



**STUDY MATERIAL FOR B.COM
BUSINESS LAW
SEMESTER - V, ACADEMIC YEAR 2020-2021**

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**UNIT - I
INDIAN CONTRACT ACT, 1872**

- Contract act enacted in the year 1872.
- This act deals with all rights.
- Now separate acts for each and every right.
- Contract act is the parental act.
- It is a universal act.

What is Contract?

Legal enforceable agreement made with lawful consideration. This is based on 3 essentials,

- There must be two parties.
- There must be consensces of Ad Ddem.
- Valid Consideration.

OFFER

Sec 2(a) of contract define offer as follows

When one person signifies his willingness to do or not to do an act with a view get the assets of other for such act or abstinence is called offer.

Rule regarding to offer

- It must create legal obligation - **Balfour vs Balfour.**
- It should not be social invitation - **Weeks vsTyphold.**
- It may be individual offer or general offer –**CarlilvsCarbolic smoke ball company.**
- The offer must be certain and executable - **Taylor vs Poring Ton.**
- The conditions in the offer must be communicated to offer - **Henderson vs Stevenson.**
- The offer must be communicated to offer - **Fitch vs Sneadhar, LalmannvsGowridutt.**
- The offer should not be accepted before it capes –**Monteflorevs Victoria Ramsgate Hotel.**

ACCEPTANCE

2(b) the offer is said to be accepted by the offer.

Sir William Anison

It is a lighted match thrown on a train of gun power. It exploded in to contract.

Rules relating to acceptance

- It must be unconditional and absolute - **Cox vs Simmonds.**
- Acceptance shall be made by the person to whom offer is made –**Baultonvs Jones.**
- The acceptance must be by authorised person - **Powell vs Lee.**
- The acceptance shall be communicated to offer –**BroidenvsMetropolitan.**
- The acceptance must be in the same made in which offer is made - **Adams vsLindshell.**
- Whether silence amounts to acceptance or not –**Jelthousevs Bindles.**

CONSIDERATION

EX NUDO PACTO NON ORITUR ACTIO NOTHING WILL CREATE NO ACTION

In every contract there must be consideration. It is called quid prequel that means something in return.



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Sec 2(d) define consideration as follows

“At this desire of promiser the promisee of any other person to do or not to do an act this act or abstinence is called consideration”.

But consideration was defined in the case of - **Carrie vsMisa.**

An interest advantage or disadvantage loss, gain profit detriment, undertaking to do something or money etc....

Without consideration no contract became ex nudopacto non orator action contract without consideration void in the case of –**KedarnathvsGorieMhammed, Abdul AreizvsMousm Ali.**

To this rule the following exception are made out

Gift

Between blood relationship loves affection gift is made without consideration – **RajluckyvsBhoonath.**

Moral Obligation

Acknowledgement of time aired debts no consideration is necessary.

Voluntary Service

Without expecting anything is voluntary service rendered in past at present no consideration necessary.

No consideration for Agency

Rules relating to consideration

- Consideration maybe at the desire of promisor - **Durga Prasad vsBalda.**
- Consideration may move from promisee or any other person.
- Consideration maybe positive or negative act.
- Consideration must be real not illusory.
- Consideration maybe past, present or future.
- Consideration must be lawful.

Doctrine of privet contract

(or)

Stranger to Contract

Privet means rights to obligation of parties to a contract only parties known their right& duties, stranger did not know an about it. So strangers to a contract cannot sue or sued - **Dunlop Company vs Selfridge Company.**

Exception to this Rule

- Trust beneficiaries are strangers they can question the same - **Khawaja Mohammed vs Hussami Begaum.**
- Family settlement women are strangers they can question - **Shuppuammal vs Subramanian.**
- Assignment of contact Stanger can question - **Chinnaya vs Ramaya.**
- Agency principal even though Stanger can question.

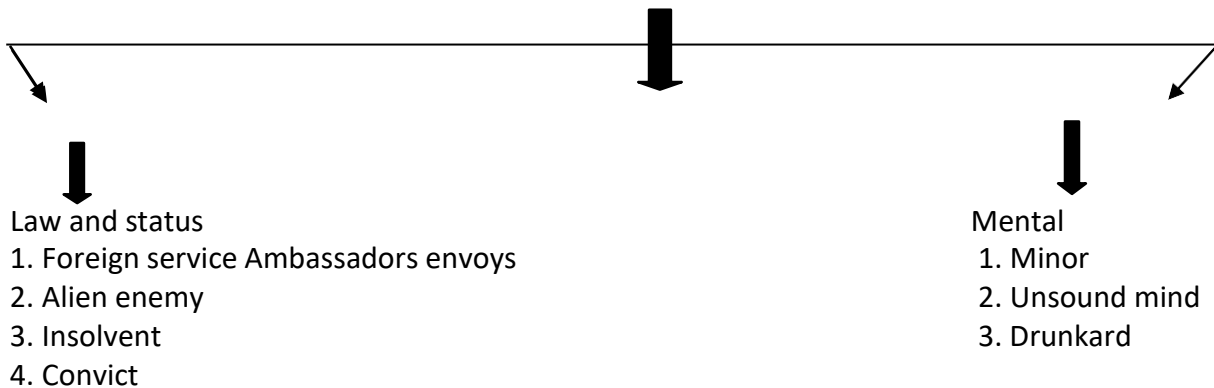


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Legality of consideration object

- Any agreement prohibited by law void - **Beret vs Smith.**
- Any agreement against morality is void - **Pearce vs Broukes.**
- Any agreement injures others declared to be void – **Ransaurup vs Bansimander.**
- Any agreement restricting legal prosecution declares to be void.
- Any agreement opposed to public policy declares to be void.

Capacity to contract



Foreign service

Foreign Service ambassador envoys cannot enter into any contract with any citizen. Because can do no wrong.

However, in England if the Foreign Service accepts the jurisdiction of the court the contracts valid expands of sultan of - **Johore vs Mighell.**

Alien enemy

If any country declares war with another country, all the contracts suspended if the war exceeds countless days' contracts are terminated.

Insolvent

If a person adjudged insolvent all his properties vested with official receiver, He cannot enter into any contract.

Convict

If any person convicted by court undergoing sentence his right is suspended.

Minor

- In India those who are not complete 18 years of age is called minor.
- If condition appointed by court then the age is 21 years.
- In England it is 21 years of age to be complete.

