

LAW

Law is a basic necessity of every civilized society. Law is the bundle of rules and principles to be followed by the members of the society. When there is a law in a country, it brings uniformity and balance in human actions, and provides justice to the aggrieved persons.

Definition

According to Holland, “Law is a rule of external human action enforced by the sovereign political authority.”

COMMERCIAL LAW OR MERCANTILE LAW

Business law governs and regulates the trade, the auxiliaries of trade and industry. Auxiliaries of trade are transportation, banking, finance warehousing and insurance etc.

INDIAN CONTRACT ACT 1872

The law relating contract in India is contained in the Indian contract Act, which came in to force on the first day of Sept 1872. The act is extended to the whole of India except the state of Jammu and Kashmir.

CONTRACT – Definition

Generally contract may be defined as an agreement which creates rights and obligations between the parties. According to Salmond, “A contract is an agreement creating and defining obligation between the parties.”

Section 8(h) of the Indian Contract Act defines contract as an agreement which is enforceable by law.

AGREEMENT

The term agreement is defined to sec 2 (e) of the Indian contract Act as “Every promise or set promises, forming the consideration for each other” Agreement involves a valid offer by one party a valid acceptance by the other party.

ELEMENTS OF CONTRACT

1. **Agreement or Offer and acceptance:** - There must be an agreement between the parties of a contract. Agreement is created by offer and acceptance. Therefore an agreement is = offer + acceptance.
2. **Lawful consideration:** Consideration means something in return. It may be past, present or future and must be real and

lawful. A contract without consideration is not a contract at all.

3. **Capacity of parties:** The parties to an agreement must be capable of entering into a valid contract.

- (a) Persons of unsound mind
- (b) Persons disqualified by law
- (c) Minors

4. **Free consent:** For the formation of a contract one person must give his consent to another person. The consent thus obtained must be a free consent. Consent is said to be free if it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.

5. **Consensus ad idem:** It means the two parties of the contract must agree upon the subject matter of the contract in the same manner and in the same sense. That is there must be identity of minds among the parties regarding the subject matter of the contract.

6. **Lawful object:** The object of an agreement must be lawful. It must not be illegal or immoral or opposed to public policy. If it is unlawful, the agreement becomes void.

7. **Not declared to be void:** There are certain agreements which have been expressly declared void by the law. It includes:

- (a) Wagering agreement
- (b) Agreement in restraint to marriage
- (c) Agreement in restraint of trade

etc.

8. **Certainty and possibility of performance:** - The terms of the contract must be precise and certain. They should not be vague. The terms of agreement must be capable of performance.

9. **An intention to create legal relationship:** - There should be an intention between the parties to create a legal relationship. Mere informal promise is not to be enforced. Social agreements are not to be enforced as they do not create any legal obligations.

TYPES OF AGREEMENTS

Void agreements: “An agreement not enforceable by law is said to be void”. A void agreement has no legal significance from the beginning. No contract comes out from a void agreement ie it is void *ab initio*

Illegal agreements: - An agreement which is either prohibited by law or otherwise against the policy of law is an Illegal agreement. All illegal agreements are null and void but void agreements are not illegal.

CLASSIFICATION OF CONTRACTS

Contracts made by the parties can be classified into different types on the following bases

1. Formation of Contract
2. Performance of Contract
3. Extend of validity of Contract

I. ON THE BASIS OF FORMATION:-On this basis, contracts may be grouped into three

- a. **Express contract:** - These are the contracts, which are entered into between the parties, by words spoken or written.
- b. **Implied contract:** - Implied contracts are formed on the basis of implied promises on the part of parties. When the proposal or acceptance is made otherwise than in words, the contract formed is called implied contract.
- c. **Quasi contracts:-**In certain circumstances law itself creates legal rights and obligations against the parties. These obligations are known as quasi contracts. It is also known as constructive contract.

II. ON THE BASIS OF PERFORMANCE:- It includes

- a. **Executed Contract:-**Executed contract is one that has been performed. If both parties of a contract have performed their respective obligations, contract is known as executed contract.
- b. **Executory contract:-**An executor contract is one in which both the parties have not yet performed their obligations either wholly or partly
- c. **Unilateral contract** – where one part has performed his obligation either before or at the time of when the contract comes into existence.

d. **Bilateral contract** -when the obligation of both parties is outstanding at the time of formation of the contract, it is known as bilateral contract.

III. ON THE BASIS OF EXTEND OF VALIDITY:-

a. **Valid contract:-** Contract is said to be valid if it satisfies all conditions required for its enforceability. In other words an agreement enforceable by law is a valid contract.

b. **Void Contract:** A contract which ceases to be enforceable by law become void. No party has right to claim it in the court of law. A void contract not necessarily be unlawful but it has no legal effects.

c. **Voidable contract:-** According to sec.2(i) “ An agreement which is enforceable by law at option of one or more parties, but not at the option of other or others is a voidable contract.” Generally a contract becomes voidable when the consent of one of the parties to the contract is obtained by coercion, undue influence or misrepresentation.

d. **Illegal contracts:** - The contract is said to be illegal, if its object is illegal.

e. **Unenforceable contract:** - It is a contract, which is valid, but not capable of being enforced in a court of law because of some technical defects. Technical reasons affecting validity of contract may be that contract is not in writing or is not registered or has no adequate stamp duty on it etc.

“All contracts are agreements but all agreements are not contracts”

According to section 2 (h) of the Indian Contract Act, “an agreement enforceable by law is a contract”. That is all agreements are not contract. An agreement, in order to become a contract must satisfy certain conditions which are the essential elements of a contract.

DIFFERENCE BETWEEN AGREEMENT AND CONTRACT

Every promise and every set of promises forming the consideration for each other is an agreement while, an agreement which is enforceable by law is contract.

Agreement is sum total of offer and acceptance, on the other hand, contract is the agreement and its enforceability at law.

Certain agreement may not create any legal obligation while, all contracts necessarily create legal obligations.

An agreement is not always binding the contract but a contract is always binding on the concerned parties

All agreement are not contract, on the other hand all contracts certainly become agreement.

DIFFERENCE BETWEEN VOID CONTRACT AND VOIDABLE CONTRACT

A contract become void when it ceases to enforceable by law, while an agreement which is enforceable by law at the option of one party, but not the others is a voidable contract

A void contract cannot be enforced but a voidable contract can be enforced if the aggrieved party elects to carry out the contract

A void contract is valid at the time of formation but later it becomes void due certain reason while a contract is voidable because the consent of one part is not a free consent.

No party gains any option and it has no legal effects, but aggrieved has the option either elect to be continue the contract or to cancel.

A void contract is void in itself and a voidable contract can be void at the option of aggrieved party.

OFFER AND ACCEPTANCE

OFFER OR PROPOSAL

According to sec. 2 (a) of the Contract Act, "When one person signifies to another his willingness to do or 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."

Offer is one of the essential elements of a contract. The person making the offer or proposal is called the offeror proposer or promisor and the person to whom the proposal is made is called 'the proposee' or offeree.

ELEMENTS OF AN OFFER:

- In an offer one party must express his willingness for doing or not doing a thing
- It must be made to another person
- Offer is made with a view to know the assent of the other person.
- There must be an intention to create legal relationship.

CLASSIFICATION OF OFFER:

1. Express offer – an offer made by words, spoken or written is an express offer.

2. Implied offer - An implied offer is one which may be gathered from the conduct of the party or the circumstances of the case

3. Specific offer: - When an offer is made to a specific person or class of persons, such offer is known as specific offer. The specific offer can be accepted only by that particular person or organization.

4. General offer: It is an offer which is made to a group of people or public at large. Such offer can be accepted by any member of that group.

5. Cross offer: - When two parties exchange identical offers with each other, in ignorance of each other's offer, the offers are cross offer.

6. Counter offer: Incomplete and conditional acceptance of an offer is known as counter offer. In other words, when an original offer is rejected and a new offer is made, it is known as counter offer.

7. Standing offer (Tender):- An offer for a continuous supply of a certain article at a certain rate over a definite period is called a standing offer.

ESSENTIALS OF VALID OFFER

The following characteristics are necessary to create a valid offer.

1. The terms of an offer must be clear and certain: - The terms of an offer should not be indefinite, vague or loose.

2. Offer may be express or implied: -

3. The offer must be communicated to the offeree: - An offer must be communicated to the offeree. Until an

offer is made known to the offeree, he does not know what he has to accept.

4. Legal relationship is required: - A proposal will not become a promise even after it has been accepted unless it was made with a view to create legal obligations.

5. Offer may be conditional: - An offer can be made subject to a condition. It can be accepted only subject to those conditions

6. Offer must be made with a view to obtaining the assent of the other party

7. Invitation to an offer is not an offer:- Offer is different from invitation to an offer. Quotations, catalogues of goods, advertisement for tender etc are not actual offer. They are mere invitation to offer.

8. Offer may be specific or general: - The offer being made to a particular individual or organization is known as specific offer. On the other hand, if an offer has been made to a group of people or public at large, such offer is known as general offer.

WHEN DOES AN OFFER COMES TO AN END? / REVOCATION OF OFFER/LAPSES OF OFFER:-

1. Revocation by Communication of notice (Sec. 6(1):- A person who makes an offer can withdraw it at any time before acceptance. Such revocation may be express or implied.

2. By lapse of time (Sec.6 (2):- An offer lapses if it is not accepted within the prescribed time. Where no time is fixed, it should be accepted within a reasonable time.

3. Death or insanity of an offeror:- An offer lapses by the death or insanity of the offeror, if the fact of his death or insanity comes to the notice of the acceptor before acceptance.

4. Non fulfillment of pre requisite conditions: - When the offeror has put some conditions, which are prerequisites to acceptance, such conditions must be fulfilled before accepting offer. Non fulfillment of such conditions will lead to revocation of an offer.

5. By counter offer: - The offer will be revoked if the offeree makes a counter offer.

6. Offer not accepted according to the mode prescribed:- Sometimes the offer or may prescribe particular mode in which

offeree must send his acceptance.**7. Subsequent Illegality or destruction of subject matter:** - An offer lapses, if it becomes illegal after it is made but before it is accepted.

8. By rejection
ACCEPTANCE

According to section 2(b) a proposal or offer is said to have been accepted when the person to whom the proposal is made, signifies his assent to the proposal. An offer when accepted becomes a promise. Offer and Acceptance in a contract are like two sides of a coin and the absence of any one will not create any contractual relationship between these parties.

DEFINITION

According to William Anson, "acceptance is to offer what is a lighted match is to a train of gun powder." An acceptance can be made by words spoken or written. It can be made by conduct also. It can be accepted only by the person to whom it is made.

ESSENTIALS OF A VALID ACCEPTANCE:-

1. Acceptance must be absolute and unconditional: - Partial and conditional or qualified acceptance will not be a valid acceptance.

2. Acceptance must be given in a prescribed mode or manner: -

3. Time of Acceptance: - Acceptance must be made within the time allowed. When no time is specified, acceptance must be given within reasonable period of time.

4. Acceptance must be communicated: Acceptance to be legally effective must be communicated and brought to the knowledge of the offeror

5. Acceptance may be express or implied: - When an acceptance is made by words spoken or written, it is an express acceptance. If it is accepted by conduct, it is an implied acceptance.

6. Acceptance must be made before offer is revoked: - The acceptance of an offer must be done before the offer lapses or is withdrawn or cancelled.

7. Acceptance must be made by the offeree: - Acceptance must be made only by the person to whom the offer is made and not by others.

8. Acceptance is not implied from silence of the party: - Generally, silence on the part of offeree regarding the offer in no case may amount to acceptance.

COMMUNICATION OF OFFER AND ACCEPTANCE

Communication of offer and acceptance is necessary for forming a contract. **The communication of an offer is complete as soon as it comes to the knowledge of the offeree.**

Communication of acceptance is complete

1. as against the proposer, when it is put in a course of transmission to him.

2. as against the acceptor, when it comes to the knowledge of the proposer.

REVOCATION OF OFFER AND ACCEPTANCE:-

An Offer may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. So an offer can be revoked at any time before the letter of acceptance has been posted by the acceptor.

An Acceptance may be revoked at any time before the communication of the acceptance is complete as against acceptor, but not afterwards.

CONSIDERATION

Consideration is one of the essential elements of valid contract. According to sec. 25 of the Indian Contract Act, an agreement made without consideration is void. Every agreement must be supported by consideration to become a contract. In true sense consideration means “something in return” to the promisor (quid pro quo).

DEFINITION

The term consideration is defined in sec.2 (d) of the Indian Contract Act as, “when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or promise to do or to abstain from doing something, such act, abstinence or promise is called a consideration for the promise.”

