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INDEX

UNIT - I
INDIAN CONTRACT ACT

Indian Contract Act frames and validates the contracts or agreements between various parties. Contract Act is one of the central laws that regulate and oversee all the business wherever there is a case of a deal or an agreement. The following section will tell us what a contract is.

Contract Act

The Indian Contract Act, 1872 defines the term "Contract" under its section 2 (h) as "An agreement enforceable by law". In other words, we can say that a contract is anything that is an agreement and enforceable by the law of the land.

This definition has two major elements in it viz – "agreement" and "enforceable by law". So in order to understand a contract in the light of The Indian Contract Act, 1872 we need to define and explain these two pivots in the definition of a contract.

Agreement

In section 2 (e), the Act defines the term agreement as "every promise and every set of promises, forming the consideration for each other".

Promise

The Act in its section 2(b) defines the term "promise" here as: "when the person to whom the proposal is made signifies his assent thereto, the proposal becomes an accepted proposal. A proposal when accepted, becomes a promise".

In other words, an agreement is an accepted promise, accepted by all the parties involved in the agreement or affected by it. This definition says that in order to establish or draft a contract, we need to initiate some steps:

I. The definition requires a person to whom a certain proposal is made.

II. The person (parties) in step one has to be in a position to fully understand all the aspects of a proposal.

III. "Signifies his assent thereto" – means that the person in point one accepts or agrees with the proposal after having fully understood it.

IV. Once the "person" accepts the proposal, the status of the "proposal" changes to "accepted proposal".

V. "Accepted proposal" becomes a promise. Note that the proposal is not a promise. For the proposal to become a promise, it has to be an accepted proposal.

Essentials of a Valid Contract

1] Two Parties

So you decide to sell your car to yourself! Let us say to avoid tax or some other sinister purpose. Will that be possible? Can you have a contract with yourself? The answer is no, unfortunately. You can't get into a contract with yourself.

A Valid Contract must involve at least two parties identified by the contact. One of these parties will make the proposal and the other is the party that shall eventually accept it. Both the parties must have either what is known as a legal existence e.g. companies, schools, organizations, etc. or must be natural persons.

For Example: In the case State of Gujarat vs Ramanlal S & Co. – A business partnership was dissolved and assets were distributed among the partners as per the settlement. However, all transactions that fall under a contract are liable for taxation by the office of the State Sales Tax Officer. However, the court held that this transaction was not a sale because the parties involved were business partners and thus joint owners. For a sale, we need a buyer (party one) and a seller (party two) which must be different people.

2] Intent of Legal Obligations

The parties that are subject to a contract must have clear intentions of creating a legal relationship between them. What this means is those agreements that are not enforceable by the law e.g. social or domestic agreements between relatives or neighbours are not enforceable in a court of law and thus any such agreement can't become a valid contract.

3] Case Specific Contracts

Some contracts have special conditions that if not observed would render them invalid or void. For example, the Contract of Insurance is not a valid contract unless it is in the written form.

Similarly, in the case of contracts like contracts for immovable properties, registration of contract is necessary under the law for these to be valid.

4] Certainty of Meaning

Consider this statement "I agree to pay Mr. X a desirable amount for his house at so and so location". Is this a valid contract even if all the parties agree to this term? Of course, it can't be as "desirable amount" is not well defined and has no certainty of meaning. Thus we say that a valid contract must have certainty of Meaning.

5] Possibility of Performance of an Agreement

Suppose two people decide to get into an agreement where a person A agrees to bring back the person B's dead relative back to life. Even when all the parties agree and all other conditions of a contract are satisfied, this is not valid because bringing someone back from the dead is an impossible task. Thus the agreement is not possible to be enforced and the contract is not valid.

6] Free Consent

Consent is crucial for an agreement and thus for a valid contract. If two people reach a similar agreement in the same sense, they are said to consent to the promise. However, for a valid contract, we must have free consent which means that the two parties must have reached consent without either of them being influenced, coerced, misrepresented or tricked into it. In other words, we say that if the consent of either of the parties is vitiated knowingly or by mistake, the contract between the parties is no longer valid.

7] Competency of the Parties

Section 11 of the Indian Contract Act, 1872 is:

"Who are competent to contract — Every person is competent to contract who is (1) of the age of majority according to the law to which he is subject, and who is (2) of sound mind and is (3) not disqualified from contracting by any law to which he is subject."

I. Refers to the fact that the person must be at least 18 years old or more.

II. Means that the party or the person should be able to fully understand the terms or promises of the contract at the time of the formulation of the contract.

III. States that the party should not be disqualified by any other legal ramifications. For example, if the person is a convict, a foreign sovereign, or an alien enemy, etc., they may not enter into a contract.

8] Consideration

Quid Pro Quo means 'something in return' which means that the parties must accrue in the form of some profit, rights, interest, etc. or seem to have some form of valuable "consideration".

For example, if you decide to sell your watch for Rs. 500 to your friend, then your promise to give the rights to the watch to your friend is a consideration for your friend. Also, your friend's promise to pay Rs. 500 is a consideration for you.

9] Lawful Consideration

In Section 23 of the Act, the unlawful considerations are defined as all those which:

I. it is forbidden by law.

II. is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent.

III. involves or implies, injury to the person or property of another

IV. the Court regards it as immoral or opposed to public policy

Type of Contracts

In a broad sense, the type of contract in business law can be divided into three categories. They are:

- Contracts are made based on the mode of formation.
- Contracts are made based on performance.
- Contracts are made based on Enforcement/validity.

1. Based on the mode of formation

- **Express contract:** The proposal given or acceptance of the proposal/promise is agreed upon in words. Then it is known as an express contract. The two parties interact and decide the terms and conditions with the obligations that must be adhered to while making this type of contract in business law.

Some clauses and points are spoken and discussed, while some may be in written form and drafted with the help of a company lawyer.

- **Implied contract:** The type of contract in business law which is existing in nature but is not necessarily written or spoken. The parties have a binding legal obligation that is based on the duties, responsibilities, and circumstances.

Implied contracts are further classified into two parts implied- in – fact contracts and implied-in-law contracts.

- **Quasi-contract:** It is one of the types of contract in business law where the parties have no obligations and enter into an active agreement. A quasi-contract is used by a party who has possession related to another party's property.

These types of contracts in business law are legally binding and may not have any previous documentation. The contract is designed to retrieve fair outcomes from the business structure.

- **E-contracts:** These types of contracts in business law are signed digitally. The parties can arrange to make one without meeting each other in person. Electronic contracts are enforceable if they adhere to every condition and requirement of the Indian Contracts Act 1872.

Some parties may hold a dominant position over other parties. The Indian evidence act 1872 and The Information Technology Act 2000 have some provisions which provide the necessary information on the regulatory standards for such contracts.

2. Based on performance

- **Executed contracts:** These types of contracts in business law are signed to form a contractual relationship between the two parties. The parties show their mutual consent to follow every obligation stated in the agreement as per law provisions. There is a distinct difference between the execution date and the effective date.
- **Executory contract:** The type of contract in business law where parties have a mutual understanding of their roles but do not fulfil the necessary objectives or obligations are executory contracts. It is based on a future consideration or promise provided in the agreement.
- **Partly Executed and partly executory contract:** In this type of contract in business law, one party has fulfilled their obligations and duties. The other party is yet to comply with its obligations. The process can cause litigation if not handled properly; taking online legal advice related to such matters may help both parties.
- **Unilateral contract:** These types of contracts in business law are generally unilateral/one-sided. The obligations and duties are fulfilled by only one party.
- **Bilateral contract:** It is a two-sided contract where both parties have to fulfil their obligations and promises. They come to terms and conditions with their agreement and act accordingly.

3. Based on Enforceability/ validity

- **Valid contract:** These contracts are entered and presumed valid only if they abide by the legal provisions of the Contract Act.
- **Void contract:** This type of contract in business law cannot be enforced in a court of law for any kind of litigation or unfulfilled obligations. The rights and risks are exercised accordingly by the parties.
- **Voidable contract:** This is a contract where one party can legally avoid their roles and duties or have the authorization to do so. The right is gained if a party proves the use of fraud, coercion, or undue influence.
- **Illegal contract:** Contract that is not legal as per law are called illegal contracts. They are void and cannot be enforced. Any criminal activity or fraudulent intent used in a contract is an illegal contract.
- **Unenforceable contract:** The type of contract in business law that are under the terms and conditions of the law but contains drafts and technical faults are unenforceable contract.

Proposal or offer

- The entire process of entering into a contract begins with the proposal or an offer made by one party to another. The proposal must be accepted to enter into an agreement.

- According to the Indian Contract Act 1872, proposal is defined in Section 2(a) as "when one person will signify to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer."

Features of a valid offer

The person making the offer/proposal is referred to as the "promiser" or the "offeror". And the person who accepts an offer is referred to as "promisee" or the "acceptor".

- The offeror must express his willingness to do or abstain from doing an act. Only willingness is not adequate. Or just an urge to do something or not to do anything will not be an offer.
- An offer can either be positive or negative. It can be a promise to do some act, and can also be a promise to abstain from doing any act/service. Both are valid offers.

There must be two parties

There have to be at least two parties a person making the proposal and the other person agreeing to it. All the persons are included i.e, Legal persons as well as artificial persons. Every proposal must be communicated. Communication of the proposal is mandatory. An offer is valid if it is conveyed to the offeree. The communication can either be express or implied. It can be communicated by terms such as word of mouth, messenger, telegram, etc. Section 4 of the Indian Contract Act says that the communication of a proposal is complete when it comes to the awareness of the person to whom it is made.

Example

'A' proposes, to sell a car to 'B' at a certain price. Once 'B' receives the letter, the proposal communication is complete.

It must create Legal Relations

An offer must be such that when accepted it will result in a valid contract. A mere social invitation cannot be regarded as an offer, because if such an invitation is accepted it will not give rise to any legal relationship.

Example

'A' invited 'B' to dinner and 'B' accepted the invitation. It is a mere social invitation. And 'A' will not be liable if he fails to provide dinner to B.

It must be certain and definite

The terms of the offer must be certain and clear in order to create a valid contract, it must not be ambiguous.

It may be specific or general

The specific offer is an offer that is accepted by any specific or particular person or by any group to whom it is made. Whereas, the general offers are accepted by any person.

Classification of offer

Some types of offers can be based on the design, timing, purpose, etc. Let us look at the offer's classification.

Express Offer

An offer may be made by express words, spoken or written. This is known as Express offer.

Example

When 'A' says to 'B', "will you purchase my car for Rs 2,00,000"?

Implied Offer

An offer may be derived from the actions or circumstances of the parties.

This is known as implied offer.

Example

There is an implied offer by the transport company to carry passengers for a certain fare when a transport company operates a bus on a particular route.

General Offer

A general offer is not made by any specified party. It is one that is made by the public at large. Any member of the public can, therefore, accept the offer and have the right to the rewards/consideration.

Example

'A' advertises in the newspaper that whosoever finds his missing son would be rewarded with 2 lakh. 'B' reads it and after finding the boy, he calls 'A' to inform about his missing son. Now 'A' is entitled to pay 2 lakh to 'B' for his reward.

Specific Offer

It is the offer made to a specific person or group of persons and can be accepted by the same, not anyone else.

Example

'A' offers to sell his house to 'B'. Thus, a specific offer is made to a specific person, and only 'B' can accept the offer.

Difference between General Offer and Specific Offer

General Offer	Specific Offer
General Offer is made to the whole world at large.	A specific Offer is made to some specific person.
A general offer can be considered by any person.	A specific offer can be accepted by only a specific person.

Cross offer

Two parties make a cross-offer under certain circumstances. It means that both make the same offer at the exact time to each other. However, in either case, the cross-offer will not amount to accepting the offer.

Example

'A' and 'B' both send letters to each other offering to sell and buy B's house at the same time. This is the cross offer made where one party needs to accept the offer of another.

Counter-offer

A counter-offer is an answer given to an initial offer. A counter-offer means that the original offer has been refused and replaced by another. The counteroffer offers three choices to the original offered; accept, refuse, or make another offer.

Lapses and revocation of an offer

- An offer lapses after a defined or reasonable time.
- An offer lapse by not being accepted in the specified mode
- An offer lapses by rejection.
- An offer lapses by the offeror or the offeror's death or insanity until acceptance.
- An offer lapses by revocation before acceptance.
- An offer lapses by subsequent illegality or destruction of the subject matter.

When communication is complete

- Communication of offer (section 4)

The communication of the offer is complete when it comes to the knowledge of the person to whom it is made.

Time of revocation of an offer

- Revocation of the offer (Section 4)

A proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterward.