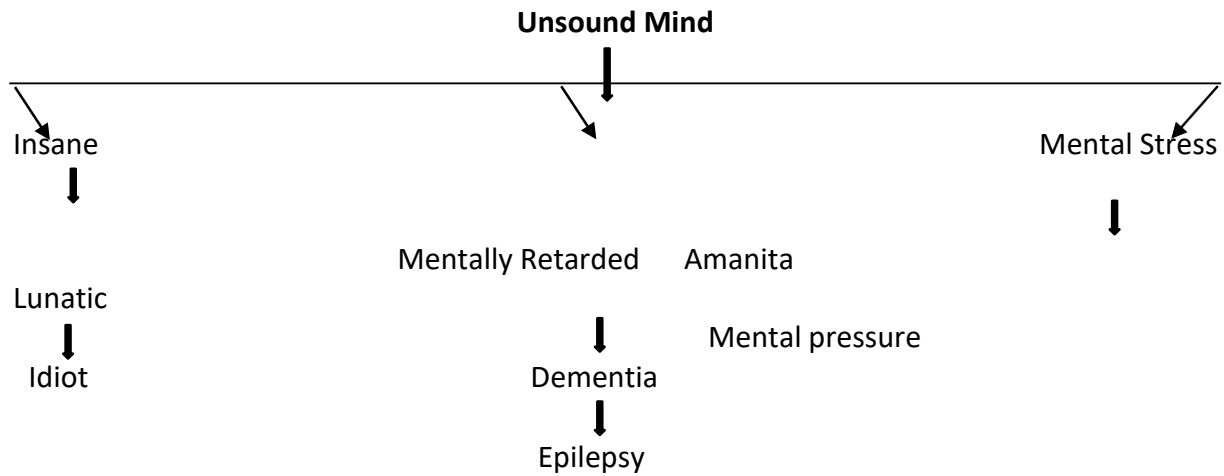
Rules relating to minor

- The minor contracts declared to be void AB INTIO - **Mohari Bi vs Dharmadoss in house.**
- Minor cannot be made liable for estoppel.
- Minor need not return the benefit received - **Stock vs Ragavachary.**
- No ratification of minor after attaining majority.
- Minor is liable for archival necessities – **Nassh vs Innamam.**
- Minor can be agent but he is not personally liable for his rule.



- Minor cannot be adjudged as insolvent.

Unsound Mind



Insane

A person born insane it is.

Lunatic

A person born lunatic but he has.

Idiot

A person who has no way of thinking power

Drunkard

A person additional he alcohol and drugs

FREE CONSENT

Indian contract act provides that the consent to any contract act must be slowness consent or free consent.

The concern to any contract you should be free from following factor,

- Coercion
- Undue influence
- Misrepresentation
- Mistake

Coercion

It means to force any contract by using Physical force and violence is affected by Coercion. Coercion may be committing an offence under Indian penal code.

It may be also threatening to commit such act. Causing or threatening to cause damage to the property also included – **AluarchetlyvsRengarayakamma.**

Duress

In England is known as duress for duress immediate violence is necessary damage to property not considered a duress.

Difference between Coercion and Duress



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Coercion	Duress
An act or threat is considered as coercion.	An act only threatening not duress.
At maybe by party or this person.	It may be by party alone.
It maybe against party, relative friends are property.	It must be against party & dose relation.
No immediate violence necessary.	Immediate violence necessary.

Undue influence

Indian contract act section 16 provide where the relationship of party by which one person able to dominate the will of another and again unfair advantage to himself or other the contract is affected by undue influence.

The coessential of undue influence are

- There must be relationship.
- Able to dominate will of another.
- Unfair advantage by this act.

Misrepresentation

Representation means statement of fact. Misrepresentation means statement of fact which is not true on. Misrepresentation classified into innocent misrepresentation and willful-misrepresentation fraud.

Mistake

“IgranatiaJuris Non Excure”

- Mistake is a factor which decides consent of parties.
- Mistakes means error happened is rating contract.
- Mistake classified into,
 - a. Mistake of law.
 - b. Mistake of fact.



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**UNIT - II
PERFORMANCE OF CONTRACT**

Action Personatis Martuis Cum Personna

Explain:

In contract kinds of rights are available,

- Rights is Rem-that means General right.
- Rights impersonal-that means personal right.

In performance of contract parties to contract perform their respective right and duties. If any one of the party died after contract before performance who has to perform is a question.

Here the maximum is essential. It means personal action come to with that person so, it is a personal contract it ends with that person. It is general contract the maximum is not available.

The rules in offering Tender is as follows

- The tender must be to proper person.
- The tender must be communicated.
- The tender must be in prescribed form.
- The tender must be total not partial.
- The tender must be in proper place.
- The tender must be made within reasonable time.
- If more than one person it must be to anyone.
- The party making tender must be ready to perform.

Appropriation of payment

(or)

Rules in Clayton's case

If a person borrowed various loan from other person and make payment at different date. The way of given credit to such payments where provided in Clayton's case in England. In India contract act section 58 to 62 provided the.

For the various loans explained as follows

Date	Loan	Payment
03.10.2010	15000	-
03.10.2017	20000	-
03.10.2018	10000	-
03.01.2019	15000	-
03.03.2019	-	10000
03.04.2019	-	15000
03.06.2019	-	10000
03.10.2019	-	5000



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Now the appropriation rule

Option –I

It is for the debtor to give direction to creditor to give credit to a particular loan
03.03.2019 payment 10000 shall be given credit to 03.01.2019 loan.

Option–II

When the debtor not gives any direction the creditor may credit the payment to any loan. Even to the time barred debt 03.03.2019 payment given credit to 03.10.2019 loan which is a time barred debts.

Option - III

When the debtor and creditor not used their option then law will give effect. According to the law the earliest lawful loan shall be credited first 03.03.2019 payment 10,000 shall be credited to 20000.

Option – IV

The appropriation shall first to the interest amount and then to be principal amount.

Discharge of contract

Parties to the contract can be discharge of by,

- Performance
- Mutual contact
- Frustrations

Discharge by performance

In both parties perform their rights and duties contract terminated by performance.

Discharge of contract by mutual consent

The contract is created by mutual consent of parties. Hence the contract may be discharged by mutual consent. This has been explained by the maximum.

That means the way in which a thing is created the same way it must be destroyed.

Hence by following ways it can be discharges

- Novation
- Alteration
- Recession
- Remission
- Waiver
- Merger
- Amalgamation

Discharge by Frustration

(or)

Supervening impossibility

(or)

Dortrine of implied term theory

- Lex non cogit impossibility.
- Impossibility nuccaobligate.



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That means law will not create obligation impossible thing is not valid contract.

Remedies for breach of contract

When one party to contract is ready to perform are refused to perform the contract is broken.

The remedy for the affect party is as follows,

Specific performance

The affected party consults a suit before the court of law directing the other party to perform. This is available to anyone when damagers not available.