ESSENTIALS OF CONSIDERATION:-

1. Consideration must move at the desire of the promisor: - It is essential that promisee should perform his part of the promise only at the desire of the promisor. The desire of the promisor may be express or implied.

2. Consideration may move from the promisee or any other person:- According to Indian law, the consideration may proceed either from the promisee or any other person. Under the English law, consideration must move from the promisee.

3. Consideration may be past, present or future: - If the promisor had received the consideration before the date of the promise, it is known as past consideration. If the promisor receives consideration simultaneously with his promise, it is known as present consideration. When the consideration on both sides is to move at a future date, it is called future consideration. However, according to English Mercantile law, consideration may be present or future only.

4. Consideration need not be adequate:- According to Indian contract Act, it is not necessary that the value of promise should be equal to the value of consideration.

5. Consideration must be real and not illusory: - Consideration must have some value in the eyes of law. It must not be illusory, fictitious, fraudulent and uncertain.

6. Consideration must be lawful:- Consideration is said to be unlawful if

1. If it is forbidden by law.
2. It is fraudulent
3. It involves or implies injury to the person or property of another person.
4. It is regarded by court as criminal
5. It is regarded by the court as being against the public policy.

A STRANGER TO A CONTRACT/ PRIVITY OF CONTRACT

A stranger to a contract is a person who is not a party to the Contract. Such a party

neither makes nor accepts any offer. Privity of contract states that the contract confers right and obligations on contracting parties only. Therefore stranger to a contract cannot sue on the contract.

**A STRANGER TO CONSIDERATION/
PRIVITY OF CONSIDERATION:**

When consideration is furnished not by the promisee but by a third person, the promise becomes a stranger to consideration. Under the Indian contract Act, consideration may move from the promisee or any other persons. So in India, a consideration made by the stranger is lawful and enforceable.

Exceptions to the rule that a stranger to a contract cannot sue:

1. **Beneficiary of a trust:** - Trust is an arrangement whereby some property is handed over to trustee by the owner. This property is to be managed by the trust for the benefit of the party known as beneficiary. Here the beneficiary can sue to enforce his rights under the trust, though he is not a party to a contract.

2. **Contracts through an agent:** - Contracts which are entered into through an agent can be enforced by his principal. Here the principal can file suit against third party or can be sued by third party.

3. **Marriage settlement, partition or other family arrangement:** - If an agreement has made for the above purpose, in such agreement provision may be made for the benefit of a particular member. Such person, who is beneficiary in the agreement, can maintain a suit.

4. **Estoppels to acknowledgment:**-When a party admits liability in a contract to third party, then if he denies it on any ground, he will be stopped from doing so. His liability would continue towards third party.

5. **an assignee can also sue on the basis of assignment:-**

**EXCEPTION TO THE RULE 'NO
CONSIDERATION NO CONTRACT'**

Generally a promise without consideration is null and void. It is a 'naked promise' or '*Nudum Pactum*'. But sec. 25 of the contract Act given some exceptions to this rule.

1. Agreement based upon love and affection:- Here the essentials of the agreements includes:

- a. It must be expressed in writing
- b. It should be registered under the law for the time being in force
- c. It should be made on account of natural love and affection, and
- d. The parties should stand in a near relation to each other.

2. Promise to compensate for Past voluntary services: - If a person has already voluntarily done something for the promisor and the promisor agrees to compensate wholly or in part, the agreement is valid even though it is without consideration.

3. Agreement to pay time barred debt:- A promise by a debtor to pay a time barred debt is enforceable provided it is made in writing and is signed by the debtor or by his agent authorized in that behalf. An oral promise to pay a time barred debt is unenforceable.

4. **Agency:** - According to sec 185 of the Indian Contract Act, no consideration is necessary to create an agency.

5. **Completed gifts:** - Gift once made cannot be recovered on the ground of absence of consideration.

CAPACITY OF PARTIES

According to section 10 of the contract Act, parties making an agreement must have the contractual capacity. Thus every person is competent to enter into a contract if,

- a. he has attained the age of majority
- b. he is of sound mind, and
- c. he is not disqualified by any law from contracting

MINOR

A person who has not attained the age of majority is a minor. According to the Indian Majority Act 1875, a person who has not completed his 18th year of age is considered to be a minor. But if a minor is under the care and custody of the court and a guardian is appointed by the court for the minor, then the minor becomes major only on the completion of the age of

21 years.

LAW REGARDING MINOR'S AGREEMENT:-

1. An agreement with a minor is void ab initio: A minor does not have the contractual capacity and when he makes agreements, such agreements are void and cannot be enforced in the court of law.

2. Minor can be a promisee or beneficiary:
- A minor cannot be stopped from getting benefits in an agreement. If in a contract, minor is a beneficiary or suffered loss or he is a promisee, he can demand the enforcement of agreement.

3. Ratification on attaining the majority is not allowed: A minor cannot ratify a promise entered into during his minority, after attaining majority.

4. Minor is not bound to return the benefits received: - If a minor retained any benefit under the agreement, he is not liable for repay or compensate the same. The reason is that the original contract is void in the beginning itself.

5. The principles of estoppel is not applicable to minor: - The general principle of estoppel is not applicable to a minor.

6. A minor is liable for necessaries supplied: According to sec 68, "if a person, incapable

of entering into a contract or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in his life, the person who has furnished such supplies, is entitled to be reimbursed from the property of such incapable person.

7. Minor can be an agent: A minor can act as an agent and bind his principal by his acts.

8. He cannot be adjudged insolvent: A minor cannot be adjudged insolvent as he is not competent to enter into contracts for debts.

9. Minor- as partner: A minor cannot be a partner, but he may be admitted to the benefit of a partnership. His liabilities are limited to the extent of his interest in the partnership.

PERSONS OF UNSOUND MIND

In order to be competent to contract, a person must be of sound mind. A person who is usually of unsound mind and

occasionally of sound mind may make a contract when he is of sound mind. A person who is usually of sound mind but occasionally of unsound mind, may not make a contract when he is of unsound mind.

TYPES OF PERSONS OF UNSOUND MIND:

1. Idiots: A person who has completely lost his mental powers and incapable of forming a rational judgment is called an idiot. All agreements other than of necessities of life, with idiots are absolutely void.

2. Lunatic: A lunatic person is a person who suffers a serious mental disorder due to some mental strain or mental shock or any highly tragic event. A lunatic is not liable for agreements entered into during the period of his madness.

3. Drunken persons: A drunken person suffers from temporary incapacity to contract. An agreement by a drunken person is void because during his drunkenness he cannot understand the business and its implications.

PERSONS DISQUALIFIED BY OTHER LAWS

1. Alien enemies: - A person who is not a citizen of India is called alien. No contract can be made with an alien enemy during the subsistence of war

2. Foreign sovereigns, and ambassadors:- In the case of Ambassadors and foreign sovereigns, according to sec 86 of the civil procedures, previous sanction of the central government is to be obtained .

3. Insolvents: When a debtor is adjudged as insolvent his property vests in the official Receiver and thereby he cannot enter into a contract. This disqualification is automatically removed after he is discharged.

4. Convicts:- A convict when undergoing imprisonment is incapable of entering in to a contract. When the period of sentence expires, the incapacity to contract disappears.

5. **Corporations:** A company or corporation can enter into contracts only through its agents, such as Board of Directors, Managing Directors etc in accordance with its Memorandum of Associations. Any contract beyond the Memorandum is not valid.

6. **Married women:** They are competent to enter into a contract with respect to their separate properties. But she cannot enter into contracts with respect to their husbands' property.

FREE CONSENT

According to Sec13 of the Contract Act defined consent as, "two or more persons are said to consent when they agree upon the same thing in the same sense." Without free consent of the parties, an agreement does not acquire legal sanctity and consequences.

Section 14 of this act states that, 'Consent is said to be free when it is not caused by,

1. Coercion
2. Undue influence
3. Misrepresentation
4. Fraud
5. Mistake

In the first four cases, the contract is voidable, but in the last case, the contract is *void ab initio*

ELEMENTS OF FREE CONSENT

A.COERCION

Coercion implied use of some kind of physical force by doing some act forbidden law to seek consent of the other party. If the consent to an agreement is obtained by coercion, the contract is voidable at the option of the party whose consent is so obtained. It includes:

- a. **The committing of any act forbidden by the Indian Penal Code.**
- b. **The unlawful detaining or threatening of any property of another person.**
- c. **intention of causing any person to enter into an agreement.**
- d. **can be applied either a party to the contract or even by a stranger.**
- e. **the place of coercion is immaterial.**

THREAT TO COMMIT SUICIDE IS A COERCION

Threat to commit suicide is also one of the mode of coercion, hence it is treated voidable contract at the option of one party.

EFFECT OF COERCION

Section 19 of the contract Act lies down that when the consent of a party to a contract is obtained by coercion, it is voidable contract at the option of aggrieved party."

DURESS

It is an equivalent term to coercion as per English law.

UNDUE INFLUENCE:

It is the improper use of any power possessed over the mind of the contracting party.

Section 16(1) of the Contract Act defines undue influence as follows:- " 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 the other and uses that position to obtain an unfair advantage over the other"..

EFFECT OF UNDUE INFLUENCE: -

An agreement caused by undue influence shall be voidable at the option of the party whose consent has been so obtained.

PERSONS IN DOMINANT POSITION

- He hold a real or apparent authority over the other eg manager and worker
- He stand in a fiduciary relation to the other eg – parent and child
- Person whose mental capacity is temporarily or permanently affected eg Doctor and patient

CONDITION UNDER WHICH UNDUE INFLUENCE IS SUSPECTED

- Inadequacy of consideration
- Fiduciary relationship between the parties
- Inequalities between the parties
- Pardnashin Women
- Unfair bargaining

NO PRESUMPTION OF DOMINANT POSITION

- Husband and wife
- Creditor and debtor
- Landlord and tenant
- Principal and agent

CONTRACT WITH A PARDANASHIN WOMEN

A pardanashin woman is one who observes complete seclusion because of the custom of the particular community to which he belongs. She is a lady under parda. She is not allowed to mix up with outsiders. She is deemed to ignorant of outside tricks. Any person who enters into a contract with a pardanashin women has to prove that no undue influence was exercised in obtaining her consent. He has to satisfy the court that terms and conditions of the contract have been explained to her and they were understood properly by the women.

DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE:

1. Coercion implies the use of physical force or threat to cause consent. While undue influences involve use of moral or mental pressure to cause consent.
2. Coercion involves a criminal act while there is no criminal act in undue influence.
3. in coercion, the consent of aggrieved party is given under threat wherein undue influence the consent of aggrieved party is obtained by misusing the dominant position.
4. In case of coercion, the threat may come from a third party who is a stranger to the contract. While on the other hand, the undue influence must be exercised by or against a person who is a party to the contract.

C.FRAUD:

When a wrong representation is made by a party with the intention to deceive the other party or to cause him to enter in to a contract, it is said to be fraud.

ELEMENTS OF FRAUD

- The fraudulent act must have been committed by a party to the contract
- There must be a false representation
- There must be active concealment of fact

- Promise made without intention of performing it
- Made with an intention to deceive the other party.
- Representation must relate to a fact.
- The other party must have been deceived
- Must have suffered some loss

EFFECT OF FRAUD:

If the consent to an agreement is caused by fraud, the contract is voidable at the option of the party, whose consent was so caused. In case of fraud, the aggrieved party has the following **remedies:-**

- a. He can cancel the contract within a reasonable time.
- b. He can sue for damage
- c. He can insist on specific performance of the contract on the condition that he shall be put in position in which he would have been if the representation made had been true.

SILENCE AS FRAUD:

Mere silence or non-disclosure of facts normally does not constitute fraud unless party keeping silence is under legal obligation to speak or his silence is equivalent to speech.

But this rule has certain exceptions.

1. **Contract of uberrimaefidei**(at most good faith) – eg marriage contract
2. **Silence maintained by the party is equivalent to speech**
3. **Fiduciary Relationship**

D.MISREPRESENTATION:

It is a misstatement of material facts. The party making untrue statement believes that the statement is true, but in reality statement turns to be incorrect. It also includes non-disclosure of material facts and facts without any intention to deceive the other party.