Revocation of the offer by the offeror

The offeror can withdraw his offer before it is accepted "the bidder can withdraw (revoke) his offer at an auction sale before being accepted by any auctioneer using any of the customary methods.

Example

'A' agreed to sell the property to 'B' by a written document which stated "this offer to be left over until Friday 9 AM". on Thursday 'A' made a contract to sell the property to 'C'. 'B' heard of this from 'X' and on Friday 7 AM he delivered to 'A' acceptance of his offer. Held 'B' could not accept A's offer after he knew it had been revoked by the sale of the property to C.

Acceptance

The Indian Contract Act 1872 defines acceptance in Section 2 (b) as "When the person to whom the proposal is made signifies his assent thereto, the offer is said to be accepted. Thus the proposal when accepted becomes a promise." An offer can be revoked before it is accepted.

As specified in the definition, if the offer is accepted unconditionally by the offeree to whom the request is made, it will amount to acceptance. When the offer is accepted it becomes a promise.

Example

'A' offer to buy B's house for rupees 40 lacs and 'B' accepts such an offer. Now, it has become a promise.

When an offer is accepted and it becomes promise it also becomes irrevocable. No legal obligation created by an offer.

Types of Acceptance

- Expressed Acceptance

If the acceptance is written or oral, it becomes an Expressed Acceptance.

Example

'A' offers to sell his phone to 'B' over an email. 'B' respond to that email saying he accepts the offer to buy.

- Implied Acceptance

If the acceptance is shown by conduct, It thus becomes an Implied acceptance.

Example

The Arts Museum holds an auction to sell a historical book to collect charity funds. In the media, they advertise the same. This says that a Mere Invitation to an Offer as per Indian Contract Act, 1872.

The invitees offer for the same. Offer is expressed orally, so the offer to buy is an Express Offer, but by striking the hammer thrice the final call is made by the auctioneer. This is called Implied Acceptance.

- Conditional Acceptance

A conditional acceptance also referred to as an eligible acceptance, occurs when a person to whom an offer has been made tells the offeror that he or she is willing to accept the offer provided that certain changes are made to the condition of the offer. This form of acceptance operates as a counter-offer. The original offer or must consider a counter-offer before a contract can be established between the parties.

Consideration

Consideration is what makes the foundation of a contract. An agreement without consideration cannot amount to a legally enforceable contract. According to the Indian Contract Act, 19872, consideration is something done at the desire of the promisor. As consideration, the promisor may ask the promisee or any other person to do or abstain from doing something. This act of abstinence from it is known as the consideration to the contract.

Assume Mr. X sells his car to Mr. Y for Rs. 2,00,000. Mr. Y accepts the offer and agrees to pay him the amount. The sum of Rs. 2,00,000 will be a valid consideration, making this agreement a contract.

To get into more detail, let us see the types of consideration to a contract.

Types of consideration

Consideration may be of three types– past, present, and future. These are explained as:

Past consideration

Past consideration is something that the promisee has already done (or abstained from doing) before entering into any agreement. For example, Mr. A provided transportation to Mr. B in June. In July, Mr. B agreed to pay Mr. A Rs. 1,000 for the service. Since the act occurred before promising to pay, it serves as past consideration.

In many cases, it is also known as moral consideration. Let us see how.

Assume that you are driving when you witness an accident on the road. You help the injured person and take them to a hospital. A few days later, as a token of appreciation, the person offers Rs—2,000 for your help and any expense you may have incurred. The help you extended is taken as past consideration.

Present or executed consideration

This is when you provide the promisor with the consideration simultaneously while entering into a contract. This kind of act is always done (or not done) in response to an agreement with another party.

For example, you buy fruits from a vendor and immediately pay him the price. This payment is taken as executed or present consideration.

Future or executory consideration

Future consideration is when the promisor, promisee, or both move the act to a future date. It means that the parties have not yet performed their obligations.

For instance, you purchase a car from a showroom, which will be delivered next week. You agree to pay the seller when the car arrives. This implies that there is a contract between you and the seller, with a future consideration.

Various factors make the consideration valid. Let us get into the details.

Essentials of a valid consideration

The following things are required to make a consideration valid:

The consideration must move at the desire of the promisor

This implies that the consideration will only be valid when the promisor has requested it. Effectively, any act done voluntarily does not constitute valid consideration. For example, if you help a person find his missing wallet and then ask for a reward, he is not bound to pay you. The help you provided was voluntary and not asked for by the person.

The consideration may move from the promisee to any other person

It is not necessary for the promisee to supply the consideration. It may move from any other person. Even if you are a stranger to consideration, you can sue as long as you are a party to the contract.

The consideration must be lawful

An illegal consideration is not valid and makes the contract void. The Act declares consideration as unlawful if it is a forbidden act under any law, if it causes injury to a person or his property, or if it is immoral.

The consideration must be real and possible

An impossible act cannot be classified as valid consideration. Whatever is decided and agreed to as consideration must be capable of being performed. Impossibility may be legal or physical. Moreover, the consideration must not be uncertain.

The consideration may not be adequate

The Indian law states that adequacy of consideration is not necessary. The parties are free to bargain. A poor negotiation by one party does not make the contract void. However, the decision must be made with the free consent of both parties. For example, you sell your books worth Rs. 1,000 for Rs. 200 as per your wish. You cannot legally claim this as inadequate consideration later.

Competent to Contract

To make a contract, only certain people are eligible. The following are the people who have the capacity to contract:

- Those with a sound mind
- People who have crossed the majority age
- Those who can contract because they are qualified under the contracting law

Incompetent to Contract

To make a contract, certain people are not eligible. The following are the people who do not have the capacity to contract:

- Those with an unsound mind
- Minors who have not crossed the majority age
- Those who cannot contract because they are disqualified under the contracting law

Minors

Any person who is not of the age of majority is a minor. In India, 18 years is the age of majority. Below the age of 18 years does not have the capacity to enter into a contract. A contract or agreement with a minor is null from the beginning, and no one can sue them. The State provides the Minors with civil and criminal immunities. In addition to that, it takes custody of the well-being and the property of the minor. These immunities do not let the minors to enter into a contract. But if a minor enters into a contract knowing his incapability, then such a contract shall work independently of any contract.

If a party is from India and another party from a foreign country, then there will more than one law that will be applicable in the contract. In such cases, the TNS Firm v. Muhammad Hussain has set specific guidelines. The age of the majority for ordinary mercantile transactions will depend upon the law of the country where they make the contract. The age of the majority for land transactions will depend upon the law where the land is located.

Effects of a Minor's Agreement

If a minor enters into a contract by misrepresenting the age, then no one can stop him or her from disclosing their age. The minor is not liable for inducing another party into a contract. Even if any mishaps take place, he is not responsible. But in certain mishaps, he will be liable to it.

The minor to avoid a contract can plead his infancy. An agreement of a minor stands as a doctrine of restitution. Whereas if a minor purchases a property by hiding his age, then the purchased property will be returned. But, if he has converted or sold them, then the law cannot sue him.

Contracts Beneficial to Minors

One can bring a minor into a contract if he is beneficiary for the contract. The minor does not have a restriction to be a promisee or payee in a contract. Thus a minor can purchase an immovable property and also can sue for the possessions upon the tender of the money. One cannot order a specific performance against a minor.

Claim for Necessaries Supplied to Minors

Section 68 of the Indian Contract Act, 1872 states that if a person does not have the capacity of being in a contract receives necessaries from another person. He has the power to reimburse from the incapable person. Though section 68 makes minor liable for the necessaries, it does not define the necessaries. The necessaries will be decided upon the case. To have reimbursement for the necessaries the party supplying the necessaries must prove that the good and reasonable. They have also to confirm that the provided necessaries are the only support for the minor and that they do not have any sufficient supply with them.

Agents

The minor can become an agent. But he is not responsible to the principal. The contract of apprenticeship is a service contract, and it binds the minors by providing benefits to them. But such an apprenticeship contract is made by a parent or guardian.

Negotiable Instrument

The minor can draw, deliver, endorse and negotiate the negotiable instruments. This is to bind every party except him. Any person who receives any goods from the minor has to pay for it. A minor can avail the benefits of a partnership but cannot be a partner. A minor can register as a member to a fully paid shares of a company. If a minor owns the shares through transmission, then guardian of the minor's name will appear as a member.

Person of Unsound Mind

The contract law refers to the medical dictionary for the definition of an unsound mind person. The mental incapacity prevents the person from understanding the transactions and also the awareness of its implications. An agreement or contract with an unsound mind person stays inoperative and void. But such a person cannot avail any benefits from the contract. The property of such a person is always liable. It is responsible for the necessaries he receives or to anyone he is bound legally to support. A person who is normally of unsound mind but occasionally of sound mind can contract when he is of sound mind. This is the lucid intervals.

Intoxication

It is a mental disorder if there is the incompetence of intoxication. The person who alleges it can only prove the intoxication. A person drinking or consuming any intoxicants cannot enter into a contract in such an unsound mind state.

Person Disqualified by Law

If the law does not accept any person, then he does not have the capacity to enter into a contract. The law should qualify a person for them to be a part of a contract.

Alien Enemies

The foreign country citizens living in India are the alien enemies. Such persons have the capacity to enter into a contract with the Indians only during peace times. Such a contract is also subject to the restrictions of the Government. If there is a war declaration between his country and India, then he will become an alien enemy, and so he does not have the capacity to enter into a contract. If the person from the foreign country enters into a contract before the declaration of the war, then the contract will stay suspended during the period of war. The contract can be revived after the end of the war if it has not barred the time limit.

Convict Serving Sentence

A person who is guilty and is serving imprisonment does not have the capacity to enter into a contract. He also cannot sue on the contracts that were before his conviction. After the expiry of his sentence, he is at liberty to suit.

Married Women

A married woman does not have the capacity to enter into a contract relating to the property of her husband. But the wife can be an agent for her husband and bind his property if he fails to provide her with the necessaries.

Insolvent

An adjudged insolvent has the capacity to enter into a contract of certain types. The insolvent can incur debts, be an employee and purchase a property, but he cannot sell the property. He has certain disqualifications like he cannot be a magistrate, he cannot be a company's director, or he cannot be a local body's member. The insolvent person has the capacity of a contract except for his property. He becomes an ordinary citizen after the order of discharge.

Pardanashin Women

A person under the veil or parda and set out of the house, then she is under undue influence. She does not have an understanding of the implications of the contracts and so she does not have the capacity to contract.

Corporation Incorporated under a Special Act and Joint Stock Company

Such a corporation or company will be an artificial person formed by the law. It does not have the capacity to contract outside the powers of the Memorandum of Association or the Special Act.

Judges, Legal Practitioners or Officers

The judges, legal practitioners or officers who have a connection with the business interest in actionable claims do not have the capacity to enter into a contract.

Officers and Employees of the Patent Office

The officers and the employees of the patent office do not have the capacity to take rights, obtain or take an interest in the patent issued by them during the period of appointment.

Foreign Sovereigns and Ambassadors

International laws extend diplomatic immunities to foreign consulate employees and ambassadors. Hence the Indian laws cannot enforce the contracts on them. They can sue the persons to implement the contracts with them, but they cannot be sued without a sanction from the Central Government. Thus the ambassadors and the consulate employees are in a privileged position but are considered to be not competent to contract.

Free Consent

In the Indian Contract Act, the definition of Consent is given in Section 13, which states that "it is when two or more persons agree upon the same thing and in the same sense". So the two people must agree to something in the same sense as well. Let's say for example A agrees to sell his car to B. A owns three cars and wants to sell the Maruti. B thinks he is buying his Honda. Here A and B have not agreed upon the same thing in the same sense. Hence there is no consent and subsequently no contract.

Now Free Consent has been defined in Section 14 of the Act. The section says that consent is considered free consent when it is not caused or affected by the following,

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

Elements Vitiating Free Consent

1] Coercion (Section 15)

Coercion means using force to compel a person to enter into a contract. So force or threats are used to obtain the consent of the party under coercion, i.e it is not free consent. Section 15 of the Act describes coercion as

- committing or threatening to commit any act forbidden by the law in the IPC
- unlawfully detaining or threatening to detain any property with the intention of causing any person to enter into a contract

For example, A threatens to hurt B if he does not sell his house to A for 5 lakh rupees. Here even if B sells the house to A, it will not be a valid contract since B's consent was obtained by coercion.

Now the effect of coercion is that it makes the contract voidable. This means the contract is voidable at the option of the party whose consent was not free. So the aggravated party will decide whether to perform the contract or to void the contract. So in the above example, if B still wishes, the contract can go ahead.