Instruction

It is a negative remedy restraining the other party multiplying that dispute.

Recission

Withdraw from the contract.

Damage

In any contract one party affected by another. He sustained a loss. That must be executed by the party by money. This has been explained in the case of - **HaldleyvsBoxandale.**

- Affected party must be paid damages.
- He must be put into original position.
- Calculate damage accruing to circumstance.

On the basis of the following damages were made out

- Ordinary or general damage.
- Nominal damage.
- Special damage.
- Exemplary damage.
- Liquidated damage or partly.

Ordinary damage

This damage shall be awarded to all person. This will be different between contract price and market price.

Nominal damage

It is awarded for technical valuation in the contract there will not be much loss.

Special damage

At the time of contract, a special circumstance was explained to the parties and it was accepted, then for breach special damages shall be awarded.

Exemplary damage

This is maximum damage it is awarded as punishment in is the case of loss at reputation or goodwill of a person.

Liquidated damage or penalty

Parties at the time of contract fix an amount as damage. It is a fixed amount.



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**UNIT - III
SPECIAL CONTRACT**

BAILMENT

According to section -148 of the Indian Contract Act, a bailment is the delivery of goods by one person to another for some purpose; it may be returned (or) disposed as per the terms of the contract, after the completion of the purpose.

- The person delivering the goods is called the Bailor.
- The Person to whom goods are delivered is called the Bailee.
- The transaction is called Bailment.

ESSENTIALS OF BAILMENT

A. There should be a contract. The agreement may be express or implied.

B. There should be delivery of goods,

- The delivery of goods may be actual or constructive.
- Actual delivery means hand over the possession of goods.
- Constructive or Symbolic delivery - does not involve handing over the physical possession.

One who has custody without Possession, like a servant or a guest, he is not bailee –

Ultzen vs Nicols.

An actor, who left his clothes in his dressing room, did not constitute the theatre owner as bailee of the clothes –**Deyong vs Shenburn.**

C. Delivery of goods must be for some specific purpose.

D. After the accomplishment of the purpose, the goods should be returned or follow the terms of the contract.

KINDS OF BAILMENT

A. On the basis of Benefit

Benefit of Bailor

Goods are delivered to a neighbor or someone else for safe custody without any charge.

Benefit of Bailee

Delivery of a thing to someone else for his use without any charge,

Ex: -delivery of scooter to a friend to go somewhere.

Mutual benefit

Delivering a Scooter to a mechanic for repairs

B. On the basis of Reward

Gratuitous Bailment

Neither the bailor nor the bailee is entitled to any remuneration,

Eg: - A gives his book to B for reading.

Non - gratuitous Bailment

Either the bailor or the bailee is entitled to a remuneration,



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Eg: - Cycle given for repairing etc.

RIGHTS OF BAILOR

- Claim damages against bailee's negligence.
- Right of termination.
- Claim for damages against unauthorized use.
- Compensation for unauthorized mix.
- Entitled to get back the goods.
- To enforce duties of bailee.
- Right to claim accretion to goods.
- Right to sue against wrongdoers.

DUTIES OF BAILEE

- To take care of goods bailed.
- Not to make unauthorized use.
- To return the goods bailed.
- Not to mix the goods with his own.
- To deliver accretion to goods.
- Not to setup adverse title.

DUTIES OF BAILOR

- To disclose known defects.
- To bear expenses (Gratuitous).
- To bear extra - ordinary expenses (Non - gratuitous).
- To receive back the goods.
- To indemnify the bailee.

RIGHTS OF BAILEE

- To claim damages for any loss caused by undisclosed faults.
- To recover all necessary expenses.
- Right to indemnify.
- If a third person claims the ownership, the bailee can ask the court to decide the ownership.
- If a third person wrongfully deprives, right to bring an action against such third party.
- Can deliver the goods back to one of bailor without consent of all.
- The right of lien.

BAILEES LIEN

Lien is a right to a person to retain his possession which belongs to another, until the demands are satisfied. Once the possession is lost, lien is also lost.

Example: -

A delivers a rough Diamond to B a jeweller, to be cut and polished which is accordingly done. B is entitled to retain the stone till he is paid for the services he had rendered.

(i) Particular Lien



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It means that the right to retain the particular goods, until receives the remuneration for the services.

Particular lien is available under the following Conditions

- The goods must be in the possession.
- The bailee must have rendered some services.
- The Services must have been performed in full.
- There should not be any terms in the contract to contrary.
- The bailee retains only such goods –**SkinneVsJager**.

Plaintiff delivered an organ for repair to the defendant and the defendant promised to repair it for Rs.100/-. Then the defendant refused to repair it for Rs. 100/- and retain the organ for the work done on it. It was held that the defendant could not retain the organ.

(ii) General Lien

It means that the right to retain possession of any goods belonging to another for any amount due. Bankers, factors, wharfingers, policy brokers may retain as security for a general balance of amount. But no other person has a right to retain as a security for such balance.

(iii) Termination of Lien

By the following ways

- By the death.
- As soon as the purpose is accomplished.
- On the expiry of the specified period.
- By Surrender of Possession of goods.
- When the debt is satisfied.

FINDER OF LOST GOODS

Sec. 71 of the Indian Contract Act clearly states that A Person who finds goods belonging to another and takes them into custody is called a finder of lost goods.

Duties of finder of lost goods

- He must take reasonable care of the goods found.
- He must try to find out the true owner of the goods.
- He must not mix up the goods with his own goods.
- He should not use the goods found for his own purpose.

Rights of the finder of lost goods

- The right of lien over the goods for his expenses.
- But he has no right to sue the owner for any compensation.
- If owner offered the reward, he may retain the goods until such reward is paid.
- The right to retain possession of the goods against the whole world, except the true owner.
- According to sec 169 of the contract Act the finder of goods may sell it,
 - If owner not takes reasonable diligence to find.
 - If refuses to pay the lawful charges.
 - If the things are in danger of perishing.
 - The lawful charges of the finder are two - thirds (2/3) of its value.



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PLEDGE OR PAWN

According to section 172 of contract Act, The bailment of goods as security for payment of a debt or for the performance of a promise

Pawnor or pledger means

The person who delivers the goods

Pawnee or pledgee means

The person to whom the goods are delivered as security

DUTIES OF PAWNOR

- To repay the loan.
- Has to compensate for any extraordinary expenses.
- Default or risk should be known to pawnee.