EFFECTS OF MISREPRESENTATION:

When consent of the party is caused by the misrepresentation made by another party, the contract is voidable at the option of the aggrieved party whose consent was caused by misrepresentation. He has the right to May avoid or rescind

the contract

DISTINCTION BETWEEN FRAUD AND MISREPRESENTATION

1. Fraud implies an intention to deceive and in misrepresentation there is intention to deceive.
2. In fraud person making the wrong statement does not believe it to be true wherein misrepresentation, the person making wrong statement it to be true.
3. In the case of fraud aggrieved party can cancel the contract and also he can claim damages while in the case of misrepresentation, the aggrieved party can cancel the contract but cannot sue.
4. In case of fraud the contract is voidable at the option of aggrieved party even though it discovered the truth, but in misrepresentation aggrieved party cannot avoid the contract if discovered the truth.
5. In case of fraud the person making the representation has full knowledge that it is not true and in misrepresentation, the wrong statement is made without the knowledge of the fact.

E.MISTAKE

A mistake means that parties intending to do nothing have by intentional error done something else. If the agreement is made under a mistake, it means that there is no consent and when the consent is nullified by such mistake, and then the agreement has no legal effect.

CLASSIFICATION OF MISTAKE:

- Mistake of law
- Mistake of fact

Mistake of Law:- Mistake of law may be of two types:

- 1. Mistake of Indian Law
- 2. Mistake of foreign law

Mistake of Fact:-Mistake relating to terms and conditions or any facts essential to the agreement is known as mistake of facts. Mistake of facts may be

a. Bilateral mistake:- A bilateral mistake is one where both the parties are under a mistake. Section 20 of the Act lays down

that, “where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void”

CONDITIONS OF BILATERAL MISTAKE

- Mistake must be mutual
- Mistake must be of fact and not law
- Fact which must be essential to the agreement

TYPES OF BILATERAL MISTAKE

- **Mistake as to subject matter**
 - Regarding the existence of subject matter
 - Regarding the identity of subject matter
 - Regarding the title of the subject matter
 - Regarding the quantity of the subject matter
 - Regarding the quality of subject matter
 - Regarding the price of subject matter
- **Mistake as to possibility of performance**
 - Physical impossibility
 - Legal impossibility

b. Unilateral mistake:- In this case only one party is under a mistake. In other words, if there is a mistake on the part of one party alone and the other party does not know the mistake, then it is called unilateral mistake.

UNLAWFUL CONSIDERATION AND UNLAWFUL OBJECT:

Under the following circumstances an agreement would be unlawful:

1. **It is forbidden by law:-**If the object or consideration of an agreement is forbidden by law, the agreement is void.
2. **It defeats the provisions of any other law:-**Where the enforcement of a particular is of such a nature that it would defeat the provisions of any statutory law which is in force, the agreement is void.
3. **It is fraudulent:-** Fraud is punishable under the provisions of the law. Thus an agreement made with an object of defrauding or deceiving another will be void.

4. It involves an injury to a person or property of other:-

5. It is Immoral: - If the object of an agreement is considered as immoral in the opinion of the court, such agreement will be void on account of unlawful object.

6. It is against public policy: - Any agreement which goes against public policy and adversely affect public welfare public decency and public interest will be void. The court has declared the following agreements oppose to public policy.

- Trading with alien enemy
- agreement to commit a crime
- Interfering with course of justice
- . Marriage brokerage agreements
- Agreement for stifling prosecution
- Agreement of champerty and maintenance
- Agreement for sale of public offices, titles and appointments
- Agreement in restraint of parental rights Agreement restraining personal liberty
- Agreement restraining trade
- Agreement to defraud the creditors
- Agreement to create monopolies
- Agreement not to bid
- Agreement to influence election

WAGERING AGREEMENT

According to Anson, "wager means promise to give money or money's worth upon the determination of an uncertain event in which the parties have no material interest and with mutual chances of gain or loss." Thus in simple words, Wagering agreement is one in which money is to be paid by one to another party or vice versa on the happening or non-happening of future uncertain event.

ESSENTIALS OF WAGERING AGREEMENT:

- 1. Mutual gain or losses:** - There are two parties in wagering agreement. One of the parties will win and another party will lose.
- 2. Uncertain event:** - The performance of wagering agreement depends on happening or non-happening of a future uncertain event.
- 3. Interest of the parties:** - The parties must not have any other interest in the happening of the event except the sum of money which

either of them will win or lose.

4. Control over the event:-Neither of the parties should have any control over the event.

5. Payment of money: - The two persons agree that dependent on the determination of that.

EFFECT OF WAGERING AGREEMENTS:

1. Wagering agreements are void. Therefore the winner cannot recover amount which other party had to pay.
2. Agreement by way of wager is just void and unenforceable. The collateral transactions based on such agreement are not affected and thus are valid.

EXCEPTION TO THE WAGERING AGREEMENT:

1. Speculative transactions
2. Commercial transaction
3. Horse racing
4. Lotteries
5. Prize competitions
6. Athletic competition

CONTRACT OF INSURANCE:

Insurance contract is a contract whereby the insurance company in consideration of payment of premium from the insured promises to compensate his losses arising out of insured cause. These contracts are valid.

DIFFERENCES BETWEEN INSURANCE CONTRACT AND WAGERING CONTRACT

1. Contract of insurance is a contract of indemnity while a wagering contract is not a contract of indemnity.
2. In insurance contract there is insurable interest, but in wagering contract there is no insurable interest.
3. A wager will arise only if one party losses and another gains while in insurance contract no winning or losing.
4. A contract of insurance is legal and enforceable while a wagering contract is void.

5. In insurance contract the amount of premium is determined scientific way, but in a wagering agreement, to determine amount of loss or gain has no basis at all.

CONTINGENT CONTRACT

Contract is mutual exchange of promise between the parties. A contract may be absolute or contingent. An absolute contract is one in which the promisor must perform the contract in all events.

CONTINGENT CONTRACT: - meaning

A contract is said to be contingent when its performance depends upon the happening or non-happening of a future event.

Definition

According to section 31 of the Indian Contract Act, “a contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen.” Contingent contract are called conditional contracts in English law. Contract of indemnity and guarantee is a contingent contract..

ESSENTIALS OF A CONTINGENT CONTRACT:-

1. future event.
2. uncertain event
3. Collateral event

RULES REGARDING CONTINGENT CONTRACT:

1. Contingency on Happening of an event:
2. Contingency on non-happening of an event:
3. Contingency on the happening of an event within stipulated time:
4. Contingency on non-happening of an event within the stipulated time:
5. Contingency on the non-happening of impossible event

DIFFERENCE BETWEEN WAGER AND CONTINGENT AGREEMENT:

1. There are mutual promises in a wagering agreement. While it is not necessary in a contingent contract.
2. Wagering agreements are void. But contingent contracts are valid subject to conditions.
3. In wagering agreements parties do not have any interest on the happening or non-

happening of that event. But in contingent contract, one or both the parties may have some interest on the event.

4. In wagering agreement future event is determining factor, but in contingent contract future event is collateral to a contract.

5. a contingent contract is not a wagering nature, but a wagering agreement is essentially of a contingent nature.

QUASI CONTRACTS

The obligations which are created and imposed by law in the absence of any contract to that effect are called quasi contracts. Quasi contracts are also called constructive contracts.

TYPES OF QUASI-CONTRACTS:

1. Supply of necessaries to the person having no contractual capacity or to his dependent:-
2. Reimbursement of payment made by a person who is interested but which another person is legally bound to pay
3. Obligation to pay for non- gratuitous act or service:-
4. Rights and duties of the finder of lost goods:
5. Liability of persons to whom money is paid or things delivered by mistake or under coercion.

DISCHARGE OF CONTRACT

Discharge of contract means terminations of the contractual relationship between the parties. On the termination of such relationship the parties are released from their obligations in the contract.

Modes of discharging Contract:

A contract may be discharged in any one of the following ways.

A. Discharge of contract by performance:

- This is the most popular and usual way of discharging contracts. When the parties to a contract fulfill their obligations arising under the contract within the time, and in the manner prescribed, it is known as discharge of performance.

B. Discharge of contract by mutual agreement:

1. By Novation (Substitution of a new contract):- Under the method of novation, existing contract is replaced by new one either between same parties or between new parties. It discharges an existing contract and brings new contract into existence.

2. By alteration:- Alteration of contract may take place when one or more of the terms of the contract altered by the mutual consent of the parties to the contract.

3. By Rescission:- Rescission means cancellation of the contract. If the parties to a contract agree to rescind it, the original contract need not be performed. Rescission may either be total or partial.

- **By mutual consent**
- **By aggrieve party**
- **By failure to perform**

4. By remission: - Remission means acceptance of lesser performance than what was actually due under the contract.

5. By waiver: - When both parties, by mutual consent, agree to abandon their respective rights, the contract need not be performed and the same is discharged. It is called waiver.

6. Merger – Merging of two contracts into one is merger.

C. Discharge by lapse of time: -

If the contract is not performed and the promisee fails to take any action within the period of limitation, then the contract is terminated or discharged by lapse of time.

D. Discharge by Operation of Law:- A contract may discharged by the operation of law in the following cases:

a. By Death:- Where performance of a contract is required to be made in person and the personal skill and qualification of the promisor are important, the death of the promisor discharges the contract.

b. By insolvency: When a person is adjudged insolvent, he is discharged from all the liabilities incurred before the adjudication.

c. By Merger of rights: This is a condition by which, an inferior right contract merges into a superior right contract. In this case, the inferior right contract stand discharged automatically.

E. Discharge by Impossibility of Performance: -The impossibility of performance of a contract may be initial impossibility and subsequent impossibility.

1. Initial impossibility

When both the contracting parties are aware of impossibility of performance of the contract even at the time of formation of the contract itself, then the agreement becomes *void ab initio*.

- Known impossibility
- Unknown impossibility

2. Supervening impossibility subsequent impossibility/Doctrine of frustration: /

In certain cases, the contract at the time of formation is capable of being performed. Subsequently after the formation, its performance becomes impossible or illegal. This kind of impossibility is known as Supervening impossibility and such contract becomes void.

A contract is discharged due to supervening impossibility under the following situations:-

a. Destruction of subject matter: - If the subject matter of the contract is destroyed or perished subsequent to the formation of the contract without the fault of either party to the contract, the contract need not be performed and it is discharged.

b. Death or personal incapacity of the promisor:- A promise requiring personal skill and ability may become physically incapable of performance by reasons of the death or incapacity of the same person. Such impossibility discharges the promisor from liability.

c. Change of Law: - Change of law, after the formation of a contract, if renders performance of contract unlawful; such contract is discharged on the ground of supervening impossibility.

e. Declaration of war: When a war is declared after the formation of a contract, all pending contracts with the residents of enemy country remains suspended.

EXCEPTIONS TO THE DOCTRINE OF SUPERVENING IMPOSSIBILITY

1. **Difficulty of performance:** - Difficulty is no excuse for performance
2. **Commercial impossibility:** - When the performance of a promise becomes costlier, non-profitable and more risky, such contract will not be discharged.
3. **Strikes, lock-outs,;-** A contract is not discharged automatically on the ground of supervening impossibility due to strike.
4. **Impossibility due to failure of third party:** - Failure of third party or his inability will not be considered sufficient ground for discharging a contract.
5. **Partial impossibility:** When a contract is entered into for several objectives, failure of one of the objects does not terminate the contract.
6. Self-induced impossibility

F. Discharge by Breach of Contract: - A contract can be discharged by not performing it. Breach of contract means refusal of performance on the part of the parties.

BREACH OF CONTRACT AND REMEDIES FOR BREACH

Breach of contract may of two types; actual breach and anticipatory breach. Actual breach of contract takes place when the promisor fails to perform his obligation or refuses to do so on the due date of performance.

In anticipatory breach of contract, the promisor either refuses to perform or makes himself unable to perform a promise before due date of performance.

The various remedies available to an injured are:

- A. Rescission of the Contract:** - Where one of the parties to a contract commits breach, the other party treats the contract as rescind or cancelled and refuses the further performance.
- B. Suit for damages:** - When a contract is broken, the injured party can claim damages from the other party. There are different types of damages.
 - a. **Ordinary/ compensatory damages** - under this, the actual damage can be

identified clearly

b. **Special damages:** - These damages are those which arise from the breach of contract under special circumstances. Under this, actual loss cannot be identified

c. **Exemplary damages or vindictive damages:** - These damages are awarded with a view to punish the defaulting party who injured the feelings of the others.

d. **Nominal damages:** Nominal damages are awarded in cases where the injured party is able to prove a breach of contract, but he has not suffered any real and substantial loss.

C. Suit for Specific Performance: In certain cases, damages is not an adequate remedy for the breach of the contract. In such circumstances, the court directs the defaulting party, to carry out the performance of the contract specifically. This is known as specific performance. court may be granted specific performance in the following cases:

- a. Where monetary compensation is not an adequate remedy for breach of contract.
- b. Where there is no standard for ascertaining the actual damage, caused by non-performance of promise by the party.
- c. When it is probable that monetary consideration on non-performance of the act cannot be obtained.