Also, if any monies have been paid or goods delivered under coercion must be repaid or returned once the contract is void. And the burden of proof proving coercion will be on the party who wants to avoid the contract. So the aggravated party will have to prove the coercion, i.e. prove that his consent was not freely given.

2] Undue Influence (Section 16)

Section 16 of the Act contains the definition of undue influence. It states that when the relations between the two parties are such that one party is in a position to dominate the other party, and uses such influence to obtain an unfair advantage of the other party it will be undue influence.

The section also further describes how the person can abuse his authority in the following two ways,

- When a person holds real or even apparent authority over the other person. Or if he is in a fiduciary relationship with the other person
- He makes a contract with a person whose mental capacity is affected by age, illness or distress. The unsoundness of mind can be temporary or permanent

Say for example A sold his gold watch for only Rs 500/- to his teacher B after his teacher promised him good grades. Here the consent of A (adult) is not freely given, he was under the influence of his teacher.

Now undue influence to be evident the dominant party must have the objective to take advantage of the other party. If influence is wielded to benefit the other party it will not be undue influence. But if consent is not free due to undue influence, the contract becomes voidable at the option of the aggravated party. And the burden of proof will be on the dominant party to prove the absence of influence.

3] Fraud (Section 17)

Fraud means deceit by one of the parties, i.e. when one of the parties deliberately makes false statements. So the misrepresentation is done with full knowledge that it is not true, or recklessly without checking for the trueness, this is said to be fraudulent. It absolutely impairs free consent.

So according to Section 17, a fraud is when a party convinces another to enter into an agreement by making statements that are

- suggesting a fact that is not true, and he does not believe it to be true
- the active concealment of facts
- a promise made without any intention of performing it
- any other such act fitted to deceive

Let us take a look at an example. A bought a horse from B. B claims the horse can be used on the farm. Turns out the horse is lame and A cannot use him on his farm. Here B knowingly deceived A and this will amount to fraud.

One factor to consider is that the aggravated party should suffer from some actual loss due to the fraud. There is no fraud without damages. Also, the false statement must be a fact, not an opinion. In the above example if B had said his horse is better than C's this would be an opinion, not a fact. And it would not amount to fraud.

4] Misrepresentation (Section 18)

Misrepresentation is also when a party makes a representation that is false, inaccurate, incorrect, etc. The difference here is the misrepresentation is innocent, i.e. not intentional. The party making the statement believes it to be true. Misrepresentation can be of three types

- A person makes a positive assertion believing it to be true
- Any breach of duty gives the person committing it an advantage by misleading another. But the breach of duty is without any intent to deceive
- When one party causes the other party to make a mistake as to the subject matter of the contract. But this is done innocently and not intentionally.

Mistake of Law and Mistake of Fact

One important factor of a valid contract is free consent. Both the parties involved in the contract must enter the contract willingly and under no pressure. There are factors which impair the free consent of either party. Once such factor is "mistake", which includes a mistake of law and mistake of fact. Let us take a more detailed look into it.

Free Consent

According to section 14 of the Indian Contract Act 1857, free consent is defined as "consent is said to be free when it is not caused by coercion, under influence, fraud, misrepresentation, and mistake." In the previous article about Free Consent, we have already covered the first four factors. Here we will be looking at the mistake factor.

A mistake is an erroneous belief that is innocent in nature. It leads to a misunderstanding between the two parties. Now when talking about a mistake, the law identifies two types of mistakes, namely

I. A Mistake of Law
II. A Mistake of Fact

Mistake of Law

This mistake may relate to the mistake of the Indian laws, or it can be a mistake of foreign laws. If the mistake is regarding Indian laws, the rule is that the ignorance of the law is not a good enough excuse. This means either party cannot simply claim it was unaware of the law.

The Contract Act says that no party shall be allowed to claim any relief on the grounds of ignorance of Indian law. This will also include a wrong interpretation of any legal provisions.

However, ignorance of a foreign law is not given a similar treatment. Ignorance of the foreign law is given some leeway, the parties are not expected to know foreign legal provisions and their meaning. So a mistake of foreign law is in fact treated as a mistake of fact under the Indian Contract Act.

Mistake of Fact

Then there is the other type of mistake, a mistake of fact. This is when both the parties misunderstand each other leaving them at a crossroads. Such a mistake can be because of an error in understanding, or ignorance or omission etc. But a mistake is never intentional, it is an innocent overlooking. These mistakes can either be unilateral or bilateral.

Bilateral Mistake

When both parties of a contract are under a mistake of fact essential to the agreement, such a mistake is what we call a bilateral mistake. Here both the parties have not consented to the same thing in the same sense, which is the definition of consent. Since there is an absence of consent altogether the agreement is void.

However, to render an agreement void the mistake of fact should be about some essential fact that is of importance in a contract. So if the mistake is about the existence of the subject matter or its title, quality, quantity price etc then it would be a void contract. But if the mistake is of something inconsequential, then the agreement is not void and the contract will remain in place.

For example, A agrees to sell to B his buffalo. But at the time of the agreement, the buffalo had already died. Neither A nor B was aware of this. And so there is no contract at all, i.e. the contract is void due to a mistake of fact.

Unilateral Mistake

A unilateral mistake is when only one party to the contract is under a mistake. In such a case the contract will not be void. So the Section 22 of the Act states that just because one party was under a mistake of fact the contract will not be void or voidable. So if only one party has made a mistake of fact the contract remains a valid contract.

However, there are some exceptions to this. In certain conditions, even a unilateral mistake of fact can lead to a void or voidable agreement. Let's see a few of these exceptions via some examples and case studies.

1. **When Unilateral Mistake is as to the Nature of the Contract:** In such a case the contract can be held as void. Let us see the example of Dularia Devi v. Janardan Singh. Here an illiterate woman put her thumb impression on two documents thinking they were the same. She thought the document was to gift some property to her daughters. But the other document was a Sale deed to defraud the women out of more of her property. This contract was held void by the courts
2. **When the Mistake is regarding the Quality of the Promise:** There was an auction being held by A to sell hemp and tow. B thinking the auction was only for hemp, mistakenly bid for a tow. The amount bid was on par for hemp but very high for a tow. Hence the contract was held as voidable.
3. **Mistake of the Identity of the Person contracted with:** For example, when A wants to enter into a contract with B but mistakenly enters into a contract with C believing him to be B.

Lawful Object and Lawful Consideration

The legality of the object in contract law stipulates that the consideration and the object of a contract are considered legal except when:

- They are specifically forbidden by law.
- They are fraudulent in nature.
- The nature of the object and the consideration is such that it defeats the purpose of the law.
- They involve injury or harm to a person(s) or property.
- Are considered immoral by the court of law.
- Are against public policy.

Forbidden by the Law

An object and/or a consideration prohibited by law are not considered legal and render a contract void. Unlawful consideration of the object means unlawful acts that are punishable by the law. The acts disallowed by the appropriate authority by means of their rules and regulations are also considered for determining the legality. However, if these rules and regulations are not in tandem with the law, they are not applicable.

Forbidden by law provision renders a contract void but all void contracts may not be illegal.

Fraudulent in Nature

The object and the consideration of the contract must not be fraudulent as then, the contract will become void.

Example- A enters into a contract with B where he agrees to pay B if he embezzles money from C. This is considered a fraudulent object and the contract is not valid.

Defeats the Purpose of the Law

If the purpose of entering into the contract is to go against any provisions of law, the contract will be deemed void. The contract is void if:

- The object of the contract is to perform an illegal act.
- The object of the contract is explicitly or in an implied manner prohibited by law.
- The completion of the contract is impossible without going against the provisions of the law.

Example - A enters into a contract with B whereby B promises to not pursue legal proceedings against A if A commits a robbery in B's house. This contract is against the provisions of the IPC law.

Involves Injury or Harm to another Person or Property

The object of the contract must not cause any destruction to property or cause injury to another person.

Examples:

- Publishing a book on the life of a person without his consent.
- Destruction of a property.
- Violation of licenses.
- Violation of copyrights.

A enters into a contract with B whereby he agrees to pay a sum of money to B if he destroys a city landmark. This contract does not have a lawful consideration and lawful object and it is not deemed legal.

Immoral as Per Law

If the object and/or consideration of the contract are considered immoral, the contract will not be deemed void. Immoral acts are against the reasonable and acceptable general behaviour or personal conduct accepted by society.

Example - A lends money to B on the condition that B will divorce C, and later get married to A. If B does not divorce C, then A cannot pursue legal proceedings against B to recover the money. The basic premise of this contract is immoral so it will be deemed void.

Against the Public Policy

A lawful object in business law means that it should not be against public policy. The purpose of public policy is not to curtail any individual's rights but to maintain and protect the general welfare of the community. Let's see what kind of contracts are considered to be against the public policy:

- Entering into an agreement with a party that belongs to a country with which India does not have peaceful relations, makes the agreement void.
- Restraining from prosecution: A contract that prohibits a person from pursuing legal recourse is considered void.
- Maintenance and Champerty: In a maintenance agreement, a person promises to maintain a lawsuit in which he has no vested interest. Champerty is when a person agrees to assist another party in litigation in return for a portion of the damages or proceeds received.
- An agreement to indulge in trafficking in public offices.
- Agreements to create monopolies.
- An agreement to brokerage marriage as a reward.
- An agreement to induce judiciary or state officials to act in a corrupt manner and interferes with legal proceedings.

Contingent Contracts

An absolute contract is one where the promisor performs the contract without any condition. Contingent contracts, on the other hand, are the ones where the promisor performs his obligation only when certain conditions are met.

If you look at the contracts of insurance, indemnity or guarantee, they have one thing in common – they create an obligation on the promisor if an event which is collateral to the contract does or does not happen.

For example, in a life insurance contract, the insurer pays a certain amount if the insured dies under certain conditions. The insurer is not called into action until the event of the death of the insured happens. This is a contingent contract.

Under Section 31 of the Indian Contract Act, 1872, contingent contracts are defined as follows: “If two or more parties enter into a contract to do or not do something, if an event which is collateral to the contract does or does not happen, then it is a contingent contract.”

Example: Peter is a private insurer and enters into a contract with John for fire insurance of John’s house. According to the terms, Peter agrees to pay John an amount of Rs 5 lakh if his house is burnt against an annual premium of Rs 5,000. This is a contingent contract.

Here, the burning of the house is neither a performance promised as a part of the contract nor a consideration. Peter’s liability arises only when the collateral event occurs.

Essentials of Contingent Contracts

1] Depends on happening or non-happening of a certain event

The contract is contingent on the happening or the non-happening of a certain event. These said events can be precedent or subsequent, this will not matter. Say for example Peter promises to pay John Rs 5,000 if the Rajdhani Express reaches Delhi on time. This is a contingent event.

2] The event is collateral to the contract

It is important that the event is not a part of the contract. It cannot be the performance promised or a consideration for a promise.

Peter enters into a contract with John and promises to deliver 5 television sets to him. John promises to pay him Rs 75,000 upon delivery. This is NOT a contingent contract since John’s obligation depends on the event which is a part of the contract (delivery of TV sets) and not a collateral event.

Peter enters into a contract with John and promises to deliver 5 television sets to him if Brazil wins the FIFA World Cup provided John pays him Rs 25,000 before the World Cup kicks-off. This is a contingent contract since Peter’s obligation arises only when Brazil wins the Cup which is a collateral event.

3] The event should not be a mere will of the promisor

The event cannot be a wish of the promisor. Say for example Peter promises to pay John Rs 5,000 if Argentina wins the FIFA World Cup provided he wants to. This is NOT a contingent contract. Actually, this is not a contract at all.

Peter promises to pay John Rs 50,000 if he leaves Mumbai for Dubai on August 30, 2018. This is a contingent contract. Going to Dubai can be within John’s will but is not merely his will.

4] The event should be uncertain

If the event is sure to happen, then the contract is due to be performed. This is not a contingent contract. The event should be uncertain.

Peter promises to pay John Rs 500 if it rains in Mumbai in the month of July 2018. This is not a contingent contract because in July rains are almost a certainty in Mumbai.

Enforcement of Contingent Contracts

Sections 32 – 36 of the Indian Contract Act, 1872, list certain rules for the enforcement of a contingent contract.

Rule # 1 – Contracts Contingent on the happening of an Event

A contingent contract might be based on the happening of an uncertain future event. In such cases, the promisor is liable to do or not do something if the event happens. However, the contract cannot be enforced by law unless the event takes place. If the happening of the event becomes impossible, then the contingent contract is void. This rule is specified in Section 32 of the Indian Contract Act, 1872.