RIGHTS OF PAWNEE

- Right to retain the goods pledged for Interest on the debt and expenses incurred by him.
- Retain for subsequent Advances.
- Entitled to receive extra ordinary expenses.
- Can file a suit against the pawnor for the debt.
- Can retain for collateral security.
- May sue for the sale of goods.
- Can sell the goods after giving reasonable notice to the pawnor.
- Can recover any deficiency arising on the sale, but surplus shall be given to the Pawnor.
- If obtained possession of the goods under voidable contract which has not been rescinded at the time of the pledge, acquires a good title.

RIGHTS OF PAWNOR

- Right to take back the goods.
- Can enforce by suit all the duties of the pawnee.
- If the pawnor makes default payment of the debt, he may redeem the goods before actual sale is made.

DUTIES OF PAWNEE

- Has to take reasonable care of the goods pledged.
- Has to return the pledged goods on the payment of debt.
- Should not do any act in violation of the terms of the contract.
- Should not mix the goods with his own goods.

PLEDGE BY NON - OWNERS

In the following cases, a non-owner can make a valid pledge.

- Pledge by mercantile agent.
- Pledge by seller or buyer in possession after sale.
- Pledge by a person in possession under voidable contract.
- If pledged by a person having limited interest is valid to the extent of that contract.
- Pledge by co - owners in possession.



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CONTRACT OF INDEMNITY AND GUARANTEE

The contract of indemnity and guarantee are the special kinds of contracts.

CONTRACT OF INDEMNITY

- It is a contract to protect the promisee against anticipated loss.
 - A person who promises to make good the loss that promiser is called indemnifier.
 - A person whose loss is to be made good that promisee is called indemnity - holder or indemnified.
- Eg: - Policy of insurance is a good example for express contract of indemnity.

ESSENTIALS OF A VALID CONTRACT OF INDEMNITY

- Must contain all the essentials of valid contract - competency of the parties, free consent, consideration, legality of the object etc...,
- One person shall promise to save other from any loss...,
- The loss may be caused by the conduct of promisor himself or any other person,
- May be express or implied.

RIGHTS OF INDEMNITY - HOLDERS

- May compel to pay all damages.
- May compel to pay all costs for the suit.
- To recover all sums based on the terms of compromise made in the suit.

COMMENCEMENT INDEMNIFIER'S LIABILITY

There is different opinion among different High courts, High court of Bombay, Nagpur etc. held that indemnifier can be made liable only when the indemnity holder has incurred an actual loss, But High Court of Calcutta, Allahabad, Madras Patna, etc., held that the indemnified can compel the indemnifier to make good his loss even before he has actually discharged his liability - **Osman Jalal &son's vsGopal**.

Indemnity is not given by repayment after payment.

Liverpool Insurance Company's Case

Payment is a condition precedent to recover.

'A' and 'B' go into a shop 'A' says to the shopkeeper, "Let him (B) have the goods, I will see you Paid," this is a contract of Indemnity. If he says, " If 'B'does not pay you, I will pay." It is a guarantee.

CONTRACT OF GUARANTEE

It is a contract to perform the promise or discharge the liability of a third person in case of his default, it may be oral or written. But under English law is required to be in writing. Under Indian Law it may be tacit or implied.

In the contract of Guarantee there are three separate agreements

- One between the Principal debtor and the creditor.
- The second between the creditor and the surety.
- The third between the surety and the principal debtor.

ESSENTIALS OF A CONTRACT A GUARANTEE

- Must satisfy all the essential elements of a valid contract.



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- But it is not necessary that there should be direct consideration between the surety and creditor.
- The Consideration received by the principal debtor is taken to be sufficient consideration for the surety.
- The incapacity of the principal debtor does not affect the validity of a contract of guarantee.
- The creditor and the surety must be competent to enter in to a valid contract.
- If the principal debtor is minor, the surety will be deemed to be a principal debtor – **kashibavssripat, Manjuvsshivappa, EdavanNambiarvsMoolaki Raman.**
- There must be at least three parties.
- There should be a liability, existing or future.
- There are two types of liabilities,
 - ✓ Primary liability
 - ✓ Secondary liability
- It is an undertaking to perform the promise of other on his failure to do so.
- It may be oral or written.

INVALID GUARANTEE

- If any guarantee obtains by misrepresentation of the creditor is invalid.
- If any guarantee obtains by concealment, it is invalid.

Sr	Indemnity	Guarantee
1	There are two parties i.e. Indemnifier Indemnity holder.	There are 3 parties i.e., Creditor, Principal, debtor Surety.
2	The liability of the indemnifier is primary.	The liability of the guarantee is Secondary.
3	There is only, one contract.	There are 3 contracts.
4	Indemnifier need not act on the request.	Surety gives guarantee on the request.
5	The liability of indemnifier arises on the happening of a contingent event.	There is existing debt.
6	An indemnifier cannot sue a third Party for loss.	A Surety on discharging the debt. Can take action against the principal debtor for his own recovery.
7	It is for reimbursement of loss.	It is for the security of the creditor for ensuring his payment.
8	The Promisor has some interest in the transaction, apart from indemnity.	The surety gets nothing substantial for his promise except the promise to pay the debt.



**UNIT - IV
AGENCY**

Sec. 182 of contract Act defines that

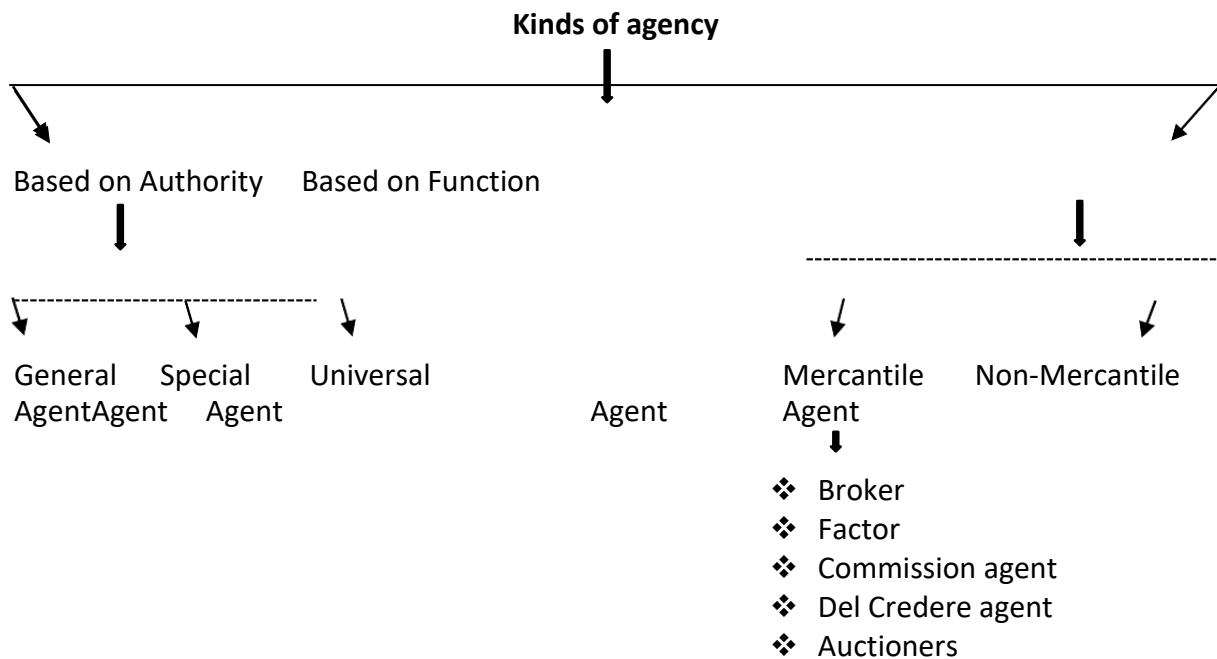
An agent is a Person employed to do any act for another or to represent another in dealings with third person. The function of an agent is to bring his principle into contractual relationship with third parties. But servants, employees are not agents.