D. Suit for Injunction: - In a contract if the party has made a promise for not doing something, and the party makes a breach of contract by doing that thing. To prevent such party from doing that act an order of injunction may be claimed by an aggrieved party. Injunction is a preventive relief and is generally issued in cases where the compensation in terms of money is not an adequate relief.

E. Suit upon quantum meruit:-The quantum meruit literally means 'as much as earned' or 'in proportion to work done'. That is when a person had done some work under a contract and the other party repudiated the contract, then the party who has performed the work can

claim remuneration for the work has already done.

CLAIM FOR QUANTUM MERUIT: Claim for quantum meruit arises in the following cases:

a. **When a contract is found to be void:** When a contract is discovered to be unenforceable for some technical reasons, any person who has received any advantage under such contract is bound to restore it.

b. **When something is done without any intention to do so gratuitously:** -when a person does some work for or delivers something to another person with the intention of receiving payment for the same then such other person is bound to make payment if he accepts such services or goods or enjoys their benefit.

c. **When a contract is divisible:** When a contract is divisible and the party no in default has enjoyed the benefit of the part performance, the party in default may sue on quantum meruit.

d. **When one party abandons or refuses to perform the contract:-** When a party of a contract performs a part of the contract, abandons it without completing or refuses to perform the remaining part, then, the other party can claim, compensation for the work done on the basis of quantum meruit.

e. **When an indivisible contract is performed badly:** - When an indivisible contract for lump sum has been completely performed but badly, the person performing it is entitled to claim the whole amount; but the other party can make a deduction for a bad work.

CONTRACT OF INDEMNITY AND GUARANTEE

A contract of indemnity is a contract in which one party promises to compensate or protect the other party from the losses arising in future. According to section 124 of Indian Contract Act," a contract of indemnity is a, contract by which one party promises to save the other from loss caused to him either by the conduct of the promisor himself or buy the conduct of any third party."

The object of a Contract of Indemnity is essentially to protect the promisee against

anticipated loss. A contract of fire insurance and marine insurance is a contract of indemnity. The person who promises to save the other from the loss is called indemnifier. The person to whom the promise is made, is called indemnified or indemnity holder.

FEATURES OF INDEMNITY CONTRACT:

1. **Express contract of indemnity:** - Where the terms of the contract of indemnity are either in oral or in written, it is called an express contract of indemnity.

2. **Implied contract of indemnity:** - Where the contract of indemnity inferred from the circumstances of the case, or from the relationship of parties, is called an implied contract of indemnity.

3. **Compensation of loss:** - In the case of contract of indemnity, there is a compensation for the loss suffered by the indemnified.

4. **Essentials of a valid contract:** A contract of indemnity is also required to possess all the essentials of a valid contract.

RIGHTS OF AN INDEMNITY HOLDER:-

1. **Right to recover damages:** - All damages which he may be compelled to pay in any suit of any matter to which he promise to indemnify applies.

2. **Right to recover cost:**

3. **Right to recover all sum paid:** - He is entitled to recover all the sums which he may have paid under the terms of any compromise of any such suit.

RIGHTS OF AN INDEMNIFIER:

1. **Right to subrogation:** - On payment of the amount of loss or liability to the indemnified the indemnifier is subrogated to all the rights of indemnified.

2. **Right to equities:** - After making payment to the indemnified for the loss, indemnifier is entitled for all equities which indemnified could have enforced against the third party liable for loss.

3. **Right to refuse indemnity:** The indemnifier has the right to refuse indemnity provided the loss caused to the indemnity holder is beyond the scope of

the contract.

CONTRACT OF GUARANTEE

Where a person gives a guarantee to another person, either to (a) performing a promise or (b) discharging the liability of a third person, there arises a “Contract of Guarantee”

DEFINITION

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, and the person in respect of whose default the guarantee is given is called the principal debtor, and the person to whom the guarantee is given is called the creditor.

Essential features of a contract of guarantee:-

The essential features of a contract of guarantee are as follows:-

1. **Three parties:** - There must be three parties in a contract of guarantee, namely the principal debtor, the creditor and the surety.
2. **Three contracts:** There are three contracts in a contract of guarantee, namely, contract between principal debtor and creditor, contract between principal debtor and surety, and contract between creditor and surety.
3. **Capacity to contract:** In a contract of guarantee, the principal debtor may not be a person competent to contract, but his incapacity should be in the knowledge of the surety. In such case, the surety is regarded as the principal debtor and is personally liable to pay the debt, although the principal debtor is not liable to pay.
4. **Concurrence:** The contract of guarantee requires concurrences of all the three parties i.e., creditor, Principal debtor and the surety. It may be either express or implied by the circumstances of the case.
5. **Liability:** A contract of guarantee presupposes a liability enforceable by law. That is in a contract of guarantee, the surety undertakes to pay a debt or discharge a

liability of a third person, in case of his default.

6. **Consideration:**-Like all other contracts, the contract guarantee must be supported by lawful consideration. It is not necessary that the surety must get some consideration directly from the creditor.

1. free consent
2. writing is not necessary
3. at the request of principal debtor

KINDS OF GUARANTEE:

Guarantee may be classified in the following ways:

1. **On the basis of purpose:** There are three types of guarantees on this basis
 - a. **For Payment of debt:**-A guarantee may be for payment of debt or loan.
 - b. **For price:** A guarantee may be for the payment of price of the goods to be sold on credit.
 - c. **For honesty:** A guarantee given for the honesty or good conduct is known as fidelity guarantee.
2. **On the basis of transaction:** : It may be
 - a. **Simple or specific guarantee:** - When a guarantee is given in respect of a single debt or specific transaction, it is called a specific or simple guarantee.
 - b. **Continuing guarantee:** When a guarantee extends to a series of transactions, it is called a continuing guarantee.

REVOCATION OF A CONTINUING GUARANTEE:

A continuing guarantee as regards future transaction may be revoked under the following circumstances.

1. **By notice of revocation by the surety:**
2. **By the death of the surety**
3. **By novation:** - Novation means substitution of a new contract in the place of an old one.
4. **By altering the terms of contract:**
5. **By release of Principal debtor:**

DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND CONTRACT OF GUARANTEE:

	Contract of indemnity	Contract of guarantee
1	A contract by which one party promise to save the other from loss caused	contract to perform the promise or discharge the liability of a third person in case of his default.
2	In a contract of indemnity there are only two parties.	In a contract of guarantee, there are three parties
3	In a contract of indemnity, the liability of the indemnifier is primary and independent.	The liability of the surety is secondary and dependent
4	There is only one contract in a contract of indemnity.	In a contract of guarantee, there are three contracts
5	Consideration is must	Consideration is not must
6	It is not necessary for the indemnifier to act at the request of the indemnity holder.	It is necessary that the surety should give the guarantee at the request of the debtor
7	The indemnifier cannot sue third parties for loss	entitled to sue against the principal debtor in his own name.
8	The object of a contract of indemnity is to save the promisee form loss.	The object of a contract of guarantee is to provide an assurance
9	Both the parties must have contractual capacity.	Principal debtor need not necessarily be competent to contract.

RIGHTS OF SURETY:

A surety has certain rights against (1) the creditor (2) the debtor (3) the co-sureties

1. Rights against creditor:-

A. Right to be set-off: On being sued by the creditor the surety may plead any set of or counter claim which the debtor has against the creditor.

B. right of subrogation

C. right to securities **2. Rights against principal debtor:-**

a. Right of subrogation: - Where a guaranteed debt has become due and the surety has paid all that he is liable for, he is invested with all the rights which the creditor had against the principal debtor.

b. Right to indemnity: In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety and the surety is entitled to recover from the principal debtor all payments properly made.

3. Rights against co-sureties:

When a debt is guaranteed by two or more sureties, they are called co-sureties. The co sureties are liable to contribute, as agreed, towards the payment of the guaranteed debt.

a. Co-sureties liable to contribute equally: - Where there are two or more co-sureties for the same debt and the principal debtor has committed a default, the co-sureties in the absence of any contract to the contrary, is liable to contribute equally to the extent of default.

b. Liabilities of co-sureties bound in different sums (sec.147): Where the co-sureties have agreed to guarantee different sums, they have to contribute equally subject to the maximum amount guaranteed by each one.

c. Release of co-surety: Where there are co-sureties, a release by the creditor of one of them does not discharge the others, nor does it free the surety so released from his responsibility to the other sureties.

d. Right to share benefits of securities.

DISCHARGE OF SURETY FROM LIABILITIES:

The following are the circumstances under which a surety is discharged from his liability.

1. **Revocation by giving notice:** - In the case of continuing guarantee, by giving notice of revocation by the surety, he can be relieved from his liability with respect to future transactions.
2. **Revocation by death of surety:** - In the case of continuing guarantee the death of a surety discharges him from all liabilities as regards transactions after his death.
4. **Novation:** A surety is discharged when a new contract of guarantee is substituted for an old one.
5. **Release or discharge of the principal debtor:** - The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor; the legal consequences of which is the discharge of the principal debtor.
- 6 **Variation in terms of contract:** A surety will be discharged from his entire liabilities if the terms of original contract between the principal debtor and the creditor have been altered in any way without his consent.
7. **Loss of securities:** If the creditor loses or parts with the securities belonging to the principal debtor without the consent of the surety, then the surety will be discharged to the extent of the value of the surety.
8. **Guarantee obtained by misrepresentation:** If the surety's consent to guarantee is obtained by the creditor by his misrepresentation then the contract becomes invalid and the surety gets discharged.
9. **Guarantee obtained by concealment:-** The surety is discharged if the guarantee is obtained by the creditor by means of keeping silence as to material fact, as the contract becomes invalid.
10. **Failure of consideration:** The surety will be discharged on a substantial failure of consideration.

11. **Lack of any essential element of contract:** A contract of guarantee like any other contract must have all the essential elements of a valid contract. If any of the elements is not present, the contract is void and the surety is discharged.

CONTRACT OF BAILMENT AND PLEDGE:

The word 'bailment' is derived from a French word 'Bailer' which means 'to deliver'. In legal sense, it has been defined as voluntary change of possession of goods from one person to another for some purpose. The person who delivered the good is called bailor and the person to whom they are delivered is called the bailee. The transaction is called bailment.

ESSENTIALS OF BAILMENT:

1. **There must be a delivery of goods:** - Delivery of goods from one person to another for some specific purpose is very essential for bailment. Mere custody without possession does not create bailment.
2. **Specific purpose:** - Delivery of goods should be made for some specific purpose. If the goods are delivered to a particular person by mistake, there is no bailment at all.
3. **Return of goods:** - When the purpose is accomplished the same goods are to be returned.
4. **Ownership:** In the bailment, ownership is not transferred from the bailor to the bailee. Possession alone is transferred.
5. **Movable goods:** Bailment is concerned with only movable goods. It is important to note that money is not included in the category of movable goods.
6. **Contract:** bailment arises express or implied contract

KINDS OF BAILMENT :**On the basis of reward**

1. **Gratuitous bailment** it is one where no consideration or remuneration passes between bailor and bailee.
2. **Non gratuitous bailment-** it is one where some considerations pass between bailor and bailee.

On the basis of benefit received –

1. Bailment for the exclusive benefit of the bailor – it is a bailment where the goods are delivered only for the benefit of the bailor himself.

2. Bailment for exclusive benefit of bailee - it is a bailment where the goods are delivered only for the benefit of the bailee.

3. Bailment for the mutual benefit - it is a bailment where the goods are delivered for the mutual benefit of bailor and bailee.

DUTIES OF A BAILOR:

1. Duty to disclose known defects:-It is the duty of the bailor to disclose all the known defects in the goods bailed to the bailee. If he fails to do so, he is responsible for any damage caused to the bailee directly from such defects.

2. Duty to bear extraordinary expenses: - Where the bailment is gratuitous and the bailee is to receive no remuneration the bailor shall pay the bailee all the necessary expenses incurred for the purpose of bailment.

3. Duty to indemnify bailee: - Sec. 164 of the act says that the bailor should indemnify the bailee for any cost or costs incurred because of the defective title of the bailor to the goods bailed.

4. Duty to receive back the goods bailed: When the bailee returns the goods after the purpose is fulfilled or the time is expired, it is the duty of the bailor to receive back the goods.

5. Duty to bear normal risks

RIGHTS OF BAILOR:

1. Entitled to get back the goods:-He is entitled to get back the goods bailed as soon as the time for which they were bailed has expired or the purpose for which they were bailed has been accomplished.