Peter promises to pay John Rs 50,000 if he can marry Julia, the prettiest girl in the neighbourhood. This is a contingent contract. Unfortunately, Julia dies in a car accident. Since the happening of the event is no longer possible, the contract is void.

Rule # 2 – Contracts Contingent on an Event not happening

A contingent contract might be based on the non-happening of an uncertain future event. In such cases, the promisor is liable to do or not do something if the event does not happen. However, the contract cannot be enforced by law unless happening of the event becomes impossible. If the event takes place, then the contingent contract is void. This rule is specified in Section 33 of the Indian Contract Act, 1872.

Peter promises to pay John Rs 50,000 if the ship named Titanic which leaves on a dangerous mission does not return. This is a contingent contract. This contract is enforceable by law if the ship sinks making its return impossible. On the other hand, if the ship returns, then the contract is void.

Rule # 3 – Contracts contingent on the conduct of a living person who does something to make the event or conduct as impossible of happening

Section 34 of the Indian Contract Act, 1872 states that if a contract is a contingent upon how a person will act at a future time, then the event is considered impossible when the person does anything which makes it impossible for the event to happen.

Peter promises to pay John Rs 5,000 if he marries Julia. However, Julia marries Oliver. Julia's act thus renders the event of John marrying her impossible. (A divorce is still possible though but the happening of the event is considered impossible.)

Rule # 4 – Contracts Contingent on an Event happening within a Specific Time

There can be a contingent contract wherein a party promises to do or not do something if a future uncertain event happens within a fixed time. Such a contract is void if the event does not happen and the time lapses. It is also void if before the time fixed, the happening of the event becomes impossible. This rule is specified in Section 35 of the Indian Contract Act, 1872.

Peter promises to pay John Rs 5,000 if the ship named Titanic which leaves on a dangerous mission returns before June 01, 2019. This contract is enforceable by law if the ship returns within the fixed time. On the other hand, if the ship sinks, then the contract is void.

Rule # 5 – Contracts Contingent on an Event not happening within a Specific Time

Contingent contracts might be based on the non-happening of an uncertain future event within a fixed time. In such cases, the promisor is liable to do or not do something if the event does not happen within the said time. The contract can be enforced by law if the fixed time has expired and the event has not happened before the expiry of the time. Also, if it becomes certain that the event will not happen before the time has expired, then it can be enforced by law. This rule is specified in Section 35 of the Indian Contract Act, 1872.

Peter promises to pay John Rs 5,000 if the ship named Titanic which leaves on a dangerous mission does not return before June 01, 2019. This contract is enforceable by law if the ship does not return within the fixed time. Also, if the ship sinks or is burnt, the contract is enforced by law since the return is not possible.

Rule # 6 – Contracts Contingent on an Impossible Event

If a contingent contract is based on the happening or non-happening of an impossible event, then such a contract is void. This is regardless of the fact if the parties to the contract are aware of the impossibility or not. This rule is specified in Section 36 of the Indian Contract Act, 1872.

Peter promises to pay John Rs 50,000 if the sun rises in the west the next morning. This contract is void since the happening of the event is impossible.

Void Contract

A contract that is legally not enforceable from the moment it is formed can be termed as a Void Contract. It can be nullified for some reasons. Contracts become void for a variety of reasons, including illegal consideration. Both voidable contracts and void contracts are different from one another. However, they can be drafted and created if and only if both parties wish to indulge legally.

Causes of Void Contract
Presence of any illegal object or element

A contract is deemed to be void it is consists of any illegal object, consideration or element. For example: If the terms mention illicit substance or promise of sex or anything that is objectionably caused due to either or both the parties. This will simply violate the agreement or contract.

Either or both parties are incompetent

If either one party or both the parties are legally incompetent then the contract or agreement will be considered as a void contract. If the party or both the party do not have the capacity to make informed decisions or are incapable to enter into the agreement then the contract will be null or void.

Elements of a Void Contract

The presence of the following elements in the agreement or contract will lead to a void or null agreement/contract:

Proper inclusion of elements

A contract will be deemed or void if it fails to include complete terms and conditions laid by both parties.

Mutual benefit

It is essential for both parties to benefit post entering into the contract or agreement. If any one party is enjoying the benefit on the cost of another party then the agreement or contract will be termed as null or void.

Ensuring the legality of contract

If both the parties simply make a promise then in that case a contract will not be formed. It is essential for both the parties to indulge legally and establish their terms and conditions in it. Also, both of them should mutually agree. Or else, the contract will be void.

Acceptance

It is essential for both parties to be in an aware state. They should know about all the terms laid in the contract and acknowledge them mutually. It is essential to accept the conditions for both parties. In case, either one party or both do not accept, then this contract will be void.

Void and Voidable Contracts

Both 'voidable' contracts and 'void contracts' differ from one another. Usually both the words are replaced and used for one another. A voidable contract is a valid document. A void contract is not enforceable under the Court of Law.

Steps for Voiding a Contract

Determine which aspects of the contract may be void: –

1. Examine which laws and reasons apply to the contract being void
2. Make sure that all contract-related information is assembled (e.g., communication between partakers, signed copies, etc.)

3. It is essential for parties to decide whether they have to draft a new contract or whether it should be discarded.
4. Legal action may be taken to evaluate the case and resolve whether or not the contract is null or void.

Void Contract Example
Example 1

Reena agrees to a 50/50 split of royalties from her new album with a record label. Reena, on the other hand, has been drinking at the bar for several hours and is severely inebriated at the time of this agreement. Because Reena was incompetent when she signed the contract, it is null and void.

Example 2

Assume you're in a similar situation to the previous example. This time, Reena is a minor, and she hasn't had anything to drink. The contract is immediately voidable due to Reena's small size. However, the agreement is valid because she was not incompetent. Reena will have the option of continuing the contract or terminating it.

Example 3

A contract between a local dealer and a drug supplier for an illegal drug transaction. Because it involves illicit goods, this contract would be null and void. It is unenforceable from the beginning because it serves no legal purpose. Another example is a contract that restricts a few activities, such as the right to work for a living or who a person can marry

Other Considerations

When each arrangement is unique, it can be difficult to determine its validity. While a contract may not be invalid when written, it may become void as a result of other factors. New rules may be enacted that render a contract immediately null and void. Furthermore, previously unknown information to the contracting parties can nullify the warranty.

UNIT II
PERFORMANCE OF CONTRACT

The term "performance of contract" refers to the fulfilment of contractual obligations by the parties involved in a contract. When two or more parties enter into a contract, they agree to certain terms and conditions, and each party is obligated to perform specific actions or provide certain goods or services as outlined in the contract. The performance of these obligations is crucial for the successful execution of the contract.

Mutual Agreement: The parties involved in a contract must mutually agree on the terms and conditions. Each party is bound by the terms specified in the contract, and failure to meet these obligations may lead to legal consequences.

Timely Performance: Contracts often include timelines or deadlines for performance. It is important for the parties to fulfil their obligations within the specified time frames. Failure to do so may result in a breach of contract.

Quality of Performance: In addition to timely performance, contracts typically outline the quality standards that must be met. The goods or services provided should meet the agreed-upon specifications and standards. If there is a significant deviation from these standards, it may be considered a breach of contract.

Communication: Parties are often required to communicate effectively throughout the contract period. Any changes, delays, or issues that may affect the performance should be communicated promptly to avoid misunderstandings and disputes.

Legal Consequences of Non-Performance: If one party fails to fulfil its contractual obligations, it may be considered a breach of contract. The non-breaching party may have legal remedies, such as seeking damages, specific performance (forcing the breaching party to fulfil their obligations), or termination of the contract.

Force Majeure: In certain situations, events beyond the control of the parties (such as natural disasters, war, or other unforeseen circumstances) may prevent or delay performance. Contracts often include force majeure clauses that excuse performance in such cases.

Termination: Contracts may include provisions for termination under specific conditions. For example, if one party consistently fails to perform or breaches the contract, the other party may have the right to terminate the agreement.

The performance of contract is a critical aspect of contractual relationships, and parties are expected to act in good faith to fulfil their respective obligations. It is advisable for parties to clearly define terms, responsibilities, and remedies in the contract to minimize the risk of disputes and ensure a smooth performance of the agreement. Legal advice should be sought if issues arise or if there is uncertainty about contractual obligations.

Devolution of joint liabilities refers to the process by which the responsibility for a joint liability is distributed among the parties who share that liability. Joint liabilities typically arise when two or more parties are collectively responsible for fulfilling an obligation, such as a debt or contractual duty. In the event that one party is unable or unwilling to fulfil their share of the obligation, the question of how the remaining parties should handle the liability arises.

There are two main types of joint liabilities: joint and several liabilities and joint liabilities.

Joint and Several Liabilities:

Joint Liability: In joint liabilities, all parties are collectively responsible for the entire obligation. If one party fails to fulfil their share, the other parties may be required to cover the shortfall.

Several Liability: In joint and several liabilities, each party is individually responsible for the entire obligation. This means that if one party fails to meet its obligation, the others may be held responsible for the entire amount.

Joint Liabilities:

In joint liabilities, each party is responsible only for their agreed-upon share of the obligation. If one party fails to fulfil its share, the other parties are not automatically responsible for covering the deficit. The creditor must seek payment from the non-compliant party directly.

The devolution of joint liabilities may occur in various ways:

Agreement among Parties: The parties involved may agree among themselves on how to distribute the liability if one party fails to meet its obligations. This could be through negotiation, mediation, or other forms of alternative dispute resolution.

Legal Action: If one party breaches the joint liability agreement, the other parties may take legal action against the non-compliant party to recover their losses or seek specific performance.

Contribution Actions: In some legal systems, a party that has covered the liability on behalf of all may have the right to bring a contribution action against the defaulting party to recover their share of the payment.

It's important for the terms of joint liabilities to be clearly defined in contracts or agreements to avoid ambiguity and potential disputes. Parties should also be aware of the legal implications and mechanisms available to them in case of non-performance by one of the parties sharing the joint liability.

Legal advice should be sought in complex cases to ensure that the devolution of joint liabilities is handled appropriately and in accordance with relevant laws and contractual agreements.

The concepts of time, rights, and places of performance are essential elements in contract law that help define the obligations of the parties involved. These elements are often specified in a contract to ensure clarity and to avoid disputes. Here's an overview of each:

Time of Performance:

Definition: The time of performance refers to the period within which the parties are obligated to fulfil their contractual obligations. This may include delivering goods, providing services, or completing any other agreed-upon tasks.

Express Terms: Contracts often specify deadlines or time frames for performance. These can be specific dates, a certain number of days after the contract is signed, or other agreed-upon time periods.

Time is of the Essence: In some contracts, the phrase "time is of the essence" may be included to emphasize the importance of strict adherence to deadlines. Failure to perform within the specified time frame may be considered a breach of contract.

Rights of Performance:

Assignment and Delegation: The rights of performance involve whether a party can transfer its obligations to another party. Assignment and delegation clauses in a contract determine whether a party can assign its rights and delegate its duties to a third party. Some contracts may prohibit or allow such actions, depending on the agreement.

Place of Performance:

Definition: The place of performance is the location where the parties are required to fulfill their contractual obligations. This is particularly relevant in contracts involving the delivery of goods, services, or other actions that need to take place at a specific location.

Stipulation in the Contract: The contract typically specifies where the performance is to occur. For example, in a sales contract, it may specify the location for delivery of goods. In a service contract, it may specify where the services are to be performed.

Implied or Customary Places: In the absence of explicit contractual terms, the law may imply a reasonable place of performance based on the nature of the contract or industry customs.

These elements are crucial for ensuring that parties understand their obligations and responsibilities under a contract. When drafting contracts, it's important to be clear about the timeframes, the rights of the parties, and the locations where performance is expected. Clarity in these areas can help prevent misunderstandings, disputes, and breaches of contract.

In case of any uncertainties or complexities related to time, rights, and places of performance, seeking legal advice is advisable to ensure that the contract is well-drafted and enforceable.

Reciprocal promises are a fundamental concept in contract law. In a contract, when one party makes a promise in exchange for the other party's promise, and both promises are the consideration for each other, they are termed as reciprocal promises. This forms the basis of a bilateral contract, where both parties are bound to perform their respective promises.

Bilateral Contract:

Reciprocal promises create a bilateral contract, meaning there is a mutual exchange of promises between the parties.

In a bilateral contract, each party is both a promisor (making a promise) and a promise (receiving a promise).

Consideration:

Consideration is a vital element in a contract, and in the case of reciprocal promises, the promises made by each party serve as the consideration for the other.

Consideration is what each party gives or promises to give in exchange for the other's promise.