'Qui facit per alium facit per se'

means, "He who acts through another does the act himself".

Principal

The person for whom such act is done or who is so represented. A Wife is not agent of the husband except under special circumstances and for special circumstances and for special purposes. Similarly, a guardian is not an agent of a Minor.



BASED ON AUTHORITY

(i) General Agent

To act for their Principal in all matters or in the Ordinary course on their trade, Profession or business as agent it continuous until it is terminated.

(ii) Special Agent

Special agents are authorized to do only some particular act or to act on some particular occasion.

(iii) Universal agent

One who is authorized to transact all the business of his principal of every kind and do the entire act.

BASED ON FUNCTIONS

A. Mercantile agents

Broker



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They are mere medium of communication between buyer and seller. He has no possession of goods. He is paid commission for his services.

Factor

To whom the possession of goods is given for the purpose of selling the same. He is authorized to sell in his own name.

Commission Agent

He may or may not be in actual possession of goods. He buys or sells goods on behalf of his principal. He is paid commission for his services.

Del Credere Agent

While acting as an agent on the principal's behalf, he guarantees and makes himself liable as a surety to the extent of any default which may be committed by such persons i.e. buyer.

Auctioners

Auctioneers are agents whose ordinary course of business is to sell by public auction goods or other property.

B. Non - Mercantile Agents

They include Advocates, Insurance agent, Solicitor, etc.

CREATION OF AGENCY

AGENCY BY EXPRESS AGREEMENT (SEC 186)

A Contract of agency may be created by express words, written or oral. Generally, a written agreement is the power of attorney executed on a stamped paper in favour of the agent. It may be general or special. It is a document which gives an authority or power to a person to act, on behalf of the principal in accordance with the terms and conditions mentioned in it.

BY IMPLIED AGREEMENT (SEC 187)

An authority is said to be implied when it is to be inferred from the circumstances of the case. Implied agency arises from the conduct, situation or relationship of parties.

Example: 'A' owns a shop in serampur, living himself in Calcutta and visiting the shop occasionally. The shop is managed by 'B' and he is in the habit of ordering goods from 'c' in the name of 'A' for the purpose of the shop, and paying for them out of 'A' s funds with 'A' s knowledge. 'B' has an implied authority from 'A' to order goods from 'C' in the name of 'A' for the purpose of the shop.

Implied agency may be of the following types

(i) Agency by Estoppel

When a person has by his conduct or statements induced others to believe that a certain person is his agent, he is estoppel from subsequently denying it.

(ii) Agency by Holding out

An agency by holding out requires some affirmative or positive act or conduct by the principal to establish agency subsequently.



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A is the domestic servant of B. Generally, B Purchase goods from C for A. C can assume that A is B's implied agent. Subsequently A Use B 's authority to purchase goods for his own use. C can recover the price from B.

(iii) Agency by Necessity

In certain circumstances the law confers an authority in one person to act as agent for another without requiring the consent of the Principal.

Where a horse sent by rail was not taken delivery of by the owner, the station master had to feed the horse. It was held that the station master becomes an agent of necessity and the owner is liable for the charges incurred by him - **G. N. Railway vsSwaffield.**

The following Conditions must be satisfied

- Must be impossible to get principal's Instructions.
- Must be the only practicable one.
- Necessity must be act honestly.
- There must be real emergency and necessity.

BY OPERATION OF LAW

An agency is also constituted by the operation of law. Promoter of a new company is its agent.

Agency by Ratification

Ratification means subsequent acceptance by the principal in respect of an act done by the agent without authority. It is also known as export facto agency. Ratification has got retrospective effect.

Essentials of valid Ratification

- The agent must act on behalf of the principal.
- The Principal must be in existence at the time of contract.
- The Principal must have contractual capacity.
- The Principal must have full knowledge of material facts.
- Whole transaction must be ratified.
- Ratification must be made within reasonable time.
- Act to be ratified should not be void or illegal.
- Ratification must not injure a third person.
- Ratification must be express or implied.

Examples

A without authority, buys goods for B. Afterwards B sell them to C on his own account. B's conduct implies a ratification of the purchase made for him by A.

A Without B's authority lends B's money to C. Afterward B accepts interest on the money from C. B's Conduct implies a ratification of the loan.

Between husband and wife, the authority may be express or implied or that of necessity

Wife has an implied authority by necessity to pledge her husband's credit under the following circumstances



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- When she is living with her husband.
- When she is living separate and claiming maintenance.
- She can pledge to a reasonable extent and in reasonable manner for ordinary household expenses.
- Only for necessity, it depends on circumstances of each case.

DUTIES OF AN AGENT

Section 211 to 216 and 190,192, 193 explain about agent's duties

- To conduct the business of agency according to instructions - **Lilley vs Double day**.
- To follow customs in absence to instruction.
- To carry out the business with skill and diligence –**PannalalJankidasvsmohanlal**.
- To render proper accounts to the Principal.
- To communicate with the Principal, in case of difficulty.
- To pay sums to the principal received for him.
- To Protect and preserve the interest of the principal.
- Not to deal on his own account.
- Not to make unauthorized profit from agency.
- Not to use information obtained in the course of business against the principal.
- Not to delegate authority.
- Not to setup adverse title.

RIGHTS OF AN AGENT

- To receive remuneration agreed upon.
- To retain principal's money due to himself.
- To be indemnified against lawful acts.
- To be indemnified against consequences of acts done in good faith.
- Right to lien on the possession of goods.
- To stop goods in transit.
- To claim compensation for injury by the principal's negligence.
- To protect principal's property from loss.
- To be liable for his misconduct.
- To claim compensation for premature termination of agency.