2. Right to terminate the contract: The bailor can terminate the contract if the bailee does, with regard to the goods bailed, any act which is inconsistent with the terms of the bailment.

3. Right to claim damages: The bailor has an inherent right to claim for damages for any loss that might have been caused to the goods bailed, due to the negligence of the

bailee.

4. Right to recall goods at any time in a gratuitous bailment: When goods are lent gratuitously, the bailor can demand the return whenever he pleases, even though he had lent them for a specified period.

5. Right to claim compensation

To claim increase of profit from the goods.

6. Enforcement of right: - The bailor has a right to enforce by suit all the liabilities or duties of the bailee.

DUTIES OF A BAILEE:

1. To take reasonable care of the goods bailed: - The most important duty of the bailee is to take care of the goods entrusted to him.

2. Not to mix the goods bailed and his own goods: - The bailee must keep his own goods separately from the goods of bailor.

3. Not make an unauthorized use of goods: - If the bailee makes unauthorized use of goods, he is responsible for all damages to the goods and must pay compensation to the bailor.

4. Not to set up an adverse title: - It is the duty of the bailee to return the goods only to the bailor even though any third person is claiming the title over them.

5. Return the goods: - According to sec. 160, it is the duty of the bailee to return or deliver according to bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired.

6. Return the additions or profit: - According to sec 163, in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase of profit which may have acquired from the goods bailed.

Rights of a bailee:-

1. Right to enforce the duties of the bailor: - The bailee, by suit enforce the duties of the bailor.

2. Right to deliver goods to one of the joint owners: - In the absence of an agreement to the contrary, when several joint owners of goods bail them to a bailee, the bailee has a right to deliver back the goods to anyone of the joint bailors without the consent of all.

3. Right to claim damages: - According to sec 150, if the bailee has suffered any loss due to the non-disclosure of facts by the bailor, he has a right to claim damages to that

4. Right to indemnify: - If any loss is caused to the bailee due to the demand made by the bailor for return of goods before the specified time, the bailee has a right to be indemnified by the bailor.

5. Right to sue: - Bailee can file a suit against a person who has wrongfully deprived him of the use or possession of the goods bailed or has done them an injury.

6. Right of lien: - Where the bailee has rendered any service in accordance with the purpose of the bailment involving the exercise of labour or skill, he has a right to retain such goods until he receives the due remuneration for the services he has rendered in respect of them.

7. Right to claim necessary expenses:

8. Right to recover loss due defective title of the bailor.

LIEN

Lien is a right by which one person is entitled to retain the possession of some goods belonging to another, until the demands of the person in possession are satisfied. This right is sometimes called 'possessory Lien'.

Lien may be of two types, Particular lien and General lien.

1. Particular or special lien:-This is a right to retain particular goods until claims arising on those goods are satisfied.

2. General Lien: - A general lien is a right to retain any goods belonging to the other as security for a general balance of accounts. The right of a general lien is given only to particular person. The persons entitled to general lien are bankers, factors.

DISTINCTION BETWEEN PARTICULAR LIEN AND GENERAL LIEN:

	Particular lien	General lien
1	Right to retain particular goods until claims on account of those goods are paid	Right to retain all the goods of the other party until all the claims of the holder are paid.
2	Available to all bailees	Available to limited number of Bailees
3	Can be exercised in those goods in respect of which labour or skill has been exercised by the bailee	Can be exercised against all goods lying under the possession of the bailee

TERMINATION OF BAILMENT:

A contract of bailment will be terminated in the following circumstances:

1. On the expiry of time: - If the contract of bailment is for a stipulated time period, on the expiry of the time, it will be terminated automatically.

2. Accomplishing the objectives: - If the bailment is for a specific purpose, it terminate as soon as the purpose is fulfilled.

3. Destruction of subject matter: - When the subject matter of the bailment is destroyed, a bailment is terminated.

4. Death of bailor or bailee: - A gratuitous bailment is terminated by the death of either the bailor or the bailee.

5. Misuse of the goods: If the bailee does any act in respect of goods bailed against the terms of bailment, the contract of bailment becomes voidable at the option of the bailor.

6. Demand of goods by gratuitous bailor.

FINDER OF LOST GOODS

A finder of goods is a person who finds goods belonging to another and takes them into custody. Generally there is no obligation on the part of a person who finds goods, but if he picks them up or to

take charge of the goods, he becomes the bailee of those goods.

Rights of the finder of lost goods:-

Right of lien

Right to claim reward

Right of sale of goods

OBLIGATION OF FINDER OF LOST GOODS:-

1. He must take reasonable care of the goods.
2. He should not use the goods for his own use.
3. He must try to find out the true owner of the goods

PLEDGE OR PAWN

According to sec. 172, “The bailment of goods as security for payment of debt or performance of promise is called pledge or pawn” The bailor here is the pawner and the bailee is the pawnee.

ESSENTIALS OF PLEDGE

1. Delivery of goods
2. Returning the goods
3. Movable goods
4. Existing goods
5. Contract
6. Transfer of possession
7. Delivery of goods by way of security
8. Security is meant for the payment of debt

RIGHTS OF A PAWNEE/PLEDGE:

1. **Rights of retainer:** The pawnee has a right to retain the goods pledged not only for the payment of debt, but also for its interest.

2. **Retainer of subsequent advances:** When the pawnee lends money to the same pawner after the date of the pledge, it is presumed that the right of retainer over the pledged goods extends to subsequent advances also.

3. **Right to extra ordinary expenses:** - The pawnee has a right to receive from the pawner, extra ordinary expenses incurred by him for the preservation of the goods pledged.

RIGHTS OF PAWNER OR PLEDGER:

1. **Right to get back goods:** - The pawner in entitled to get back the goods pledged.

2. Right to redeem debt: - The pawner should repay the loan and take back the delivery of the goods from the pawnee within the stipulated time.

3. Rights of an ordinary debtor: - The pawner as a debtor has various rights given to him by statute for the protection of debtors.

4.preservation and maintenance Right to receive any increase of profit

DIFFERENCE BETWEEN BAILMENT AND PLEDGE

	Bailment	pledge
1	Any kind of purpose such as safe custody, repair, use etc.	Purpose is to secure the repayment of debt.
2	Bailee may have the right to use the goods	Does not have any right to use the goods.
3	Bailee has no right to sell the goods	Pledgee has the right to sell the goods
4	Lien can be exercised only for the labour and skill spent.	Can be exercised even for non - payment of debt.
5	Consideration may or may not exist	Consideration always exist
6	The bailee is liable to return the goods on demand by the bailor.	Pawnee is not liable to retain the goods delivered unless until the debt is repaid.
7	Discharged when purpose is accomplished.	Discharged with the payment of debt.

DIFFERENCES BETWEEN PLEDGE AND LIEN:

	Pledge	Lien
1	Purpose is to secure the repayment of debt.	Purpose is to retain someone's property to recover the remuneration.
2	Pledge arises out of an agreement	Lien arises out of law
3	Goods are bailed as a promise and it gives a right to sell.	It has only a right to retain without a right to sell
4	It is terminated when the goods are returned to the owner	The right of a lien is lost when the possession of goods is lost.

PLEDGE BY NON OWNERS:-

In the following cases, one who is not an owner can make a valid pledge

1. **A mercantile agent**, -who is with the consent of the owner in possession of the goods or of the documents of title to goods, can make a valid pledge of the goods while acting in the ordinary course of business of a mercantile agent.
2. **A person having a possession of goods**-under a voidable contract can make a valid pledge of the goods so long as the contract is not rescinded.
3. **Where the person pledges goods in which he has only a limited interest** - the pledge is valid to the extent of that interest.
4. **If one of several co-owners** - is in sole possession of the goods with the consent of the owners, he can make a valid pledge of the goods.

CONTRACT OF AGENCY

It is a contract which creates the relationship of agent with principal is known as agency. According to sec.182 of the Contract Act, "an agent is a person employed to do or to represent another in dealings with third person. The person for whom such act is done or who so represented, is called the principal.

ESSENTIAL FEATURES OF AGENCY:

1. **The principal should be competent to contract:** Any person who is major and of sound mind can employ an agent. A lunatic

or a drunken person cannot employ an agent.

2. **An agreement:** Agency should be created by an agreement between the principal and the agent. Such agreement may be either express or implied.

3. **Intention of the agent:** Intention of the agent to act on behalf of the Principal is also an essential feature of the contract of agency.

4. **No consideration is necessary:-** According sec.185, No consideration is necessary to create an agency. Generally an agent is remunerated by way of commission for service rendered.

5. **Free consent:** An agreement of agency depends up on free consent of the principal and agent.

6. **Other essentials:** a valid agency must have all other essentials of a valid contract.

CREATION OF AN AGENCY:

An agency may be created in any of the following ways:-

1. **Agency by express agreement:** - When an agent is appointed by words, spoken or written is called agency by express agreement.

2. **Agency by implied agreement:-**It includes

a) **Agency by estoppels:** agency may be created by estoppel. Where a person by his conduct or statements induced others to believe that certain person is his agent.

b). **Agency by holding out:-**It is a branch of the agency by estoppels. In this case some affirmative conduct by the principal is necessary. Where a person permits another by a long course of conduct to pledge his credit for certain purposes, he is bound by the act of such person in pledging his credit for similar purposes, though in some cases without the previous permission of his master.

c. **Agency by necessity:** In some extraordinary circumstances, a person who is not really an agent should act as an agent of another. Such an agency is called agency by necessity.

Agency by ratification (Ex-post facto agency): Ratification means subsequent acceptance by the principal in all respect of an act done by the agent without authority. Sometimes the agent may act without the authority of the principal. If the principal accepts or ratify subsequently the act of the agent, he is said to have ratified the act.

Agency by operation of law –agency may also be created by operation of law. In such a case, law presumes a person as an agent of another.

DUTIES AND RIGHTS OF AN AGENT:

DUTIES OF AN AGENT TO PRINCIPAL:

1. **Duty to follow directions given:** An agent must conduct the business of the principal according to the directions given by the principal. In the absence of any direction, should conduct according to the custom.

2. **Duty to act with skill and diligence:** - An agent is bound to conduct business of the agency with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of his want of skill.

3. **Duty to render accounts:** It is the duty of an agent to keep the money and property of the Principal separate and to keep true and correct accounts.

4. **Duty to communicate in case of difficulty:** In cases of difficulty it is the duty of the agent to communicate with his principal and get his instruction.

5. **Duty to pay the amounts received for the principal:** It is the duty of the agent to pay overall money received on behalf of the principal subject to any lawful deductions for remunerations or expenses properly incurred.

6. **Duty not to delegate his authority:** An agent cannot delegate his authority to another person unless authorized or warranted by the usage of trade or nature of the agency.

7. **Duty on termination of agency by principal's death or insanity:-** When an agency is terminated by the principal's death or becoming of unsound mind, the agent is

bound to take on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interest entrusted to him.

8. **Duty not to disclose confidential information:** It is very important not to disclose the confidential information relating to the business of agency.

9. **Duty not to deal on his own account:** An agent should not deal on his own account in the business of agency. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account, the principal may either repudiate the transaction or claim from the agent any benefit which may have resulted to him from the transactions.

RIGHTS OF AN AGENT:

1. **Rights to remuneration:** Where services rendered by agent are gratuitous, he is entitled to receive the agreed remuneration or if nothing has been agreed, a reasonable remuneration.

2. **Right of retainer:** The agent has a right to retain his principal's money until his claim in respect of his remuneration or advances made or expenses properly incurred in conducting the business of agency are paid.

3. **Right of lien:** An agent has a right to retain goods, papers and other movable or immovable property of the principal received by him until the amount due to him had been paid or accounted for.

4. **Right of indemnification:** An agent had a right to be indemnified by the principal against the consequences of lawful acts done in exercise of his authority.

5. **Rights of compensation:-** An agent is entitled to claim compensation from the principal in respect of any injury caused to the agent by the negligence of the principal or want of skill.

RIGHTS AND DUTIES OF A PRINCIPAL
RIGHTS OF A PRINCIPAL:

1. The principal is entitled to compensation for any breach of duty by

the agent.

2. The principal has a right to give proper directions to the agent for the conduct of the business.

3. The principal is entitled to receive proper accounts from his agent

4. He is entitled to get profit, the agent makes by dealing with the principal's goods on the agent's own account.

5. He has the right to receive any secret profit made by the agent out of the agency.

6. He can revoke the authority of the agent under certain circumstances.

7. The principal has a right to receive all sums received on his account by the agent, after deducting the lawful remuneration and expenses incurred thereon.

DUTIES OF THE PRINCIPAL:

1. **Duty to pay remuneration**

2. **Duty to indemnify** the agent against the consequences of all lawful acts done in exercise of his duty.