Simultaneous Performance:

Reciprocal promises often involve simultaneous or nearly simultaneous performance. Each party's promise is typically expected to be fulfilled at around the same time.

For example, in a sales contract, one party promises to deliver goods, and the other party promises to make payment upon delivery.

Conditional Nature:

The obligations of the parties are often conditional on the other party fulfilling their promise. If one party fails to perform, the other party may be relieved of their obligation.

Enforceability:

Reciprocal promises are legally enforceable. If one party fails to fulfill its promise, the other party may have legal remedies, such as seeking damages or specific performance.

Example:

A common example of reciprocal promises is a typical sales contract. The seller promises to deliver a product, and the buyer promises to pay for it. The promises are interdependent, forming the basis of the contractual relationship.

Understanding reciprocal promises is crucial for establishing the nature of contractual relationships and ensuring that both parties are aware of their respective obligations. When drafting or entering into a contract, it's important to clearly outline the reciprocal promises, the conditions for performance, and any other relevant terms to avoid misunderstandings and potential disputes.

In summary, reciprocal promises are the cornerstone of bilateral contracts, where each party's promise serves as the consideration for the other, leading to legally binding obligations.

Remedies for breach of contract are legal solutions that aim to compensate the non-breaching party for the harm caused by the other party's failure to fulfill their contractual obligations. The specific remedies available depend on the nature and terms of the contract, as well as the applicable laws. Here are some common remedies for breach of contract:

Damages:

Compensatory Damages: These are monetary awards intended to compensate the non-breaching party for the actual losses suffered as a direct result of the breach. The goal is to put the injured party in the position they would have been in if the contract had been performed as agreed.

Consequential Damages: Also known as special or indirect damages, these compensate for foreseeable but indirect losses that result from the breach. The breaching party must have been aware, or should have been aware, that the breach could cause such damages.

Specific Performance:

In cases where monetary damages are inadequate to remedy the harm caused by the breach, a court may order the breaching party to fulfil their contractual obligations. This is often used for unique or rare items where monetary compensation is not sufficient.

Rescission:

Rescission involves cancelling the contract and restoring the parties to their pre-contractual positions. This remedy is typically available when there is a fundamental failure of consideration, fraud, mistake, or illegality.

Reformation:

Reformation allows the court to modify the terms of the contract to reflect the true intentions of the parties. This remedy is used when there is a mutual mistake or a drafting error in the contract.

Liquidated Damages:

Some contracts include a provision specifying the amount of damages to be paid in the event of a breach. These are called liquidated damages, and they must be a reasonable estimate of the actual damages likely to result from the breach.

Mitigation of Damages:

The non-breaching party has a duty to mitigate (minimize) their losses. If they fail to take reasonable steps to reduce the damages, the breaching party may argue that the damages should be reduced accordingly.

Punitive Damages:

In some jurisdictions and under certain circumstances, punitive damages may be awarded to punish the breaching party for particularly egregious conduct. However, these are less common in contract cases and are more commonly associated with tort (personal injury) cases.

It's important to note that the availability of these remedies can vary based on the laws of the jurisdiction and the specific facts of the case. Legal advice from a qualified attorney is crucial when seeking remedies for breach of contract.

Termination and discharge of a contract refer to the ways in which a contractual relationship comes to an end. The termination or discharge of a contract can occur through various means, depending on the terms of the contract, the actions of the parties involved, or external factors. Here are common methods of terminating or discharging a contract:

Performance:

The most straightforward way for a contract to come to an end is through performance. Once both parties have fulfilled their obligations as outlined in the contract, the contract is considered discharged.

Mutual Agreement:

The parties may mutually agree to terminate the contract. This could be done through a new agreement or a written document that acknowledges the termination of the existing contract.

Breach of Contract:

If one party fails to fulfil its contractual obligations (breach of contract), the other party may have the right to terminate the contract. The innocent party may seek remedies for the breach, as discussed in the previous response.

Impossibility or Impracticability:

If performance becomes impossible or impracticable due to unforeseen circumstances, such as a natural disaster or change in law, the contract may be discharged. This is often referred to as the doctrine of impossibility or impracticability.

Frustration of Purpose:

Frustration occurs when an unforeseen event makes the purpose of the contract impossible to achieve. In such cases, the contract may be discharged.

Operation of Law:

Certain events, such as the death of a party, bankruptcy, or a change in the law, may automatically terminate a contract by operation of law.

Agreement Conditions:

Some contracts include conditions that trigger termination. For example, a contract may specify that it automatically terminates if a certain event occurs.

Time Limitations:

Contracts may have a specific time frame, and once that period expires without the fulfilment of obligations, the contract may be considered terminated.

Withdrawal of Offer or Acceptance:

If an offer is withdrawn or an acceptance is revoked before the parties have reached an agreement, the contract is not formed, and there is no contractual relationship.

Lapse of Time:

If a contract specifies a time limit for performance, and that time passes without performance, the contract may be considered discharged.

It's important to note that the specific terms of the contract and the governing law will play a significant role in determining how a contract can be terminated or discharged. Legal advice from a qualified attorney is recommended for understanding the implications of contract termination in a specific situation.

A quasi-contract, also known as an implied contract or a contract implied in law, is a legal concept used to create an obligation between parties even in the absence of an actual contract. Unlike express contracts, which are formed through the parties' mutual agreement, quasi-contracts are not based on the parties' intentions to enter into a contract. Instead, they are imposed by the law to prevent unjust enrichment or to ensure fairness in certain situations.

Features of quasi-contracts include:
Unjust Enrichment:

Quasi-contracts are often invoked to prevent one party from being unjustly enriched at the expense of another. If someone receives a benefit that would be unfair to retain without compensating the other party, a quasi-contractual obligation may arise.

No Mutual Agreement:

Unlike express contracts, quasi-contracts do not require a mutual meeting of the minds or an actual agreement between the parties.

Elements of Quasi-Contract:

For a quasi-contractual obligation to arise, typically three elements must be present:

The plaintiff conferred a benefit on the defendant.

The plaintiff reasonably expected payment or compensation for the benefit.

The defendant would be unjustly enriched if they were not required to pay for the benefit.

Equitable Remedy:

Quasi-contracts are considered equitable remedies, and they are invoked by a court to prevent unfairness or to remedy a situation where one party has received a benefit that they should not keep without compensating the other party.

Examples of situations where quasi-contracts may arise include:

Goods or Services Rendered: If someone provides goods or services to another party, and there is an implied expectation of payment, a quasi-contractual obligation may arise if payment is not made.

Emergency Situations: In emergency situations where someone provides necessary services or goods, even without an explicit agreement, a quasi-contract may be implied to ensure fair compensation.

Mistaken Payments: If a person mistakenly pays money to another person, and the recipient is aware of the mistake, the law may imply a quasi-contract to require the return of the funds.

It's important to note that quasi-contracts are a legal fiction created by the courts to address situations where one party would be unjustly enriched if they were not required to compensate the other. The specific elements and rules regarding quasi-contracts can vary by jurisdiction, so it's advisable to consult with a legal professional to understand how these principles apply in a specific context.

UNIT – III

CONTRACT OF INDEMNITY AND GUARANTEE

The contract of indemnity and the contract of the guarantee are the special contracts under the Indian Contract Act, 1872. The contract of indemnity is the contract where one person compensates for the loss of the other. Contract of guarantee is a contract between three people where the third person intervenes to pay the debt if the debtor is at default in paying back. This article deals with the contract of indemnity and the contract of guarantee.

CONTRACT OF INDEMNITY

A contract where one party tries to help and compensate the other party of the loss is indemnity. The person giving the indemnity is the indemnifier. Whereas the person receiving the indemnity to pay the loss is the indemnity-holder or indemnified.

It is a consent that one party guarantees to save lots of the opposite from the loss caused to him by the acts of the communicator or by the other person.

In a contract of indemnity, there are two parties particularly indemnifier (promisor) and indemnified (promisee).

Rights of Indemnity-holder

The Indemnity-holder has the rights to enforce the following from the Indemnifier's a contract:

- Pay for the damages of any suit irrespective of any manner
- Pay for all the cost that requires for defending the suit against him legally
- Amount to the sums for the compromise of any suit

Commencement of Liability

The Indemnity is not given just for the repayment after the payment. It requires that the indemnified party shall never come up to pay. Major courts state that as soon as the liability to pay is precise and clear by the indemnity-holder, then he has the right to put the indemnifier in a position to meet the claims of repayment.

Indemnity Bond

The indemnity bond permits an employee to withdraw from the employment prior to the agreed period. This withdrawal is applicable only at the forfeiture cost of the bond money, which is valid only when the bond money and the period of restriction are reasonable. It retains only that part of the bond money to indemnify for the loss of the employer.

CONTRACT OF GUARANTEE

A contract where a third person discharges the liability of the debtor to the creditor. The person who gives a guarantee is the surety. A person who receives the guarantee to repay his debt is the principal debtor. The person to whom the principal debtor has to pay the guarantee is the creditor. A guarantee is either in the format of writing or of oral. This contract lets the principal debtor to avail employment, loan or goods on credit and the surety would ensure repayment in case of any default in the part of the debtor.

Salient Features of Guarantee

Principal Debtor

The guarantee or the surety is only for securing the debt. It is necessary for the existence of the recoverable debt. The contract of guarantee should contain the essentials of the valid contract. The guarantee is valid even when the principal debtor is incompetent. But if the surety is incompetent, then the contract stands void.

Consideration

For a contract to be valid, there should be a valid consideration. The consideration of the principal debtor should be a sufficient consideration for the surety to give a guarantee.

Misrepresentation

A contract availed through misrepresentation will become an invalid contract. The misrepresentation may be by the creditor or considering with his knowledge the transaction of the material part stays invalid. Moreover, the creditor's silence on the material circumstances makes the guarantee invalid.

SURETY'S LIABILITY

According to section 128 of Indian Contract Act, 1872, the liability of a surety is co-extensive of principal debtor's unless the contract provides. Liability of surety is the same as that of the principal mortal. A human will directly proceed against the surety. A human will sue the surety directly while not suing principal mortals. Surety becomes susceptible to build payment instantly once the principal mortal makes default in such payment.

However, primary liability to form payment is of the principal mortal, surety's liability is secondary. Also, wherever the principal mortal can't be commanded to blame for any payment thanks to any defect in documents, then surety is additionally not answerable for such payment.

EXTENT OF SURETY'S LIABILITY

As per section 128, the liability of a surety is co-extensive with that of the principal debtor unless the contract provides to the contrary. As soon as the Principal Debtor makes any default in the payment of the debt, the surety becomes liable. Thus, a creditor is not bound to proceed against the principal debtor first. He can directly sue the surety without suing the principal debtor. However, until the principal debtor makes any default, the creditor cannot ask the surety to pay the debt. Hence, the surety’s liability is secondary and the liability of the principal debtor being primary.

TYPES OF GUARANTEE:

A contract of guarantee could also be for Associate in Nursing existing liability or future liability. A contract of guarantee may be a particular guarantee (for any specific dealings only) or continued guarantee.

There are two sorts of guarantee contracts: specific guarantee and ongoing guarantee. A specific or simple guarantee is one that is made in respect of a single debt or unique transaction and is set to expire when the guaranteed debt is paid or the promise is fulfilled. An ongoing guarantee, on the other hand, is a guarantee that covers a series of transactions (Section129). In this instance, the surety's liability would remain until all of the transactions were completed or the guarantor revoked the guarantee for future transactions.

- **Specific Guarantee**

  a particular guarantee is for one debt or any specific dealings. It involves associates finishing once such debt has been paid.

- **Continuing Guarantee**

  Act in 1872 defines Continuing Guarantee- A continuing guarantee is a form of assurance that covers many transactions. Until the surety revokes it, it applies to all transactions engaged into by the principal debtor. As a result, bankers prefer a continuing guarantee because the guarantor's duty is not limited to the original advances and extends to all subsequent defaults.

A continuing guarantee's most crucial feature is that it applies to a succession of separate, independent transactions (series of transactions). As a result, a promise for the full consideration cannot be considered a continuing guarantee.

A continuing guarantee applies to any or all the transactions entered into by the principal mortal till it's revoked by the surety. a seamless guarantee may be revoked anytime by the surety for future transactions by giving notice to the creditors. However, the liability of a surety isn't reduced for transactions entered into before such revocation of guarantee.

Illustration-

a) S is a bookseller who gives P a collection of books with the understanding that if the person P is not able to pay for the books, his or her friend X will. This is a contract of particular guarantee, and K's liability ends the minute S receives payment for the books.

b) A wealthy landlord hires P as his estate manager after M recommends him. P was responsible for collecting rent from S's renters each month and remitting it to S by the 15th of each month. M, as the guarantee, undertakes to make good on any defaults made by P. This is a contract with a long-term guarantee.

