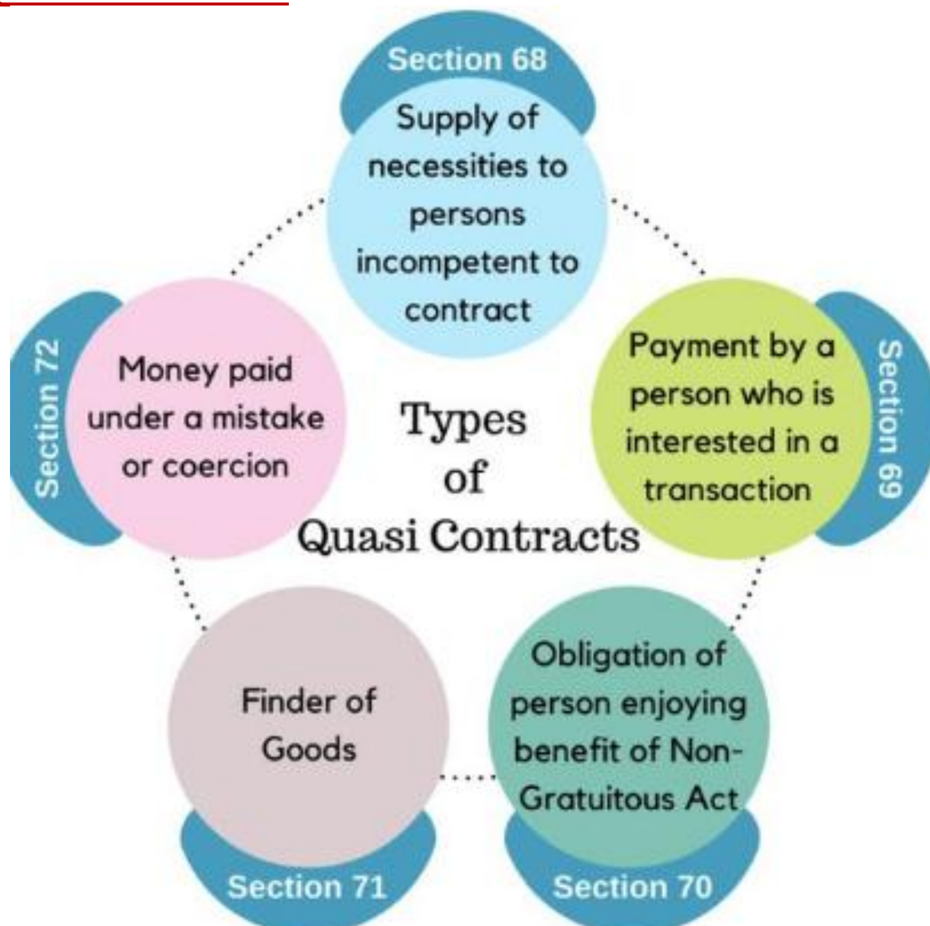
Quasi contract is defined as "an obligation to pay a sum of money, whether liquidated or un-liquidated, which arises independently of any contract, on the ground that in the circumstances of the case, it is considered by the law to be just debt".

A quasi-contract rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another. That is why the law of quasi-contracts is known as the law of restitution. Strictly speaking, a quasi-contract is not a contract at all. A contract is intentionally entered into. A quasi-contract, on the other hand, is created by law.

FEATURES OF QUASI-CONTRACTS

- It is imposed by law and does not arise from any agreement.
- The duty of a party and not the promise of any party is the basis of such contract.
- The right under it is always a right to money and generally, though not always, to a liquidated sum of money.
- The right under it is available against specific person(s) and not against the world.
- A suit for its breach may be filed in the same way as in case of a complete contract

TYPES OF QUASI CONTRACTS



CONTRACT OF INDEMNITY AND GUARANTEE

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.

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.
3. **Fidelity Guarantee-** When a guarantee is given in respect to a person's honesty, good behavior, of another purpose of employment.