3. **Duty to give compensation** to the agent in respect of any injury caused to such agent by the principal's neglect.

Liabilities of principal to third parties:-

1. **All acts of agent done within his authority:-**The principal is liable for the acts of the agent if they are done within the scope of his authority and in the course of his employment as an agent.

2. **Misrepresentation or fraud of the agent:** - The principal is responsible for and is bound by misrepresentation or frauds committed by the agent in respect of matters falling within his authority.

3. **Information obtained by the agent:** - Where an agent receives any information the presumption is that the agent communicates the same to his principal and it is construed that the principal has taken notice of it even though the agent did not in fact, communicate the information. It is called doctrine of 'constructive notice'.

4. **Where the agent acts for an unnamed or undisclosed principal:-**Undisclosed principal means principal whose existence and name both have not been disclosed by the agent. In this case, third parties have a right to discover the principal and to

proceed against him and hold him responsible for the contract entered into by the agent.

LIABILITY OF AGENT TO THIRD PARTIES:-

1. **Where the agent acts for foreign principal:** - Where the contract is made by an agent for the sale or purchase of goods for a merchant residing abroad, in such cases the agent would be personally liable.

2. **Where the agent acts for an undisclosed principal:** - Where the agent acts for an undisclosed principal, he is personally liable.

3. **When acting for a principal who cannot be sued:** Where the principal, though disclosed, cannot be sued, the agent is personally liable.

4. **Where money is paid by mistake or fraud:** - Where third party pays money to the agent by mistake or fraud, they can sue the agent personally.

5. **Where the agent exceeds his authority:** When the agent acts without or beyond his authority and in this way commits a breach of warranty of authority, he can be held personally liable.

6. **Where the agents' authority is coupled with interest:** -Where the agent has himself interest in the subject matter of agency, he shall be personally liable to that extend.

7. **When the agent signs the negotiable instrument in his own name:** - When an agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent, he is personally liable for the instrument.

9. **When the contract expressly provides:** Where the contract with the parties especially stipulates that the agent should be personally liable, in such cases the agent would be personally liable.

10. **Where misrepresentation committed outside the scope of his authority**

11. **Where an agent act for a non-existent principal**

Kinds of Agent:

1. On the basis of extend of their authority:

- a. General agent – who is employed to transact generally for all the business of the principal
- b. Special agent – is to do some particular act or represent his principal.
- c. Universal agent – authorized to transact all the business of his principal of every kind and to do all the acts which the principal can lawfully do and can delegate.

2. On the basis of nature of work performed:-

a. Commercial agent/mercantile agent – authority to sell goods on behalf of principal

- (i) Auctioneers – employed for the owner to sell his property publically by calling on the public to bid for it.
- (ii) Broker – who brings buyer and seller into contract with one another.
- (iii) Commission agent – do a certain act for his principal in return for a commission.
- (iv) Delcredere agent – who work for extra remuneration guarantees the performance of the contract
- (v) Factor – mercantile agent with whom goods are kept for sale.

b. Non mercantile agent

Estate agents, house agents, wife etc.

Sub Agent: A sub agent is a person employed by, and acting under the control of the original agent in the business of the agency. The agent is responsible to the principal for the acts of the subagent.

Substituted agent (Co-agent)

According to section 194 of the Contract Act, “When an agent has an express or implied authority of his principal to name another person to act for the principal and the agent names another person accordingly, such person is known as substituted agent. Such a person is an agent of the Principal and is responsible to him. The principal can sue the substituted agent for accounts or damages.

DIFFERENCE BETWEEN SUB AGENT AND SUBSTITUTED AGENT

	SUB AGENT	SUBSTITUTED AGENT
1	A sub agent is appointed by the agent	Named by the agent and appointed by the principal
2	Under the control of agent	Under the directions of principal
3	Agent is liable for the act of sub agent	An agent is not liable for the act of a substituted agent.
4	There is no contract between sub agent and principal	There is a contract between substituted agent and principal
5	Sub agent has no right to demand for the remuneration from the principal	Substituted agent has the right to demand for the remuneration from the principal
6	In case of appointment of sub agent, the original agent delegates his own authority.	In case of appointment of substituted agent, the original agent delegates the principal authority.
7	Sub agent is accountable to the principal only for his wrongful acts or fraud	A co- agent is fully accountable to the principal for his each and every act.

TERMINATION OF AGENCY:-

Termination of agency means cancellation of authority of the agent. A contract of agency may be terminated either by the act of parties or by the operation of law.

- 1. Termination by the act of parties:** - An agency may be terminated either by the principal or by the agent or both in the following ways.

a. **By Agreement:** - An agency contract can be terminated at any time and at any stage by the mutual agreement between the principal and the agent.

b. **Revocation by the principal:** - Principal may either expressly or impliedly after giving reasonable notice; revokes the authority of the agent before it has been exercised by the latter so as to bind the former.

c. **By renunciation of agency:** - The agent himself may renounce the agency after giving a reasonable notice to the principal. If the contract of agency is for a fixed period, the agent cannot renounce it before that period without any sufficient cause for the same.

2. Termination by operation of law:-An agency may terminated by operation of law in any of the following ways.

A. **By expiry of time:** - Where the agent is appointed for a fixed period, it terminates on the expiry of that time.

B. **By destruction of the subject matter:** - If the subject matter of the agency is destroyed, the agency comes to an end.

c. **Insolvency of the principal:** - If the principal is adjudicated as insolvent, the agency terminates, but insolvency of the agent does not terminate the agency.

d. **Principal becoming an alien enemy:-**The principal and the agent belong to different countries and war breaks out between those two countries, contract of agency is terminated

e. **Death or insanity of the Principal or agent:** - According to sec. 201, death or insanity of principal or agent automatically terminate the agency.

performance of contract

dissolution of the company: - When a company is dissolved, the contract of agency automatically comes to an end.

REVOCAION OF AGENCY:

The principal may revoke his agent's authority and that puts an end to the agency. Revocation of agency takes effect not from the moment of revocation, but when it becomes known to the agent and with regard to third persons when it becomes

known to him.

IRREVOCABLE AGENCY:

Agency cannot be revoked in the following cases:-

1. **When the agency is coupled with interest:** - When the agent is personally interested in the subject matter of agency, it is said to be agency coupled with interest. Agency is irrevocable during the existence of such interest.

2. **When the agent has incurred liability:** - Where the agent has incurred a personal liability in the contract of agency, the agency becomes irrevocable and the principal will not be permitted to revoke the agency leaving the agent exposed to risk.

3. **When the agent has partly exercised his authority:** - The principal cannot revoke the authority given to his agent after the authority has been partly exercised by the agent.

MODULE III

SALE OF GOODS ACT 1930

The Sale of goods Act contains certain law relating to sale of movable properties. The Act covers topics such as the concept of sale of goods, warranties and conditions arising out of sale, delivery of goods and passing of property and other obligations of the buyer and the seller, the documents to title to goods and the transfer of ownership on the basis of such documents. This act came into force on 1st July 1930, and it extends to the whole of India, except the state of Jammu and Kashmir. A contract of sale has some special features which are not common to all contracts.

GOODS:

The goods include every kind of movable property other than actionable claim or money. Actionable claims are claims which can be enforced only by taking action in a court of law. Goods also include stocks, shares, growing crops etc.

CONTRACT OF SALE:

According to section 4 of the sale of Goods Act, “A contract of sale of goods is a contract whereby the seller’s transfers or agrees to transfer the property in goods to the buyer for a price.”

A Contract of sale may be absolute or conditional. In absolute sale the property in the goods passes from the seller to the buyer immediately and nothing remains to be done by the seller. In conditional contract of sale, the property in the goods does not pass to the buyer absolutely until a certain conditions fulfilled.

ESSENTIAL FEATURES OF A CONTRACT OF SALE:

1. **Contract:** - A contract of sale is a contract and must fulfill all the requirements of a valid contract.

2. **Two parties:** - The sale requires existence of two parties, the seller and the buyer. The seller is a person who sells or agrees to sell goods. The buyer is a person who buys or agrees to buy goods. It is necessary that the same person cannot be both a seller and a purchaser.

3. **Movable goods:** - The subject matter of the contract of sale must be in the form of movable goods. Sale and purchase of immovable property are covered under the Transfer of Property Act 1882.

4. **Transfer of ownership:** It is the element which distinguishes a sale from several other classes of contract like bailment, lease etc. Hence, in a sale, ownership must be transferred from the seller to the buyer.

5. **Price:** - Price means money consideration for sale of goods. In a contract of sale money must be paid or promised. If there is no money consideration, the transaction is not a contract of sale.

6. **Form** – implied or expressed

DISTINCTION BETWEEN SALE AND AGREEMENT TO SELL:

	Sale	Agreement to sell
1	Where the ownership of goods is transferred just at the time of making a contract it is known as 'sale'	If the seller promises to transfer it at some future date, it is known as 'agreement to sell'.
2	Sale is an executed contract	an agreement to sell is an executory contract
3	gives right to the buyer to enjoy the goods as against the world at large.	gives a right to the buyer against the seller to sue for damage.
4	Buyer becomes the owner and he has to suffer the loss if the goods are damaged or destroyed.	Risk of loss is not transferred to the buyer
5	Existing and specific goods	Future and contingent goods
6	in case of breach by the buyer, the seller can sue for price of the goods	The seller may sue for damages only and not for the price
7	if the seller makes breach of contract, The buyer can file suit against seller for damages and can also use the rights to follow property	the buyer can only claim for damages
8	if the seller become insolvent, the buyer is entitles to recover the goods form the assignee or official receiver	If seller becomes insolvent the buyer can claim only a ratable dividend and not the goods.
9	if the buyer become insolvent the seller is entitled to a ratable dividend for the price of the goods.	If the buyer becomes insolvent before he pays for the goods, the seller may refuses to sell the goods

DIFFERENCE BETWEEN SALE & HIRE PURCHASE

	<u>Sale</u>	<u>Hire purchase</u>
1	Under sales ownership is transferred at the time of purchase.	Under hire purchase ownership is transferred only after paying last installment
2	In the case of sale, payment of price is generally paid in lump sum	In case of hire purchase payment of price is always made by installments
3	The buyer can hire out and sell the goods before paying the full amount due.	The buyer cannot hire out or sell the goods until the full amount is paid.
4	In the case of sale on credit the seller can sue the buyer for the payment of price due	If the buyer fails to pay any installment, the seller can repossess the goods
5	In sales position is like owner	In hire purchase position is like bailee
6	In case of cash sale, price does not include interest	But under H.P system the installment includes interest

SALE AND BAILMENT

Bailment is a contract to deliver the goods by one person to another for some purpose on the conditions that when the purpose is over, the goods will be returned to the person delivering them. The bailment contract differs with 'sale' on the following grounds.

- 1. Transfer of property:** - In a sale, the general property in goods is transferred to buyer at the time of making a contract. But in bailment specific property in goods passes to bailee for a temporary period.
- 2. Transfer of possession:** - In a sale, possession of goods may or may not be transferred immediately at the time of making a contract. While in bailment goods are immediately handed over to the bailee.

3. Return of goods: - In a sale goods are not returned to the seller. But in bailment, when the purpose is over the goods are returned to the bailor according to his instruction.

4. Consideration: - In a sale, consideration given to the seller in the form of money. But in bailment, consideration may or may not be present in the form of money.

Use of goods: - In a sale, the buyer is entitled to possess and use the goods at his own. But in bailment goods will be used according to instructions and terms and conditions of bailment.

SUBJECT MATTER OF CONTRACT OF SALE:

Goods may be divided into three types,

1. **Existing goods:** - Goods owned and possessed by the seller at the time of making of the contract of sale are called existing goods.. Existing goods may be either specific, ascertained or unascertained:

a. **Specific goods:** - 'Specific goods' means goods identified and agreed upon at the time a contract of sale is made

b. **Ascertained goods:** - It means goods identified in accordance with the agreement after the contract of sale is made

c. **Unascertained goods:** - these are the goods which are not specifically identified and agreed at the time when the contract of sale is made.

2. **Future goods:** - Sec. 2(6) of sale of goods act defines future goods as ,”Future goods means goods to be manufactured or produced or acquired by the seller after making of the contract of sale.” Future goods are not in existence at the time of contract of sale.

3. **Contingent goods:** - It is a type of future goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

CONDITIONS AND WARRANTIES

CONDITION:

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. If a condition is broken, the buyer has the right to terminate the contract to refuse the goods, and if he has already paid for them, then to recover the goods.