RIGHTS OF A PRINCIPAL

- To enforce all the duties of the agent.
- May repudiate the transaction.
- Entitled to claim agency's benefit, if the agent deals the business of agency without the knowledge of the principal.
- Entitled to compensation for any loss.
- Entitled to demand proper accounts from the agent.
- Entitled to compensation of the agent's negligence.
- Right to refuse remuneration.
- To ratify or to disown agent acts.
- May revoke the authority.
- To give instruction in case of difficulty.

LIABILITY OF THE PRINCIPAL

- The Principal is not bound by unauthorized acts of his agent.
- But can repudiate the whole transaction.



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- The Knowledge of the agent is the knowledge of the principal.
- Liable to compensate for the loss caused by a false representation of the agent while doing authorized dealing.
- To make compensation for any loss or damage incurred by the agent while doing authorized dealing.
- If fraud or misrepresentation committed by the agent beyond the agency he is personally liable to third parties.
- The Principal is not bound by the acts of the sub agent. If not authorized to appoint.
- Principal is liable for the negotiable instrument given by the agent when authorised.

DELEGATION OF AUTHORITY

OR

DELEGATUS NON POTEST DELEGARE

An agent who has the authority from another to do an act must do it himself and cannot delegate his authority to another.

This is based on the maxim "**delegatus non potest delegare**". A delegate cannot further delegate.

But there are certain exceptions

- If the principal expressly authorized to appoint a sub - agent.
- If the Principal came to know the intention of agent to appoint sub - agent, But the principal does not object it, If the Principal does not object, after Knowing the intention of agent is to appoint a sub agent.
- Sub agent may be employed by the ordinary custom of trade, Eg. Architects may generally appoint draftsmen.
- If unforeseen emergencies arises.
- If it is necessity to appoint a sub agent to do the nature of work.

Sub agent

- Sub agent is a person appointed by the original agent to act in the business of agency.
- Sub agent may be appointed by the agent properly or improperly.

If properly appointed

- The Principal is bound for the acts of a sub agent.
- The agent is responsible for the acts of the sub - agent.

If improperly appointed

- The Principal is not bound by the acts of such sub – agent.
- The sub - agent is responsible to the agent as his principal.
- The sub - agent is not responsible to the Principal.

Substituted agent

Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency. Such person is called as substituted agent.

'A' authorizes 'B' to recover loan from 'C' B instructs 'D' a solicitor to take legal proceedings against 'C' D is substituted agent.



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TERMINATION OF AGENCY

Sec 201 to 210 of Indian Contract Act deals with termination of agency.

An agency may be terminated or revoked in any of the following ways: -

- (i) By the act of the Parties.
- (ii) By the operation of law.

(i) By the act of Parties

- May be terminated at any time and at any stage by the mutual agreement.
- The Principal may revoke the agency. But the agency is a continuous one, notice is necessary.
- The agent also may revoke in the above said manner.

(ii) By the operation of law

- Completion of agency business.
- Expiry of time.
- Death of either Party.
- Insanity of either Party.
- Insolvency of the Principal.
- Destruction of the subject - matter.
- Principal or agent becomes alien enemy.
- Dissolution of a company.
- Termination of Sub - agent's authority.

The agency is irrevocable in the following cases

- If agency coupled with interest,
Eg: - A gives authority to B to sell A's land and Received amount. A cannot revoke this authority, nor can it be terminated by his insanity or death.
- If agent exercised authority partly.
- If there is personal liability,
The termination is effective from the time when it comes to the knowledge of the agent or third parties.



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**UNIT - V
THE SALE OF GOODS ACT, 1930**

OBJECTS, REASONS AND NATURE

- For distinction between a sale and an agreement to sell which was not clear in chapter VII of Indian Contract Act? This distinction is very necessary to determine the rights and liabilities of the parties to the contract.
- It is made clear that a contract of sale can be made by mere offer and acceptance. Neither payment nor delivery is necessary for the purpose.
- In the Indian Contract Act the word 'warranty' has been used in a very vague sense. In this Act this ambiguity has been removed.
- This act tries to remove the obscurity in clauses 27 to 30 of the Act to simplify the law on the subject regarding sales by ostensible owners.
- Made rules relating to delivery to carriers, stoppage in transit and auction sale.
- The question of the retention of the illustrations appearing in chapter VII of Indian Contract Act.
- This Act does not prevent the parties from making any bargain they please.

Definitions (Sec 2)

- "buyer" - a person who buys or agrees to buy goods,
- "delivery" - voluntary transfer of possession from one person to another,
- "goods" - every kind of movable property other than actionable claims and money, includes stock, shares, growing crops, grass, and things attached to or forming part of the land,
- "price" - the money consideration for a sale of goods,
- "Seller" - person who sells or agrees to sell goods.

SALE AND AGREEMENT TO SELL (SEC 4)

- A contract of sale of goods - whereby the seller transfers (or) Agrees to transfer the goods to the buyer for a price.
- It may be absolute or conditional.
- Under a contract of sale goods transferred from the seller to the buyer, the contract is called a sale.
- But the goods are to take place at a future time (or) subject to some Condition, is called an agreement to sell.
- An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled.

DIFFERENCES BETWEEN SALE AND AGREEMENT TO SELL

Sale Sec 4 (3)

Under a Contract of sale, goods transferred from the seller to the buyer, the contract is called a sale.

Sec. 4 (4)

An Agreement to sell becomes a sale when the time has been elapsed or the conditions are fulfilled.



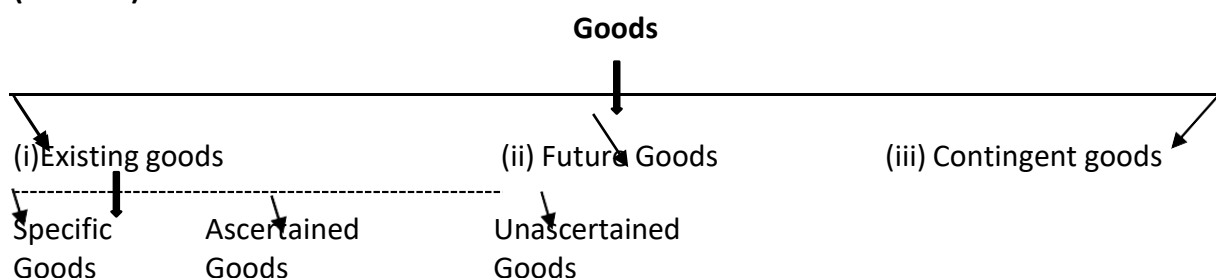
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Agreement to sell: - Sec 4(3)

Under the Contract, the goods are to be taken place at a future time (or) Subject to some Condition, is called an agreement to sell.