RIGHTS OF SURETY

The rights of the surety are of three categories. The following are the categories:

Rights against Principal Debtor

Rights of Subrogation: The surety has the rights of the creditor against the principal debtor. But the surety receives such rights only after the repayment of the default of the principal debtor.

Right to Indemnity: In every guarantee contract there implies a promise to indemnify the surety by the principal debtor. The principal debtor has to repay all the sum paid by the surety rightfully. But the amount paid wrongly need not be repaid.

Rights against Creditor

Right to Creditor's Securities: The surety has the benefit of every security that the creditor has which is against the principal debtor at the time the surety enters into a contract. The surety has rights over the securities even if he does not know of its existence at the time of the contract. If the creditor loses or parts with the security, then the surety discharges with the extent of the value of the security.

Right to Set-off: The surety has the benefit to set off if the creditor sues him.

Rights against Co-sureties

Release of Co-surety: When there is more than one co-surety, the release of one of the co-surety does not discharge the others. Moreover, it also does not discharge the surety from the responsibilities to the other sureties.

Right to Contribution: The co-sureties are liable to themselves if they are of co-sureties of the same debt. Moreover, they have to pay the equal share of the full debt or part of the debt, which is unpaid by the principal debtor. This stands irrespective of the liability of the same or different contract. It is also regardless of that the liability is with or without the knowledge of the co-sureties.

DISCHARGE OF SURETY FROM LIABILITY:

The surety is free from his liability only after the end of his limit of liability. The discharge of surety from the liabilities takes place through the following:

Revocation: The surety can revoke the continuing guarantee at any time by sending a notice to the creditor. This is for future transactions.

Death of Surety's: The death of the surety revokes the continuing guarantee in future transactions.

Variance in the Contract: The variance made in the contract between the creditor and the principal debtor releases the surety from his liability.

Discharge or Release of Principal Debtor: If the contract discharges the principal debtor, then the surety is also free from his liabilities. The discharge of the principal debtor takes place by an act or omission of the creditor. This will result in the discharge of the principal debtor.

Composition, Promise not to Sue or Extension of Time: If the creditor makes changes in the contract without consulting the surety, then the surety is free from such liability. Moreover, these changes will portray variations in the original contract.

Creditor's Forbearance to Sue: The mere forbearance of the creditor to sue the principal debtor does not discharge the surety.

A promise made with the Third Person: An agreement with the third party does not discharge the surety. The initiation of the agreement takes place to give time to the principal debtor. Moreover, the agreement is between the creditor and the third party.

Impairing Surety's Remedy: If the creditor does an act that is inconsistent or omits to do an act, then such a circumstance will discharge the surety as the remedy of the surety against the principal debtor stands impaired. Moreover, the creditor must remain consistent with the surety's rights.

UNIT-IV
BAILMENT AND PLEDGE

Bailment and pledge are legal concepts in business law that deal with the transfer of possession and control of property. Both play crucial roles in various business transactions, and understanding their distinctions is essential for individuals and businesses engaged in commercial activities.

1. Bailment:

Bailment is a legal relationship where physical possession of personal property is transferred from one party (the bailor) to another party (the bailee) for a specific purpose. The property is expected to be returned or disposed of as agreed upon after the purpose is fulfilled. Bailment typically arises in various business scenarios such as storage, repair, or transportation.

Elements of Bailment:

Delivery of Possession: There must be a voluntary transfer of possession of the property by the bailor to the bailee.

Purpose: The possession is for a specific purpose, and the property must be returned or dealt with according to the terms agreed upon.

No Transfer of Ownership: Ownership of the property remains with the bailor, and the bailee has a duty to return the property or handle it as per the agreement.

2. Pledge:

Pledge is a specific type of bailment that involves the transfer of possession of goods as security for a debt or obligation. In a pledge, the party providing the security (the pledger) transfers possession of the property to another party (the pledgee) until the debt is repaid. If the pledger fails to fulfil the obligation, the pledgee has the right to sell the pledged property to recover the debt.

Elements of Pledge:

Security for Debt: Pledge is established to secure the performance of a debt or obligation. The property serves as collateral.

Legal Formalities: Depending on the jurisdiction, certain formalities, such as a written agreement or registration, may be required for the creation of a valid pledge.

Right of Sale: If the pledger defaults on the obligation, the pledgee has the right to sell the pledged property to recover the outstanding debt.

Key Differences:

Purpose: Bailment can have various purposes, such as storage or transportation, while pledge specifically serves as security for a debt.

Transfer of Ownership: In bailment, ownership remains with the bailor, whereas in pledge, the pledgee has the right to sell the property if the pledger defaults.

Formalities: Pledge may require additional legal formalities compared to bailment, depending on jurisdiction.

Bailment Concept

Bailment is a legal concept in business law that refers to the temporary transfer of possession of personal property from one party (the bailor) to another party (the bailee) for a specific purpose. The bailor retains ownership of the property, while the bailee has temporary custody and control of it. This legal relationship is often governed by a bailment agreement or contract.

Key elements of bailment include:

1. **Delivery of Possession:**
   - The bailor must deliver the property to the bailee, and the bailee must accept the responsibility of holding the property.
2. **Intent:**
   - Both parties must have a mutual understanding and agreement about the purpose and terms of the bailment. This can be expressed through a written or verbal agreement.
3. **Temporary Nature:**
   - Bailment is a temporary arrangement, and the property is expected to be returned to the bailor or disposed of according to the terms specified in the agreement.
4. **Return of Property:**
   - The bailee is obligated to return the property to the bailor once the purpose of the bailment is fulfilled or the agreed-upon time period expires.
5. **No Transfer of Ownership:**
   - Unlike a sale or gift, bailment involves the transfer of possession but not ownership. The bailor retains the legal ownership of the property throughout the bailment period.

Bailments can take various forms, such as:

- **Gratuitous Bailment:** When there is no exchange of consideration, and the bailment is based on goodwill or trust.
- **Bailment for Hire:** When the bailee provides a service or is compensated for holding the property, such as storing goods for a fee.
- **Bailment for Mutual Benefit:** When both parties derive some benefit from the bailment arrangement, such as in a consignment agreement where a retailer (bailee) sells goods owned by a manufacturer (bailor).

Bailment Essentials

Here are some essential aspects of bailment in business law:
Creation of the Relationship:

Bailment arises through an agreement between the bailor and the bailee. This agreement can be express or implied and may be written or verbal.

Delivery of Possession:

There must be a transfer of possession of the goods from the bailor to the bailee. However, legal ownership may or may not be transferred.

Purpose of Bailment:

The bailment must have a specific purpose agreed upon by both parties. This purpose could be for safekeeping, repair, transportation, or some other mutually agreed-upon objective.

Standard of Care:

The bailee is generally expected to exercise a standard of care appropriate to the nature of the bailment. The degree of care may vary depending on whether the bailment is for the mutual benefit of both parties, solely for the benefit of the bailor, or solely for the benefit of the bailee.

Return of Goods:

Upon completion of the agreed-upon purpose or expiry of the agreed-upon time, the bailee is obligated to return the goods to the bailor. If the bailment is for a specific period, the bailee must return the goods at the end of that period.

Liability for Loss or Damage:

The parties may agree on the liability for loss or damage to the bailed goods. In the absence of such an agreement, the bailee is generally held responsible only if negligence or a breach of duty can be proven.

Termination of Bailment:

Bailment may be terminated by mutual agreement, completion of the purpose of bailment, or by the occurrence of an event specified in the agreement.

Types of Bailment:

Bailments can be categorized into various types based on the nature of the purpose, such as bailment for the sole benefit of the bailor, sole benefit of the bailee, or mutual benefit.

Classification of Bailments, Duties, and Rights of Bailor and Bailee

I. Introduction to Bailments

A bailment is a legal relationship where the possession of personal property is transferred from one party, the bailor, to another, the bailee, for a specific purpose and duration. Understanding the classification of bailments and the corresponding duties and rights is crucial in navigating the legal landscape surrounding these arrangements.

II. Classification of Bailments

A. Based on Purpose

1. **Bailment for the Benefit of the Bailor (Gratuitous Bailment):**
    - The bailment is for the sole benefit of the bailor.
    - Bailee is expected to exercise minimal care, and there is no compensation involved.
    - Bailor retains the right to terminate the bailment at any time.
2. **Bailment for the Benefit of the Bailee (Gratuitous Bailment):**
    - The bailment is for the sole benefit of the bailee.
    - The bailor, in this case, receives no compensation.
    - Bailee must exercise reasonable care for the property.
3. **Mutual Benefit Bailment:**
    - Both the bailor and bailee derive benefits.
    - Compensation may or may not be involved.
    - Standard of care is that of a reasonable person.

B. Based on Possession

1. Actual Bailment:

- Physical transfer of possession occurs.
- Bailee has direct control over the property.

2. Constructive Bailment:

- No physical transfer, but a legal relationship is established.
- Examples include keys to a car or storage locker.

C. Based on Consideration

1. Gratuitous Bailment:

- No monetary consideration involved.
- Based on trust or friendship.

2. Bailment for Consideration:

- Involves a fee or some form of consideration.
- Often a contractual agreement.

III. Duties of the Bailee
A. Standard of Care

1. Duty to Exercise Ordinary Care:

- Bailee must act with the care expected of a reasonable person.

2. Special Skills:

- If the bailee has special skills, a higher standard of care may be expected.

B. Duty to Return

1. Return in Same Condition:

- Bailee must return the property in the same condition as received, with exceptions for ordinary wear and tear.

2. Reasonable Use:

- Bailee is allowed to use the property for the intended purpose.

C. Duty Not to Mix or Change

1. Separation of Property:

- Bailee should not mix the bailed property with their own.

2. No Alterations:

- Bailee should not make any substantial changes to the property.

IV. Duties of the Bailor
A. Duty to Disclose
1. Known Defects:

- Bailor must disclose any known defects in the property.

2. Hidden Defects:

- Bailor may be liable for hidden defects if they were aware or should have been aware of them.

B. Duty to Compensate

1. Payment of Agreed Fee:

- If the bailment is for consideration, the bailor must pay the agreed-upon fee.

2. Reimbursement for Expenses:

- Bailor may be required to reimburse the bailee for reasonable expenses incurred.

V. Rights of the Bailee
1. Right to Possession:

- The bailee has the right to possess the property during the bailment.

2. Right to Use:

- Bailee can use the property for the intended purpose, as long as it aligns with the agreement.

3. Lien:

- Bailee may have a right to retain possession until compensated for services or expenses.

VI. Rights of the Bailor

1. Right to Terminate:

- The bailor can terminate the bailment if the bailee breaches the agreement or if the purpose is fulfilled.

2. Right to Receive:

- Bailor has the right to receive the property back in the same condition, subject to normal wear and tear.

3. Legal Action:

- Bailor may take legal action if the bailee fails to fulfil their duties.

VII. Termination of Bailment

1. Fulfilment of Purpose:

- Bailment terminates upon the accomplishment of the specified purpose.

2. Mutual Agreement:

- Parties may agree to terminate the bailment before the specified time.

3. Breach of Agreement:

- Either party can terminate the bailment if the other party breaches the agreement.

Law of Pledge

Meaning:

The law of pledge is a crucial component of business law, providing a legal framework for securing debts and facilitating commercial transactions. Pledge, also known as pawn or collateral, involves the transfer of possession of an asset as security for a debt. This legal instrument plays a vital role in mitigating risks for lenders and ensuring the enforceability of contractual obligations. This discussion will explore the key principles, requirements, and implications of the law of pledge in the context of business transactions.

II. Basic Concepts

A. Definition and Purpose

Pledge is a contractual arrangement where a borrower, known as the pledger, transfers possession of a valuable asset to the lender, known as the pledgee, as security for a debt. The purpose is to provide the lender with a source of repayment in the event of the borrower's default.

B. Elements of Pledge

1. **Pledge Agreement:** A written contract outlining the terms and conditions of the pledge, including the description of the pledged asset, the amount of the debt, and the rights and obligations of both parties.

2. **Delivery of Possession:** Actual or constructive delivery of the pledged asset to the pledgee is a fundamental requirement. The transfer of possession distinguishes pledge from other security interests.

3. **Pledged Asset:** The asset must have intrinsic value and be identifiable. Common examples include real estate, vehicles, inventory, or financial instruments.

III. Types of Pledge

A. Possessory Pledge

In a possessory pledge, the pledgee takes physical possession of the pledged asset. This type is common for tangible movable assets like jewellery, art, or equipment.