ESSENTIAL FEATURES

1. It is essential to the main purpose of the contract
2. The non –fulfillment of condition causes irreparable damage to the aggrieved party
3. The breach of condition gives a right to terminate the contract to the aggrieved party.

WARRANTY:

A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract repudiated. In short, breach of warranty will only give rights to claim for damages, while a breach of condition would entitle the other party to avoid the contract altogether.

DIFFERENCE BETWEEN CONDITION & WARRANTY

	<u>Condition</u>	<u>Warranty</u>
1	It is fundamental in nature and essential for main purpose of contract.	It is supportive and collateral to the contract
2	Due to breach of condition, the contract may be avoided	Breach of warranty may give a right to claim for compensation.
3	Breach of condition can be treated as breach of warranty	Breach of warranty cannot be treated as breach of condition
4	The main purpose of contract cannot be fulfilled unless the condition is fulfilled	Fulfillment of a contract does not depend on the fulfillment of a warranty

CONSEQUENCES OF BREACH OF WARRANTY:

- cancel the contract
- claim damages
- treat condition as warranty and claim damages
- no remedy when the seller is excused by law.

Express and Implied Conditions and Warranty:

In a contract of sale of goods, conditions and warranties may be express or implied. Express conditions and warranties are those which have been expressly agreed upon by the parties at the time of contract of sale. They are stated in definite words as the basis of the contract. When the conditions and warranties are not written in the contract, but applied to the contract either by operation of law or by trade or custom, they are called implied conditions and warranties.

IMPORTANT IMPLIED CONDITIONS:-

1. **Conditions as to title of goods sold:** - The first implied condition in the part of the seller is that, in the case of a sale, he has a right to sell the goods and that in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass. If the title of the seller turns out to be defective, the buyer is entitled to reject the goods and can recover the whole amount.
2. **Goods sold should correspond to description:** - Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description.
3. **Sale by sample:-**If the goods are supplied in a contract of sale, according to sample agreed upon, the implied conditions are:
 - a. The bulk shall correspond with the sample
 - b. the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and
 - c. the goods supplied shall be free from any defect.

4. Conditions as to quality or fitness: - Normally in a contract of sale there is no implied condition as to quality or fitness of the goods for a particular purpose. But there is an implied condition that the goods sold are reasonably fit for the purpose for which they are purchased for.

a. The goods are needed for a particular purpose which the buyer brings to the knowledge of the seller, either expressly or impliedly.

b. The buyer relies on seller's skill and judgment and

c. It is seller's duty to supply by description, then there is an implied condition that the goods should be reasonably fit for that purposes.

5. Condition as to merchantability: Where goods are bought by description, there is an implied condition that the goods shall be of merchantable quality.

6. Conditions as to wholesomeness: In a contract of sale of eatables and provisions, there is an implied condition on the part of the seller that the goods shall be wholesome. It means, the goods supplied by the seller must not be dangerously adulterated and must be fit for human consumption.

IMPORTANT IMPLIED WARRANTIES:

1. Warranty for quiet possession: - Where the buyer has obtained possession of the goods and if the buyer is in any way disturbed in the enjoyment of goods, the buyer has a right to sue the seller for damages caused.

2. Implied warranty against encumbrance: - There is also an implied warranty in all cases of sale that the goods are not subject to any charge in favour of third parties which is not disclosed or known to the buyer before or at any time when the contract is made.

3. Implied warranty as to usage of trade: - An implied warranty as to quality or fitness for a particular purpose may be fixed by the usage of trade.

DOCTRINE OF CAVEAT EMPTOR:

It is an important doctrine in connection with sale of goods. The term 'Caveat emptor'

means 'let the buyer beware'. This principle states that, at the time of buying goods, the buyer must make reasonable examination of the goods as to satisfy himself regarding suitability of goods for the purpose, he buys for and as to discover the defects. If the goods turn out to be defective or do not suit his purpose, the buyer cannot hold the seller liable for the same. It is the duty of the buyer to ensure that the goods are in good condition and suitable for his purposes.

EXCEPTIONS:

The following are the exceptions to the rule of caveat emptor:

1. Fitness for buyers purpose:- When the buyer, expressly or impliedly, makes known to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment the goods must be suitable for buyer's purpose. In such cases the doctrine of caveat emptor does not apply.

2. Sale under a patent or trade name:- In the case of a contract for the sale by a specified article under its patent or other trade name, there is an implied condition that the goods shall be reasonably fit for any particular purpose.

3. Merchantable quality: Where the goods are purchased by description from a seller who deals in goods of such description, there is an implied consideration is that the goods shall be of merchantable quality.

4. Usage of trade: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

5. Consent by fraud: Where the consent of the buyer is obtained by the seller or where the seller conceals a defect, the doctrine of caveat emptor does not apply.

6. Sale by Sample: Where the goods are bought by sample the doctrine does not apply, if the bulk does not correspond with the sample.

SALE BY NON OWNERS

The general rule is that if a person, who has no right or title to the goods, sold the same, the buyer cannot obtain any right or title to the goods which he purchased even though he may have acted honestly and paid the value for the goods.

According to sec. 27 of the sale of goods act, a buyer cannot get a good title to the goods unless he has purchased the same from the owner.

EXCEPTIONS TO THE GENERAL RULE

1. **Title by estoppels:** - When the owner by his conduct, or by an act, leads the buyer to believe that the seller has the authority to sell, then subsequently he may be stopped from denying the seller's authority to sell.

2. **Sale by a mercantile agent:** - The mercantile agent is a person who has authority, in the customary course of business, either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods.

3. **Sale by one of the joint owners:** - If one of the several joint owners of goods has the sole possession of the goods by permission of the co-owners, there is an exception to the general rule.

4. **Sale of goods obtained under a voidable agreement:** - When the buyer of goods has obtained possession thereof under a voidable agreement but the agreement has not been rescinded at the time of sale, the buyer obtains a good title of the goods provided he buys them in good faith and without notice of the seller's defect of title.

5. **Sale by the seller in possession of goods after sale:** - Where a seller, having sold goods, continues to be in possession of the goods or of documents of title to the goods and re-sells them either himself or through a mercantile agent in the same good faith and value without notice of previous sale, the new buyer gets good title.

6. **Re sale by an unpaid seller:** - An unpaid seller of goods who has exercised his right of lien or stoppage in transit resells the goods; the buyer acquires a good title to the goods as against the original buyer.

7. Sale under provisions of other acts:-

- a. Sale by a finder of lost goods under certain circumstances
- b. Sale by a pawnee or pledge under certain circumstances
- c. Sale by an official assignee or liquidator of companies.

RULES REGARDING DELIVERY: -

Following are the provisions relating to the delivery of goods by the seller to the buyer:

1. **Possession of goods:** Delivery should have the effect of putting the buyer in possession of the goods. So a delivery to anyone other than the buyer or his agent is insufficient.

2. **Delivery and payment are concurrent conditions:-** The seller should be ready to handover the possession of goods and the buyer should be ready to pay the price.

3. **Part delivery:** A delivery of part of the goods has the effect as delivery of the whole; such part delivery is made in progress of the delivery of the whole.

4. **Buyer to apply for delivery:** Unless expressly agreed to the contract, the seller is not bound to deliver them until the buyer applies for delivery.

5. **Time of delivery:** - in a contract of sale, the delivery of goods should be made within a reasonable time unless a time is fixed in the contract.

6. **Place of delivery:** - Where the place of delivery is stated in the contract, the goods must be delivered at the specified place during working hours on a working day.

7. **Goods in possession of third person:** - When the goods at the time of sale are in possession of a third person, delivery takes place only, if such third person acknowledges to the buyer that he holds the goods on his behalf.

8. **Expenses of delivery:** - The seller should bear the expenses of putting the goods into a deliverable state and also the incidental expenses unless otherwise agreed.

9. Installment delivery: - Unless both the parties agree, the buyer of goods is not bound to accept delivery thereof by installments.

10. Delivery to a carrier by wharfinger: Delivery of goods to a carrier for the purpose of transmission to the buyer for safe custody is prima facie deemed to be delivery of the goods to the buyer.

11. Buyer right of examining the goods: - Where the goods are delivered to the buyer which he has not previously examined, he is entitled to examine them for his satisfaction.

12. Return of rejected goods: - A mere fact that goods have been received does not lead to acceptance. In certain cases, buyer has a right to reject the goods after having received them. In such cases, the buyer is not bound to return the goods to the seller. It should be sufficient if he intimates his rejection.

14. When wrong quantity is delivered: - Where the quantity delivered is different from the quantity contracted then, the buyer accepts the goods which are in accordance with the contract and rejects the rest.

15. Liability of buyer for neglecting or refusing delivery of goods: - the buyer fails to take delivery within a reasonable time of that request, the buyer is liable to compensate the seller for any loss arising due to his neglect or refusal.

UNPAID SELLER:

An unpaid seller is a seller who has not been paid the whole of the price or any other negotiable instrument which is subsequently dishonored. Under sale of goods act, the unpaid seller has rights against goods and against the buyer personally.

1. Rights of an unpaid seller against the goods:-It includes

a. **Right of lien (sec.47 to 49):-** In the case of unpaid vendor's lien, the seller is entitled to retain the goods of the buyer until the whole price is paid even though the ownership is passed from the seller to the buyer

b. **Right of stoppage of goods in transit (sec.50 to 52):** It is only an extension of the unpaid seller's right of lien. This right can be exercised only when the following

conditions are satisfied.

- i. The seller must be an unpaid seller
- ii. Goods must be in transit
- iii. The buyer must have become insolvent

c. **Right of resale(sec. 54):** An unpaid seller can re-sell the goods:

- i. If the goods are of a perishable nature
- ii. When the unpaid seller gives notice of his intention to sell
- iii. Where the seller expressly reserves a right of re sale in case the buyer makes default.

2. Rights of an unpaid seller against the buyer personally:- The unpaid seller can exercise the following rights against the buyer personally

a. **Suit for price:** - When the property has passed to the buyer, and the buyer wrongfully neglects or refuses to pay, the seller can sue him for the price.

b. **Suit for damages:** - When the buyer wrongfully refuses to accept the goods, the seller may sue him for damages for non-acceptance.

c. **Suit for repudiation:** - If buyer repudiates the contract before the date of delivery the seller may treat the contract as subsisting and wait till the date of delivery, or may treat the contract as rescinded and sue for damages for breach.

d. **Suit for interest:** - The seller has a right to get interest from the buyer on the price of goods.

AUCTION SALE:

An Auction sale is a public sale, where the goods are offered to be taken by the highest bidder from among the public. The person who sells goods through auction is known as auctioneer. The relationship between the owner of the goods and the auctioneer is that of the principal and agent.

MODULE IV

CONSUMER PROTECTION ACT, 1986

The consumer protection act is a milestone in the history of socio-economic legislation of the country. It is one of the most progressive and comprehensive pieces of legislation enacted for the protection of consumer.

The consumer protection act was passed on 5th December 1986. This Act was amended in the year 1991, 1993 and 2002. This Act tries to help a consumer when the goods purchased are defective or the services rendered to him are unsatisfactory. Prior to enactment of this Act, consumer disputes had to be settled only through civil courts which are very expensive.

Definitions of Important terms:-

1. **COMPLAINANT:-** According to Section 2(1) (b) "Complainant" means (i) a consumer or (ii) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force or (iii) the central govt. or any state government, which makes a complaint (iv) one or more consumers, if there are a number of consumers and have the same interest.

2. **COMPLAINT:-** A complaint means any allegation in writing made by a complainant that a. An unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider.

b. The goods bought by him suffer from one or more defects.

c. The services hired by him suffer from deficiency in any respect;

d. A trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price fixed.

e. Goods which will be hazardous to life and safety

Complaint should contain

- Name and address of complainant
- Name and address of opposite part
- Description of goods and services
- Quality and quantity
- Price
- Date and proof of purchase
- Fact relating to complaint
- Relief which is seeking

3 **CONSUMER:-** According to this Act, "Consumer may **consumer of goods or consumer of service**

a. Buys any goods for a consideration which has been paid or promised or partly paid

and partly promised, or under any system of deferred payment.

b. Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment.

4. **CONSUMER DISPUTES:-** Consumer disputes means a disputes where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

5. **DEFECT:-** Defect means any fault, imperfection or short coming in the quality, quantity, potency or standard which is required to be maintained in relation to the goods.

6. **DEFICIENCY:-** It means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be in relation to any service.

7. **GOODS:-** According to the sale of goods act, goods means every kind of movable property other than actionable claims and money ie, legal tender. It includes shares, patent rights, copy rights trademarks, fruits, minerals, water, electricity etc.