Sr	Sale	Agreement to Sell
1	It is an executed agreement.	It is an executor Contract.
2	Title of the goods is transferred in present.	Title of the goods is to be transferred at a future time or after some conditions fulfilled.
3	The buyer gets right against goods If the seller refuses to transfer the goods the buyer can file suit for specific performance.	The Buyer gets right against seller. If the seller refuses to transfer the goods the buyer can file suit for damages.
4	If the buyer refuses to give the Price to the seller, He can sue for the Price and damages.	If the buyer refuses to give the Price or receive the goods, the seller can sue for damages and not for price.
5	The Seller has no right to sell the goods to 3rd Party. If he did the same the buyer can sue to return the Property and for damages.	The Seller has right to re-sell the goods. But the buyer has only right to sue for breach of contract.
6	If the buyer becomes insolvent before giving Price, the seller can give the goods with the receiver.	If the Person agree to buy insolvent before becomes paying price, the seller need to Surrender the goods with anyone.
7	If the seller becomes insolvent, the buyer can claim the goods from the receiver.	Though the buyer paid the full amount for the goods, he can only get the appropriation share.
8	If the goods perished when retain with seller the damage depends on the seller.	If the goods perished after delivery to the buyer the damage depend on the buyer.
9	Inclusive for tax	Not Inclusive.

**CLASSIFICATION OF GOODS
(SEC — 6)**





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(i) Existing Goods

Goods owned and possessed by the seller at the time of making the Contract of sale Sec. 6(1). It is including the pledged, hire goods or in the possession of an agent or bailee or servant etc.

Specific goods

Goods identified and agreed upon at the time of the making of the contract of sale sec 2 (14).

Ascertained goods

Ascertained goods have not been defined in the Act. These are the goods which are ascertained subsequent to the formation of contract of sale. The identification takes place at a later date.

Unascertained goods

The goods are not identified at the time of contract or sale that is called generic goods.

(ii) Future Goods

Future goods mean goods to be manufactured or Produced or acquired by the seller after making the contract of sale sec. 2(6). The Contract regarding the future goods operates as an agreement to sell and not a sale.

(iii) Contingent goods

Contingent goods are future goods The Seller depends upon a Contingency which may or may not happen. The Contract is only enforceable depend upon the condition mention in the Contract. If the Condition is not happening the contract becomes void. The contract regarding the Contingent goods operates as an agreement to sell and not sale.

HIRE PURCHASE AGREEMENT

It is a development of modern commercial transaction. under hirepurchase agreement the owner of the goods agrees to transfer the property to the hire - Purchaser when a certain fixed number of installments of price are paid by the hirer.

If there is a default by the hire purchaser in paying an installment, the owner has a right to resume the possession of the goods immediately without refunding the amount received till then, because the ownership still rests with him.



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Differences between Sale and Hire - Purchase Agreement

Sr	Sale	Hire - Purchase
1	It may be made either orally or in writing.	It must be in writing.
2	The ownership of the goods is transferred from the seller to the buyer as soon as the contract is made.	The ownership is transferred from the seller to the hire only when all the agreed number of installments is paid.
3	The Position of the buyer is that of the owner.	The Position of the hire - Purchase is that of the bailee.
4	The buyer in a sale can resell the goods.	Cannot resell unless he has paid all the installments of hire.
5	It is governed by the sale of goods Act 1930.	Governed by the Hire Purchase Act 1972.
6	The Seller takes the risk of any loss resulting from the insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay in installment, the owner has the right to take back the goods.

DOCUMENT OF TITLE TO GOODS (SEC 2(4))

It is a Proof of the ownership of the goods. It includes a bill of lading, dock warrant, warehouse Keeper's certificate, wharfing's Certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as a Proof of the possession or control of goods. The act recognizes the following as documents of title to goods.

Bill of lading

It is a receipt given by the ship owner acknowledging the receipt of goods for carriage.

Dock warrant

It is issued by a dock owner. It contains the detail of the goods. It authorizes the person holding it to receive the possession of the goods.

Warehouse Keeper's Certificate

Warehouse is a building in which goods are stored.
It is issued by the warehouse Keeper.

Railway Receipt

It is a document which is issued by the railway as the acknowledgement of the receipt of goods.

Delivery order

It is an order which is given by the owner of goods directing a person who holds the goods on his behalf to deliver them to a person named therein.

RIGHTS OF A BUYER

- Right to have delivery of goods Under Section - 32.
- Right to reject the goods under section - 37.



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- Right to Accept Installments Under section - 38.
- Right to examine the goods under section - 41.
- Right to the notice of Insurance Under section - 39(3).
- Suit for non-delivery under section - 57.
- Suit for Specific Performance Under section - 58.
- Suit for breach of warranty under section - 59.

DUTIES OF THE BUYER

- Duty to Pay Price for accepted the goods under section -31.
- Duty to apply for delivery under section - 35.
- Duty to Demand Delivery at a reasonable Hour Under section - 36 (4).
- Duty to Accept Installment Delivery and Pay for it Under Section - 38(2).
- Duty against Deterioration Under section - 40.
- Duty to intimate the seller when reject the goods under section - 43.
- Duty to take delivery under section - 44.
- Duty to pay Price Under section - 55.
- Duty to Pay damages for non-acceptance under section - 56.
- Duty to pay increased Tax under section - 64(A).

RIGHT OF A SELLER

- Right to claim Compensation Under section - 44.
- Right to sue for Price through the goods has not passed, under section - 55(1).
- Right to sue for Price against Contract Under section - 55(2).
- Right to sue for Damages If buyer wrongfully refuses, under section - 56.
- Right to treat the Contract as subsisting under section - 60.
- Right to interest by way of damages under section - 61 (1).