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 OF THE SURETY

I. Right against the Principal debtor	II. Right against the Creditor	III. Right against the Co-Sureties
1. Right of subrogation 2. Right of indemnity 3. Right to ask for relief 4. Right to get securities	1. Right to security 2. Right to claim set off	1. Equal contribution 2. Liability of co-securities bond in different sums 3. Right to share benefits of securities.

	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 two 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.

BAILMENT (SECTION 184)

BAILMENT

The word 'bailment' is derived from the French word '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

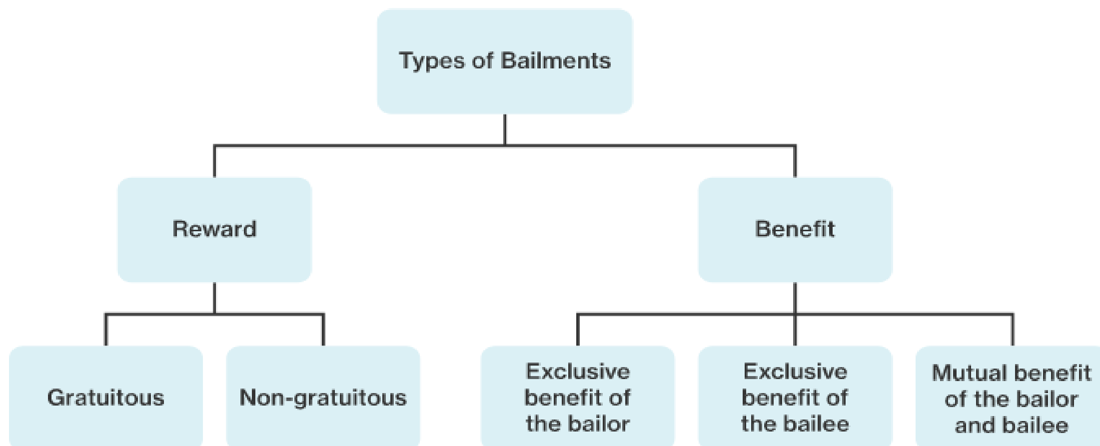
(a) A delivers a piece of cloth to B, a bailor, to be stitched into a suit. There is a contract or bailment between A and B.

(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.

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 unauthorized 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]

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

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	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.

A G E N C Y (Section 182)

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

- **Agency by express agreement:** A contract of agency may be made by express words, whether written or oral.

- **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.

- **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.

- **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

- Right to retain money received on principal’s account.
- Right to receive remuneration.
- Right of lien on principal’s property.
- Right to be indemnified.
- Right to compensation for injury caused by principal’s neglect.

Duties of an Agent

- To follow the direction of the principal.
- To conduct the business of agency with reasonable skill and diligence.
- To render accounts on demand

- To communicate with the principal.
- Not to deal on his own account
- To pay the amounts received for the principal
- Not to delegate his authority
- Not to act in excess of authority
- Duty on termination of agency by principal's death or insanity.

RIGHTS AND DUTIES OF PRINCIPAL

Rights of Principal-

- Recovery damages from agent if he disregards directions of principal
- Obtain accounts from agent
- Recovery money collected by agent on behalf of principal
- Obtain details of secret profit made by agent and recover it from him
- forfeit remuneration of agent if he misconducts the business

Duties of Principal-

- Pay remuneration to agent as agreed
- Indemnify agent for lawful act done by him as agent

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.**

- By revocation o authority by the principal
- By renunciation (giving up) of business of agency by the agency
- By mutual agreement

(B) Termination of agency by Operation of Law

- Completion of business of agency
- Death or insanity of principal or agent
- Insolvency of the principal
- Destruction of subject matcer
- Expiry of time
- Agency subsequently becoming unlawful.
- 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:

- 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.
- Where the agent has partly exercised his authority
- 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 of 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.