8. **MANUFACTURER:-** A manufacturer as per sec 2 ((1)(j) is a person who

a. Makes or manufacture any goods or part thereof or

b. Does not make or manufacture any good but assembles part thereof.

c. Puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by him.

9. **RESTRICTIVE TRADE PRACTICES:-**

Restrictive trade practice means a trade practice which tends to bring about manipulation of price or its condition of delivery or to affect flow of supplies in the market relating to goods or services.

10. **SERVICE:-** According to section 2(1) (o)' includes the provisions of facilities in connection with banking, financing, insurance, transport, supply electrical or other agency, boarding and lodging or both, housing construction entertainment,

amusement etc.

11. **PERSONS:-** Person includes

- a. A firm whether registered or not
- b. A Hindu undivided family
- c. A co-operative society
- d. Every other association

12. **TRADER:-** Trader in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacture.

13. **UNFAIR TRADE PRACTICES:-** Unfair trade practice means a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practices.

RIGHTS AND REMEDIES OF CONSUMERS:

According to section 6 of the Consumer Protection Act, the following rights are available to consumers

1. **Rights to be protected or right to safety:** - Every consumer has the right to be protected against the marketing of goods and services which are hazardous to life and property.

2. **Right to be informed:** - Every consumer has the right to be informed about the quality, quantity, potency, purity standard and price of the goods or services as the case may be, so as to protect the consumer against the unfair trade practices.

3. **Right to be assured:** - Every consumer has a right to be assured, wherever possible, access to a variety of goods and services at competitive prices.

4. **Right to be heard:** - Every consumer has a right to be heard and to be assured that consumers interest will receive due consideration at appropriate forums.

5. **Right to seek redressal:** - Every consumer has a right to seek redressal against unfair trade practices or restrictive trade practices or exploitation of consumers.

6. **Right to consumer education:** - Every consumer has a right to consumer education, which will help the consumer to know his rights and duties.

REMEDIES TO CONSUMERS: - The consumer protection act provides the following remedies to consumers:

- a) Removal of defects from goods.
- b) Replacement of defective goods
- c) Refund against defective goods or deficient services.
- d) Award of compensation for the loss or injury suffered
- e) Removal of defects or deficiencies in the services
- f) Discontinuance of unfair trade practices or restrictive trade practices
- g) Prohibition on sale of hazardous goods.

CONSUMER PROTECTION COUNCILS: - The Act provides the establishment of a Central Consumer Protection Council by the Central Government and the state consumer protection council in each state by the respective state government.

Central Consumer Protection Council: - The central government shall, by notification, establish with effect from such date as it may specify in such notification, a council to be known as the Central Consumer Protection Council.

Constitution

Minister in charge – chairman and other official and non- official members

Terms and conditions of members of the Central Council:

The term of the council shall be three years. Any member may, by writing under his hand to the chairman of the central council, resign from the council.

Objectives of the Central Council:-

1. The right to be protected against the making of goods and services which are hazardous to life and property.
2. The right to be informed about the quality, quantity, potency, purity standard and price of goods or services as the case may be so as to protect against unfair trade practices.
3. The right to be assured, wherever possible, access to a variety of goods and services at competitive prices.
4. The right to be heard, and to be assured that consumers' interest will receive due consideration at appropriate forums.

5. The right to seek redressal against unfair trade practices or restrictive trade practices

6. The right to consumer education.

MEETINGS

The meetings of the central council shall be presided over by the Chairman. In the absence of the chairman, the vice chairman shall preside over the function. The central council shall meet as and when necessary, but at least one meeting of the council shall be held every year

The state Consumer Protection Council:

The state government shall by notification establish with effect from such date as it may specify in such notification, a council to be known as the State Consumer Protection Council.

Members of the Council:-

1. The minister in charge - chairman
2. member of other officials or non-official members representing by the State Government.
3. Such member of other official or non-official members, not exceeding ten nominated by the Central Government.

Meeting of the Council: - The State Council shall meet as and when necessary, but not less than two meeting shall be held every year. The state council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government

Objects:

The objects of State Consumer Protection Council shall be to promote and protect within the state the rights of the consumers as laid down in sec.6. Which are same as those of the central council.

The District Consumer Protection Council:- it shall consist of the following members.

1. The District Collector, who shall be its chairman.
2. Such member of other official and non-official members representing such interest as may be prescribed by the state Government.

Meetings: The District Council shall meet as and when necessary but not less than two meetings shall be held every year. The District Council shall meet as such time and place within the district as the chairman.

Objects: - The objects of every District Council shall be to promote and protect within the district the rights of the consumers.

Redressal Agencies for Consumer Disputes:

The consumer protection act provides for three tier quasi-judicial redressal machinery at the District, State and National levels for redressal of consumer disputes and grievances. Accordingly sec. 9 provides for the establishment of the following agencies.

a. A consumer Dispute Redressal Forum to be known as the "District Forum" established in each district of the State by notification. The State Government is empowered to establish more than one District Forum in a district.

b. A consumer Disputes Redressal Commission to be known as the "State Commission" established by the state Government.

c. A national Consumer Disputes Redressal Commission established by the Central Government.

DISTRICT FORUM:

Composition: - Each district forum shall consist of

- a. District judge as president
- b. Two other members, who shall be person of ability, integrity and standing and have adequate knowledge or experience, and one of whom shall be a woman.

Tenure of office: Every member of the District Forum shall hold office for a term of five years or up to the age of sixty five years.

Office and Place of sitting of the District Forum:

The office of the District Forum shall be located at the head-quarters of the District.

Jurisdiction of the District Forum: - The District Forum shall have a jurisdiction to entertain complaints where the value of the

goods or services and the compensation, if any, claimed does not exceed rupees five lakhs.

Powers of the District Forum:

1. Discover and produce any document or other material object producible as evidence.
2. Reception of evidence on affidavits
3. Requisition of report of the concerned analysis from the appropriate laboratory or from any other relevant source.
4. Any other matter which may be prescribed

State Commission: - Each state commission consist of

1. A person who is or has been a judge of a High Court, appointed by the State Government -president
2. Not less than two and not more than such number of members as may be prescribed, and one of whom shall be a woman, and who Shall have the following qualification:

- a. Not less than 35 years of age
- b. Possess a bachelor degree from a recognized university
- c. To be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years I dealing with problems relating to economics, law, commerce, accountancy etc

Office and Place of sitting of State Commission:Office of the state Commission shall be located at the capital of the State.

Monetary limit: - The state commission shall have jurisdiction to entertain complaints where the value of goods or services and compensation, if any, claimed exceeds Rs. Twenty lakhs but does not exceeds Rs. One crore.

National Commission: The National Commission shall consist of

1. A person who is or has been a judge of the Supreme Court, to be appointed by the Central Government, who shall be its President.
2. Not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who

shall have the following qualifications, namely

- a. To be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years I dealing with problems relating to economics, law, commerce, accountancy etc
- b. Be not less than thirty five years of age, and
- c. Possess a bachelor's degree from a recognized university

Monetary limit:-The National commission shall have jurisdiction entertain complaints where the value of the goods or services and compensation, if any claimed exceeds Rs. One crore.

MODULE V

CYBER LAWS IN INDIA

(Information Technology Act 2000)

Introduction

Digital technology and new communication system have made dramatic changes in our life style. Now business men and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents, as it is cheaper, easier and speedier. Though people were aware of the advantages of electronic medium, they were unwilling to conduct business due to lack of appropriate legal framework. Therefore the laws and rules became necessary to facilitate electronic medium. In 1996, the United Nations Commission on International Trade Law adopted the Model Law on Electronic Commerce. The United States by its regulation in 1997 recommended that the states shall give favorable consideration to this Model Law.

In discharge of its international responsibility, the Government of India enacted a Law in 2000 known as Information Technology Act 2000. The act extends to the whole of India and it applies also to any offence or contravention thereon committed outside India by any person.

DIGITAL SIGNATURE:

As per section 2(1) (p) of the act, a digital signature means an authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the other provisions of the act.

Thus a subscriber can authenticate an electronic record by affixing his digital signature. Sec.5 provides that when any information or other matter needs to be authenticated by the signature of a person, the same can be authenticated by means of the digital signature affixed in a manner prescribed by the central government.

DIGITAL SIGNATURE CERTIFICATE:

Any person may make an application to the certifying authority for the issue of a digital signature certificate in such form as may be prescribed by the Central Government. Every such application shall be accompanied by required fee and certification practice statement. On receipt of application, the certifying authority may, after considering certification practice statement and after making necessary enquiries, grant the digital signature certificate.

Issuance, suspension and revocation of Digital Signature Certificate:

As per Sec. 35, any interested person shall make an application to the CA for a Digital Signature Certificate. The application shall be accompanied by filling fees not exceeding Rs. 25,000 and a certification practice statement or in the absence of such statement; any other statement containing such particulars as may be prescribed by the regulations.

After scrutinizing the application, the CA may either grant the Digital Signature Certificate or reject the application furnishing reasons in writing for the same.

The CA also has the power to suspend the DSC in public interest on the request of the subscriber listed in the DSC or any person authorized on behalf of the subscriber. However, the subscriber must be given an opportunity to be heard if the

DSC is to be suspended for a period exceeding fifteen days. The DSC can be revoked in two different cases.

Firstly, it may be revoked either on the request or death of the subscriber or when the subscriber is a firm or company, on the dissolution of the firm or Secondly, according to section 38(2), the CA may suo motto revoke it if some material fact in the DSC is false or has been concealed by the subscriber or the requirements for issue of the DSC are not fulfilled or the subscriber has been declared insolvent or dead.

REGULATION OF CERTIFYING AUTHORITIES:

A CA is a person who has been granted a license to issue digital signature certificates. These CAs are to be supervised by the Controller of CAs as appointed by the Central Government. The Controller will normally regulate and monitor the activities of the CAs and lay down the procedure of their conduct. The CA s has to follow certain prescribed rules and procedures and must comply with the provisions of the Act.

ELECTRONIC GOVERNANCE

1. Legal recognition of electronic record.
2. Legal recognition of digital signature [
3. Use if electronic records and digital signatures in government. :
4. Retention of electronic records:
5. Publication of rules, regulations etc in Electronic Gazette:
6. Power to make rules by Central government in respect of digital signature(sec.10)

REGULATION OF CERTIFYING AUTHORITIES

Certifying Authority is a person who has been granted a license to issue a digital signature. The certifying authorities are under the supervision of Controller of Certifying Authorities including Deputy Controllers and Assistant Controllers.

Appointment of Controller Certifying Authorities(sec17)

(a) The central government may, by notification in the Official Gazette, appoint a Controller of Certifying Authorities and

such number of Deputy Controllers and Assistant Controllers as it deems fit.

(b) The Controller shall discharge his functions subject to the general control and directions of the central government while the Deputy Controllers and Assistant Controllers shall perform the functions assigned to them by the Controller.

(c) The Controller may, in writing, authorize the Deputy Controller, Assistant Controller or any officer to exercise any of his powers (sec27).

(d) There shall be seal of the Office of the Controller (sec17(b))

OFFENCES AND PENALTIES UNDER IT ACT 2000

Cyber- crime can be defined as unlawful acts where in the computer are either a tool or target or both.

1. Tampering with computer source documents: - If a person intentionally conceals, destroys or alters or causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer network, he shall be punishable with imprisonment up to three years with a fine up to two lakh rupees or with both

2. Hacking with computer system: - Hacking means destroying, deleting or altering any information residing in a computer resource. It is punishable with imprisonment up to three years or with fine which may extend up to two lakh rupees or with both.

3. Publishing of information which is obscene in electronic form: - Publishing and transmitting information, which is obscene in electronic form, shall be punishable with imprisonment up to five years or with a fine up to Rupees one lakh and for second conviction with imprisonment up to 10 years and with a fine up to rupees two lakh.

4. Securing access to protected system contravened: - Any person who secures access to a protected computer system in contravention of the provisions of this section shall be punished with imprisonment for a term which may extend

to ten years and shall also be liable to fine.

5. Misrepresentation:- For obtaining any license or Digital Signature Certificate, if any person makes any misrepresentation or suppress any material fact, they shall be punished with imprisonment up to two years or with a fine up to one lakh rupees or with both.

6. Breach of confidentiality and privacy:- Any person commits breach of confidentiality and privacy of electronic information or documents shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees or with both.

7. Publishing digital signature certificate false in certain particulars: - If any person publishes or otherwise makes available a Digital Signature Certificate for any fraudulent or unlawful purpose shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

8. Confiscation:- Any computer, computer system, CDs or any other accessories related there to, in respect of which a contravention of the Act has occurred shall be liable to confiscation.

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