B. Symbolic Pledge

Symbolic pledge occurs when the pledged asset is too large or impractical for physical delivery. Instead, the pledgee receives a symbolic representation, such as a document or a key, representing control over the asset.

C. Non-possessory Pledge

In non-possessory pledge, the pledger retains possession of the asset, but the pledge is still effective. This type often involves financial instruments or electronic assets where physical possession is not feasible.

IV. Rights and Obligations

A. Rights of the Pledgee

1. **Right to Possession:** The pledgee has the right to possess the pledged asset until the debt is satisfied.

2. **Right to Sell:** If the pledger defaults, the pledgee typically has the right to sell the pledged asset to recover the outstanding debt.

3. **Priority in Repayment:** In case of multiple creditors, the pledgee may have a priority claim to the proceeds from the sale of the pledged asset.

B. Obligations of the Pledger

1. **Debt Repayment:** The pledger is obligated to repay the debt according to the terms specified in the pledge agreement.

2. **Maintenance of Pledged Asset:** The pledger must ensure the maintenance and preservation of the pledged asset to protect its value.

3. **Notification of Changes:** The pledger should inform the pledgee of any changes that might affect the pledged asset, such as damage, transfer of ownership, or legal disputes.

V. Perfection of Pledge

Perfection refers to the legal steps taken to establish and protect the priority of a security interest against third parties. While possession is often sufficient for perfection in pledge, certain assets may require additional steps, such as registration or notation in public records.

VI. Default and Enforcement

A. Default

A default occurs when the pledger fails to fulfil the obligations outlined in the pledge agreement, such as non-payment or violation of terms.

B. Enforcement

Upon default, the pledgee can enforce the pledge by selling the pledged asset. The sale proceeds are then used to satisfy the outstanding debt. However, the enforcement process must adhere to legal requirements and provide the pledger with any surplus proceeds after debt satisfaction.

VII. Challenges and Limitations

A. Legal Formalities

Strict adherence to legal formalities is essential in pledge agreements. Failure to meet these requirements can render the pledge unenforceable.

B. Market Fluctuations

The value of pledged assets may fluctuate, affecting the adequacy of the security. In volatile markets, this can pose challenges for both parties involved.

VIII. International Perspectives

Pledge laws vary globally, and businesses engaging in international transactions must navigate different legal frameworks. Harmonization efforts, such as the UNCITRAL Model Law on Secured Transactions, aim to facilitate cross-border transactions and enhance legal certainty.

IX. Case Studies

Illustrative case studies can provide practical insights into the application of pledge law in real-world business scenarios, highlighting key legal considerations, challenges, and outcomes.

Essential of valid Pledge

A. Definition of Pledge

A pledge is a contractual arrangement in which a debtor provides a creditor with a security interest in specific property as collateral for a debt. The transfer of possession distinguishes a pledge from other security interests.

B. Purpose of Pledge

1. **Risk Mitigation:** Pledges offer creditors a security interest, reducing the risk of non-payment by allowing them to seize and sell the pledged property in the event of default.
2. **Credit Facilitation:** Pledges make it easier for debtors to obtain credit by providing security to creditors.

II. Formation of a Valid Pledge

A. Voluntary and Legal Capacity

1. The pledger must voluntarily offer the property as collateral.
2. The pledger must have legal capacity, ensuring they are authorized to make such arrangements.

B. Identification of Pledged Property

1. **Specific Identification:** The pledged property must be clearly identified in the pledge agreement to avoid ambiguity.
2. **Description:** The agreement should include a detailed description of the pledged property to prevent disputes.

C. Delivery of Possession

1. **Physical Delivery:** In many jurisdictions, physical possession of the pledged property is required for a valid pledge.
2. **Symbolic Delivery:** Some jurisdictions recognize symbolic delivery or constructive possession as sufficient.

D. Intention to Create a Security Interest

1. The parties must clearly express their intention to create a security interest through the pledge.
2. This intention is usually reflected in the language of the pledge agreement.

III. Requirements for a Valid Pledge

A. Legal Ownership and Control

1. The pledger must be the legal owner of the pledged property.
2. Control over the property should be transferred to the pledgee.

B. Existence of a Valid Debt or Obligation

1. A valid pledge must be associated with an existing debt or obligation.
2. The debt must be legitimate, and the terms should be clearly defined in the agreement.

C. No Violation of Applicable Laws

1. Pledges must comply with relevant laws and regulations.
2. Violation of laws could render the pledge void or unenforceable.

D. Consideration

1. Like any contract, a pledge requires consideration—a benefit or detriment exchanged between the parties.
2. Consideration ensures mutuality and fairness in the agreement.

IV. Rights and Duties of Parties in a Pledge
A. Rights of the Pledger

1. **Right of Redemption:** The pledger usually has the right to redeem the pledged property upon fulfilling the debt obligation.
2. **Right to Surplus:** If the sale of the pledged property yields more than the debt amount, the pledger is entitled to the surplus.

B. Rights of the Pledgee

1. **Right of Possession:** The pledgee has the right to possess and, in some cases, use the pledged property.
2. **Right to Sell:** In case of default, the pledgee has the right to sell the pledged property to recover the debt.

C. Duties of the Parties

1. **Duty to Maintain the Pledged Property:** The pledger often has a duty to maintain the value and condition of the pledged property.
2. **Duty to Account:** Both parties may have a duty to account for the property's value and any proceeds from its sale.

V. Enforcement of a Pledge
A. Default and Remedies

1. **Definition of Default:** The agreement should clearly define events constituting default, triggering enforcement.
2. **Remedies for Default:** Common remedies include the right to sell the pledged property and apply the proceeds to the debt.

B. Sale of Pledged Property

1. **Public or Private Sale:** Depending on the jurisdiction, the pledgee may conduct a public or private sale of the pledged property.

2. **Notice Requirements:** Some jurisdictions impose notice requirements on the sale to protect the pledger's interests.

C. Surplus or Deficiency

1. **Surplus Distribution:** After satisfying the debt, any surplus from the sale should be returned to the pledger.
2. **Deficiency Judgment:** If the sale does not cover the entire debt, the pledgee may seek a deficiency judgment against the pledger.

Pledge:

A pledge is a legal arrangement in which a borrower (pledger) provides a lender (pledgee) with the right to take possession of a specific asset as collateral for a debt. The pledged asset remains in the possession of the pledger unless they default on the loan, at which point the lender can seize the collateral to satisfy the debt.

Key points about pledges include:

1. **Collateral:** The asset being pledged serves as collateral, providing security for the lender in case of default.
2. **Possession:** The possession of the pledged asset may remain with the pledger unless there is a default, at which point the lender can take possession.
3. **Purpose:** Pledges are commonly used in financing arrangements, such as loans, where the lender wants additional security beyond the borrower's promise to repay.

Lien:

A lien is a legal right or interest that a lender has in a borrower's property, granted until a debt is paid off. Unlike a pledge, a lien does not involve the transfer of possession of the property to the lender; instead, it is a right to retain possession until the debt is satisfied.

Key points about liens include:

1. **Types of Liens:** There are various types of liens, including voluntary and involuntary liens. Voluntary liens arise from a consensual agreement between the parties, while involuntary liens are imposed by law.
2. **Enforcement:** If the borrower defaults on the debt, the lender with a lien can enforce their right to the property through legal processes, such as foreclosure or repossession.
3. **Priority:** In cases where multiple parties have liens on the same property, the priority of liens determines the order in which creditors are paid in the event of the sale of the property.

Pawner:

Meaning: The term "Pawner" refers to the person who pledges or hypothecates his personal property as security for a debt or obligation. In other words, the Pawner is the individual who offers some valuable asset (known as the pledge) to secure a loan or fulfil a financial obligation.

Rights of the Pawner:

1. **Right of Redemption:** The pawner generally has the right to redeem the pledged asset by repaying the loan amount along with any agreed-upon interest and fees. This right allows the pawner to reclaim the pledged item once the debt is settled.
2. **Right to Receive Surplus:** If the pawnee sells the pledged asset to recover the outstanding debt and there is a surplus after satisfying the debt, the pawner has the right to receive that surplus.
3. **Right to Notice:** The pawner has the right to receive notice before the pawnee sells the pledged asset. The notice typically includes details about the sale, the outstanding debt, and the time and place of the sale.
4. **Right to Account:** The pawner has the right to request an account of the outstanding debt, including principal, interest, and any other charges. This helps ensure transparency in the transaction.

Pawnee:

Meaning: The term "Pawnee" refers to the person or entity (such as a financial institution) to whom the pledge is made. The Pawnee is the lender or creditor who accepts the pledged property as security for a loan or other financial arrangement.

Rights of the Pawnee:

1. **Right of Retention:** The pawnee has the right to retain possession of the pledged asset until the pawner fulfils the repayment obligations. This right is a form of security for the loan.
2. **Right to Sell:** If the pawner defaults on the loan, the pawnee has the right to sell the pledged asset to recover the outstanding debt. However, this must be done in accordance with the terms agreed upon in the pledge agreement and local laws.
3. **Right to Interest:** The pawnee is entitled to receive interest on the loan as agreed upon in the pledge agreement. The interest is a compensation for the use of funds and the risk taken by the pawnee.
4. **Right to Sue for Deficiency:** If the sale of the pledged asset does not fully cover the outstanding debt, the pawnee may have the right to sue the pawner for the deficiency, depending on the jurisdiction and the terms of the agreement.

UNIT - V
SALE OF GOODS ACT 1930

MEANING OF CONTRACT OF SALE:

According to section 4(1), of the Sale of goods act, 1930 'Contract of sale of goods is a contract whereby the seller transfer or agrees to transfer the property in goods to the buyer for a price'. A contract of Sale of goods include both (i) sale and (ii) an agreement to sell Sale: Ownership in the goods is transferred by the seller to the buyer immediately at the time of contract Whereas Agreement to sell: The transfer of ownership in goods is to take place, at a future time or subject to fulfilment of some condition.

DEFINITION:
Section 2(1) of the Act defines a contract of sale of goods as:

a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price.

Subsections (3) and (4) give different names to two transactions:

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale.

(4) Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled the contract is called an agreement to sell.

Sale distinguished from other contracts A contract of sale of goods must be distinguished from sever.

FORMATION OF CONTRACT OF SALE:

Till 1930, the law relating to sale and purchase of goods were regulated by the Indian contract act, 1872. In 1930, sections 76 to 123 of the Indian contract act, 1872 were repealed and separate act called 'The Indian sale of goods act, 1930 was passed. It came into force on 1stJuly 1930 with effect from 22nd September 1963.

ESSENTIALS OF A CONTRACT OF SALE

- Two parties i.e. Buyer and Seller
- Goods
- Transfer of the property in goods
- All Essential elements of a valid contract must be fulfilled
- Price
- Include both sale and agreement to sale

1. Difference between sale and agreement to sale:

Sale:

•Ownership passes to the buyer immediately.

•It is an executed contract.

•Risk of loss falls on the buyer.

•Seller cannot resell the goods.

•Only the existing and specific goods can be the subject matter of sale.

•In case of breach of a contract, seller can sue for the price of the goods even through the goods is in his possession.

•The seller is only entitled to the rate able dividend for the price due if the buyer becomes insolvent. Agreement to sell

•Ownership remains with the seller.

•It is an executory contract.

•Risk of loss falls on the seller even though the goods are in possession of the buyer.

•Seller can sell goods if the buyer commits a breach of his contract.

•It can be in case of future and unascertained goods.

•In case of breach of a contract by seller buyer can sue him for damages.

•The seller may refuse to sell the goods to the buyer w/o payments if the buyer becomes insolvent.

2. GOODS:

Defintion-Sec2 [7] The subject matter of a contract of a sale must be goods. The term 'goods' means 'every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale'.

Classification of goods [Sec 6]

1. Existing goods: Existing goods are those goods that are owned by or possessed by the seller at the time of making the contract and the seller has the right to sell the goods. Further classified into three types-

- **Specific goods**: Goods identified and agreed upon at the time a contract of sale is made.
- **Ascertained goods**: Existing goods that have been both specified and identified by both the partied at the time of sale.

- **Unascertained goods:** These are the goods which are not identified and agreed upon at the time when sale is made.

2. Future goods: The goods which are neither in existence nor in possession of the seller at the time of contract of sale, but will be manufactured, produced or acquired by him after making the contract.

3. Contingent goods: are the goods the acquisition of which depends upon happening and non-happening of the contingency.

4. PRICE OF GOODS:

Section 2(10) defines price "as a money consideration for a sale of goods".