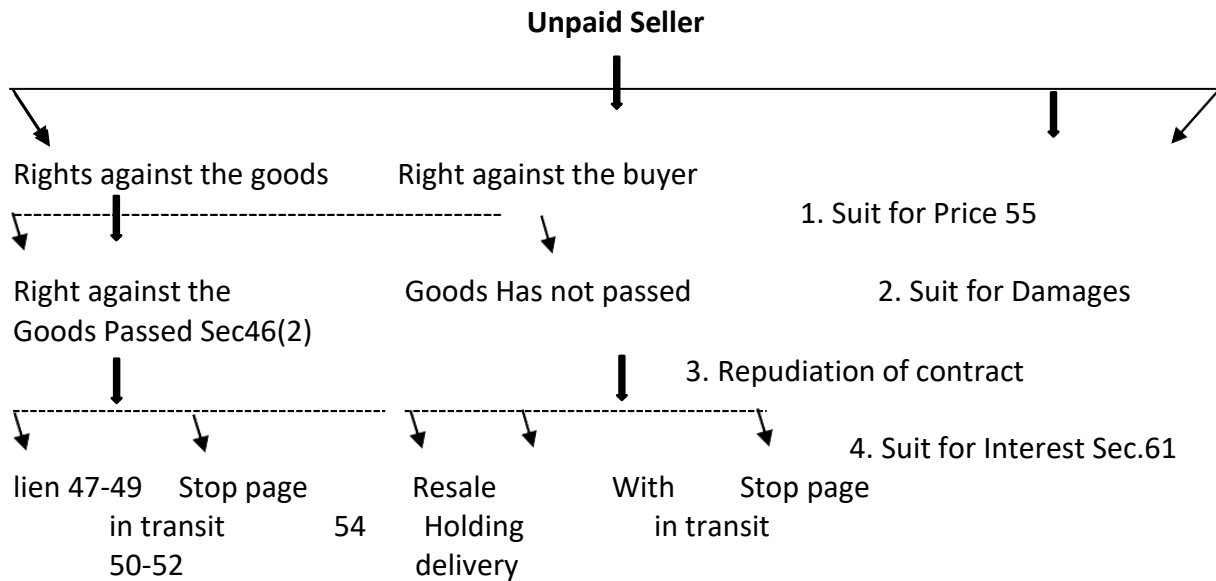
DUTIES OF A SELLER

- Duty to deliver the goods under section - 31.
- Duty to deliver the goods at the agreed place under section - 36(1).
- Duty to supply the goods with in specified time under section - 36(2).
- Duty to send the goods at reasonable hour under section - 36(4).
- Duty to bear the expenses of Putting the goods in Deliverable State Under Section– 36(5).
- Duty to make Contract with Carrier and Wharfing Under section - 39(2).
- Duty to give notice to the buyer under section - 39(3).
- Duty to give reasonable opportunity to examine the goods under section - 41.



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RIGHTS OF AN UNPAID SELLER



RIGHTS OF UNPAID SELLER

Rights of unpaid seller against the goods: - (Sec 45)

Unpaid Seller

The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act.

- a. When the whole of the price has not been paid or tendered.
- b. When a bill of exchange (or) other negotiable instrument has been received as conditional payment, and has not been fulfilled by reason of the dishonor of the instrument (or) otherwise.
- c. In this chapter the term "seller" includes any person who is in the position of a seller.

Unpaid Seller's rights (Sec 46)

A. The unpaid seller has the following rights while the property in the goods has passed to the buyer.

- a. lien on the goods while he is in possession of them
- b. If the buyer becomes insolvency, right to stoppage in transit
- c. Re-sale

B. The unpaid seller has the following rights while the property in the goods has not passed, to the buyer withholding delivery, lien and stoppage in transit.

Seller's lien (Sec 47)

A. The unpaid seller of goods is entitled to retain possession of them until payment (or) tender of the price in the following cases.

- a. Where the goods have been sold without any stipulations as to credit.
- b. Where the goods have been sold on credit, but the term of credit has expired.
- c. Where the buyer becomes insolvent.

B. The seller may exercise his right of lien as agent (or) bailee for the buyer.

Part delivery (Sec 48)

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder.



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Termination of lien (Sec 49)

- A. The unpaid seller of goods loses his lien thereon.
- a. When he delivers the goods without reserving the right of disposal of the goods.
 - b. When the buyer or his agent lawfully obtains possession of the goods.
 - c. By waiver thereof.
- B. The unpaid seller of goods, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Right of stoppage in transit (Sec 50)

When the buyer of goods becomes insolvent, the unpaid seller has the right of stopping them in transit, and he may resume possession of the goods and may retain them until payment (or) tender of the price.

Duration of transit (Sec 51)

- Goods are deemed to be in course of transit, until the buyer (or) his agent in that behalf takes delivery of them from such carrier (or) other bailee.
- If the buyer (or) his agent obtains delivery of the goods before their arrival at the appointed destination the transit is at an end.
- After the arrival of the goods at the appointed destination acknowledged by the buyer or his agent the transit is at an end.
- If the goods are rejected by the buyer, the transit is not deemed to be at an end.
- When goods are delivered to a ship, it is a question depending on the circumstances, whether they are in the possession of the master as a carrier (or) as agent of the buyer.
- Where the carrier (or) other bailee wrongfully refuses to deliver the goods to the buyer (or) his agent, the transit is deemed to be at an end.
- Where part delivery of the goods has been made, the remainder of the goods may be stopped in transit.

How stoppage in transit is effected (Sec 52)

- The unpaid seller may exercise his right to stoppage in transit either by taking actual possession of the goods, (or) by giving notice.
- Whether notice of stoppage in transit is given by the seller to the carrier (or) other bailee in possession of the goods, he shall re-deliver the goods.

Sub-Sale or Pledge by buyer (Sec 53)

The unpaid seller's right of lien (or) stoppage in transit is not affected by any sale (or) other disposition of the goods by the buyer, unless the seller has assented thereto.

Sale not generally rescinded by lien (or) stoppage in transit (Sec.54)

- A contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien (or) stoppage in transit.
- Where an unpaid seller who has exercised his right of lien (or) stoppage in transit re-sells the goods, the buyer acquires a good title; no notice of the re-sale has been given to the original buyer.
- Where the seller expressly reserves a right of re-sale in case the buyer should make default, and the buyer making default, re-sells the goods.



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**RIGHTS OF UNPAID SELLER AGAINST THE SELLER /
SUITS FOR BREACH OF THE CONTRACT**

Suit for price (Sec 55)

- Where the goods have passed to the buyer and the buyer wrongfully neglects (or) refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.
- The price for the goods within stipulated time mentioned in the contract if not given, the seller may sue him for the price although the property in the goods has not passed.

Damages for non-acceptance (Sec 56)

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for, damages for non-acceptance.

Repudiation of contract before due date (Sec 60)

Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting or wait till the date of delivery, (or) he may treat the contract as rescinded and sue for damages for the breach.

Interest by way of damages and special damages (Sec 61)

A. Nothing in this Act shall affect the right of the seller (or) the buyer to recover interest (or) special damages.

B. If the interest is not fixed in the contract, the Court may award interest at such rate as it thinks fit.

C. Interest is payable from the date of the tender of the goods (or) from the date on which the price was payable.