•It forms an essential part of the contract.

•It may be paid partly in term of cash and partly in terms of valued goods.

Modes of fixing price:

•It may be fixed by the contract

•Fixed in an agreed manner

•It may be determined by the course of dealing between the parties.

•In the absence of this, the buyer must pay to seller a reasonable price. What is reasonable price is a question of fact dependent on the circumstances of each particular case.

•Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby becomes void except as to part of goods delivered and accepted.

CONDITIONS AND WARRANTIES

Meaning of stipulation [Sec. 12(1)]- the fact which becomes a part of the contract of sale is called stipulation. The stipulation may be a condition or warranty depending upon its importance in relation to the contract.

Meaning of condition [Sec.12(2)]- •The stipulation which is essential to the main purpose of a contract is known as condition. •The breach of condition gives the aggrieved party the right to terminate the contract.

Meaning of warranty [Sec.12(3)]-

•A warranty is a stipulation which is collateral to the main purpose of the contract, and

•the breach of which gives the aggrieved party a right to claim damages but not a right to reject goods and to terminate the contract.

Difference between Condition and Warranty:

CONDITION:

- Stipulation essential to the main purpose of the contract.
- Its non-performance may be considered as failure to the performance of the contract.
- The aggrieved party may treat the contact as repudiated.
- A breach of condition can be treated as the breach of warranty.

WARRANTY:

- Stipulation only collateral to the main purpose of the contract.
- Its non-performance cannot be considered as failure to the performance of the contract.
- The aggrieved party cannot treat the contact as repudiated but can claim damages.
- A breach of warranty cannot be treated as the breach of condition.

When condition to be treated as warranty [Sec.13]-

Where the buyer waives a condition.

Where the buyer elects to treat breach of the condition as a breach of warranty.

Where the contract is not severable and the buyer has accepted the goods or part thereof.

TYPES OF CONDITIONS AND WARRANTIES:

Express conditions and warranties:

The express conditions and warranties are those which the parties agree expressly, i.e. orally or in writing.

Implied conditions and warranties: The implied conditions and warranties are those which are implied by the law in the absence of any agreement to the contract.

Implied conditions

- Condition as to title[sec.14(a)]
- Condition as to sale by description [sec.15]
- Condition as to sale by sample[sec.17]
- Condition as to quality or fitness[sec.16]
- Condition as to merchantable quality [sec.16(2)]
- Condition implied by custom[sec.16(3)]
- Condition as to wholesomeness Implied Warranties

Warranty as to quite possession [sec.14(b)].

- Warranty of freedom from charge or encumbrance [sec.15(c)].
- Warranty to disclose dangerous nature of goods.
- Warranty as to quality or fitness by usage of trade[sec.16(4)]

TRANSFER OF PROPERTY

MEANING OF TRANSFER OF PROPERTY

Section 5 of the Transfer of Property Act, 1882 defines the term transfer of property. According to this section, transfer of property means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and other living persons. The phrase "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing in this section shall affect any law for the time being in force relating to or by companies, associations or bodies of individuals.

The word property in the Act has been used in one of the following senses:

(i) Tangible material things like house.

(ii) Rights which are exercised over material things like the right to sell or make a gift of things.

(iii) Rights which are not exercised over any material such as the right to repayment of a debt.

The expression transfer of property implies various meanings. One sense maybe transfers of things such as the sale of a house. Another sense maybe transfer of one or more of the rights in a thing such as mortgage of a house or transfer of a debt.

Thus, if a new title has not been created or some interest has not been transferred in favour of the Transferee, then the transfer of property cannot take effect.

An analysis of section 5 helps us understand the meaning of the phrase, "transfer of property". Thus, transfer of property means an act which may take effect in the present or future. The property in question must be in existence at the time the transfer takes place. Moreover, the conveyance of the property must be from one living person to another.

CONTRACTS INVOLVING SEA ROUTES

Contracts involving Sea Routes:

In cases of International trade, Sea route is the most common and cheapest mode.

In case of contracts through sea routes, the contract may have the following three forms:

1. CIF Contract

2. FOB Contracts

3. Ex-Ship Contracts

CIF Contract:

CIF contract is all about Cost, Insurance and Freight. In this case of contract the price includes the cost of insurance and freight which is already built in the price charged from the buyer. This is the contract in which he seller insures the goods and delivers the same to the shipping company for being sent to the buyer.

In such a case the ownership is transferred to the buyer when the shipping documents are delivered to the buyer and he receives them by paying them the price. If the buyer refuses to take delivery of these documents, seller can claim damages for breach of the contract. That is the reason CIF contract is also called a contract of sale of document as the buyer has to accept the documents and; pay the price even if the goods are destroyed.

FOB Contracts:

Under such kind of contracts, the seller places the goods on board a ship at his own expense. The Seller simply put the goods on the ship at his own expense and then the goods are the risk of the buyer who has to bear the risk and bear the responsibilities for freight, insurance and subsequent expense. Section 39(3) of the Sale of Goods Act applies to FOB contracts.

Ex-Ship Contracts:

It is a contract for the sale of goods in which the seller has to deliver the goods to the buyer at the port of destination from a ship which has arrived at the usual place of delivery therein for the discharge of goods of the kind in question.

Where delivery is ex-ship the seller commits a breach of his duty under section 31 of the Sale of Goods Act, if he stores the goods in the go down and asks the buyer to take goods from his go down.

SALE BY NON –OWNERS:

A sale by non-owner in business law occurs when goods are sold by a person who is not the owner without the owner's permission.3 min read

A sale by non-owner in business law occurs when goods are sold by a person who is not the owner without the owner's permission. Only the person who owns the title to a piece of property, whether that is personal property or real estate, can transfer the title to someone else.

Nemo date quod non habit is a legal term that's often abbreviated to nemo dat. It simply means no one can transfer what they don't have. As such, a seller can only transfer ownership to a buyer if he possesses the right to do so. Nemo date may apply if a seller sells stolen goods without the rights to them or a buyer purchases stolen goods.

- General rule is 'NEMO DAT QUO NON HABET' means no one can give what he does not himself possess. Exceptions
- Sale by mercantile agent [Sec 27]

- Sale by one of Joint owners. [Sec 28]
- Sale by a person in possession under voidable contract. [Sec 29] •Sale by a buyer in possession before the transfer of ownership.[Sec 30 (2)]
- Sale by an unpaid seller [Sec 54]
- Sale by owner by Estoppel

RIGHT/DUTIES OF BUYER:

	RIGHT		DUTIES
1.	To have delivery of the goods as per contract. (secs . 31 & 32)	1	To accept the delivery of goods, when the seller is willing to make the delivery as per the contract (Sec. 31)
2.	To reject the goods when they are not of the description, quality or quantity as specified in the contract (Sec 37).	2.	To pay the price in exchange for possession of the goods
3.	To repudiate the contract when goods are delivered in instalments without any agreement to that effects [Sec. 38 (1)]	3.	To apply for delivery of the goods. (Sec. 35)
4.	To be informed by the seller, when the goods are to be sent by sea route, so that he may arrange for their insurance [Sec 39 (30]	4	To demand delivery of the goods at a reasonable hour (sec 36 (4)
5	To have a reasonable opportunity to examine the goods for ascertaining whether they are in conformity with the contract. (sec. 41)	5	To accept delivery of the goods in instalments and pay for them, in accordance with the contract. (Sec. 38 (2)
6	To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods.	6	To bear the risk of deterioration in the course of transit, when the goods are to be delivered at a place other than where they are sold (sec 40)

7	To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the gods to the buyer (sec 57)	7	To inform the seller in case the buyer refuses to accept or rejects the goods (sec 43)
8	To sue the seller for specific performance	8	To take the delivery of the goods within a reasonable time after the seller tenders the delivery (Sec. 44)
9	To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59)	9	To pay the price, where the property in the goods are passed to the buyer, in accordance with the terms of the contract (Sec 55)
10	To sue the seller the damages for anticipatory breach of contract (Sec 60)	10	To pay damages for non-acceptance of goods (Sec 56)
11	To sue the seller for interest where there is a breach of contract on the part of the seller and price has to be refunded to the buyer (sec 61)		

RIGHTS OF UNPAID SELLER

Meaning

According to Section 47(2), the unpaid seller can exercise his rights of lien while he is in possession of the goods by acting as an agent or bailee for the buyer. This is called possessory lien and can be exercised by the seller as long as he is in possession of the goods.

Definition of an Unpaid Seller

As per the Sales of Goods Act, 1930, Section 45 defines an unpaid seller as a seller who has not yet received the full price for the goods or a part thereof and includes any person who is in the position of a seller, e.g., an agent or a consignor. In other words, an unpaid seller is a seller who has not been paid for the goods they have sold, either in full or in part.

Rights of Unpaid Seller

The Sales of Goods Act, 1930 provides various rights to unpaid sellers in case of default by the buyer. These unpaid sellers' rights are aimed at protecting the interests of the seller and ensuring that they are able to recover their dues in case of non-payment by the buyer. The rights of unpaid seller are:

- Right of Lien
- Right to Stoppage in Transit
- Rights to Resell the Goods
- Right to Sue for the Price
- Rights to Claim Damages
- Rights of to Retain the Goods
- Right to Rescind the Contract

Right of Lien by Unpaid Seller

One of the important rights of unpaid seller is the right to lien. Lien refers to the right to retain possession of the goods until the full price has been paid by the buyer. An unpaid seller can exercise this right if the goods have been sold on credit and the buyer has not yet paid the full price.

However, there are certain conditions that need to be fulfilled in order for the seller to exercise the right of lien. According to Section 47 of the Sales of Goods Act, 1930, the right of lien can be exercised by the seller if:

a) The goods have been sold without any stipulation for credit, i.e., the sale was on a cash basis.

b) The buyer becomes insolvent, i.e., is unable to pay their debts as they become due.

c) The goods have been sold on credit, but the term of credit has expired and the seller has not yet received the full price.

Unpaid Sellers' Right to Stoppage in Transit

Another important right of unpaid seller is the right of stoppage in transit. This right arises when the goods are in transit, i.e., they have been dispatched by the seller but not yet delivered to the buyer and the buyer has become insolvent. In such a situation, the seller can stop the goods in transit and resume possession of the goods. This right allows the seller to prevent the goods from being delivered to the insolvent buyer and gives them the opportunity to recover their dues.

Rights of Unpaid Seller to Resell the Goods

The Sales of Goods Act, 1930 also provides the unpaid seller's rights to resell the goods in certain circumstances. According to Section 48 of the Act, if the seller has exercised their right of lien or has stopped the goods in transit and the buyer does not pay the price within a reasonable time, the seller can sell the goods to recover their dues.

The seller can sell the goods either by public auction or by private sale. However, the seller must notify the buyer of their intention to resell the goods and if the buyer pays the price before the resale, the seller is bound to deliver the goods to the buyer. The seller is also entitled to claim damages from the buyer for any loss incurred due to the non-payment of the price.

Right to Sue for the Price by the Unpaid Seller

If the seller is unable to exercise their right of lien or stoppage in transit, or if they do not wish to resell the goods, they can also sue the buyer for the price of the goods.

According to Section 55 of the Sales of Goods Act, 1930, the seller can sue the buyer for the price of the goods, even if the property in the goods has not been passed to the buyer.

It is important to note that the seller must notify the buyer of their intention to sue for the price, if such notice is required by the contract or by law. The notice must be given within a reasonable time after the right to sue for the price has arisen and failure to give notice may affect the seller's right to claim the price.

Unpaid Sellers' Rights to Claim Damages

Apart from the right to sue for the price, an unpaid seller's rights include the right to claim damages for any loss suffered due to the buyer's default. If the buyer wrongfully neglects or refuses to accept the goods, or fails to pay for the goods, the seller can claim damages for any loss incurred as a result.

It is important to note that the seller has a duty to mitigate their damages, which means that they must take reasonable steps to minimize their losses. If the seller fails to mitigate their damages, the court may reduce the amount of damages that can be claimed.

Rights of Unpaid Seller to Retain the Goods

In certain situations, an unpaid seller also has the right to retain the goods until their dues are paid. According to Section 46 of the Sales of Goods Act, 1930, an unpaid seller who is in possession of the goods has the right to retain the goods until the price is paid or until other obligations of the buyer are fulfilled.

Unpaid Sellers' Right to Rescind the Contract

In certain circumstances, an unpaid seller also has the right to rescind the contract of sale and treat it as if it never existed. According to Section 49 of the Sales of Goods Act, 1930, if the buyer has become insolvent and the seller has not yet delivered the goods, the seller may refuse to deliver the goods and may also treat the contract as rescinded.