

# **EXAMINATION NOTES**

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# UNIT-1

## THE INDIAN CONTRACT ACT, 1872

The Indian Contract Act, 1872, is the primary legislation governing contracts in India. It outlines the rules and regulations for creating, enforcing, and breaching contracts. Essentially, it defines the conditions under which promises become legally binding agreements.

- **Scope:**

The Act applies to all of India and covers various types of contracts, including express, implied, and even quasi-contracts.

- **Key Elements of a Valid Contract:**

The Act specifies the essential elements for a contract to be valid, such as offer, acceptance, consideration, free consent, lawful object, and competent parties.

- **Formation of Contracts:**

It details how contracts are formed, including the communication, acceptance, and revocation of proposals.

- **Breach of Contract:**

The Act also addresses what constitutes a breach of contract and the remedies available to the affected party, such as damages or specific performance.

- **Evolution:**

While initially encompassing a broader range of commercial agreements, parts of the Act were later split off into separate statutes like the Indian Partnership Act, 1932 and the Sale of Goods Act, 1930.

- **Amendments:**

The Act has been amended over time to adapt to changing circumstances, including the introduction of provisions for electronic contracts (e-contracts).

- **Importance for Businesses:**

Understanding the Indian Contract Act is crucial for businesses of all sizes to ensure their agreements are legally sound and to protect their interests.

**Contracts** can be classified in several ways, including by how they are formed, their validity, the nature of the obligations, and how they are executed. **Common types include express, implied, bilateral, unilateral, valid, void, and voidable contracts.**

### 1. Based on Formation:

- **Express Contracts**: Terms are explicitly stated, either verbally or in writing.
- **Implied Contracts**: Terms are understood through actions or circumstances, not explicitly stated.
- **Quasi Contracts**: Not true contracts, but obligations imposed by law to prevent unjust enrichment.
- **E-Contracts**: Contracts formed electronically.

## 2. Based on Nature and Consideration:

- **Bilateral Contracts**: Both parties make promises and have obligations.
- **Unilateral Contracts**: One party promises something in exchange for an act by the other party.

## 3. Based on Execution:

- **Executed Contracts**: Obligations of all parties have been fulfilled.
- **Executory Contracts**: One or both parties have not yet completed their obligations.

## 4. Based on Validity:

- **Valid Contracts**: Meets all legal requirements and is enforceable.
- **Void Contracts**: Not legally binding from the beginning.
- **Voidable Contracts**: Can be cancelled by one party.
- **Illegal Contracts**: Forbidden by law.
- **Unenforceable Contracts**: Valid but cannot be enforced due to technicalities.

## 5. Other Notable Types:

- **Standard Form Contracts**: Pre-written contracts with little to no negotiation by Shiksha.
- **Adhesion Contracts**: Standard form contracts where one party has significantly more power by Shiksha.
- **Unconscionable Contracts**: Contracts that are so unfair or one-sided as to be unenforceable.
- **Aleatory Contracts**: Contingent on an uncertain event (e.g., insurance).
- **Option Contracts**: Give one party the right to enter into another contract later.

## \*Essential of a valid contract

A valid contract requires several essential elements to be legally binding. These include a valid offer and acceptance, consideration, legal capacity, legal purpose, and mutual consent. Without these, a contract may be deemed unenforceable.

Here's a breakdown of the key elements:

- **Offer and Acceptance:** A clear offer must be made by one party, and the other party must unequivocally accept that offer.
- **Consideration:** There must be something of value exchanged between the parties. This could be a payment, a service, or a promise to do something.
- **Legal Capacity:** The parties entering into the contract must be legally competent to do so. This generally means they must be of legal age and sound mind.
- **Legal Purpose:** The purpose of the contract must be legal and not against public policy.
- **Mutual Consent (Meeting of the Minds):** Both parties must freely and voluntarily agree to the terms of the contract. There should be no coercion, duress, or undue influence.
- **Intention to Create Legal Relations:** The parties must intend for their agreement to be legally binding.
- **Legality:** The contract's subject matter and the means of performance must be legal.
- **Certainty of Terms:** The terms of the contract must be clear, definite, and not vague.
- **Possibility of Performance:** The obligations outlined in the contract must be capable of being performed.

## **\*OFFER**

A valid offer and acceptance are crucial for creating a legally binding contract. An offer must be definite, certain, and communicated to the offeree with the intention to create legal relations. Acceptance must be absolute, unqualified, communicated to the offeror, and given within a reasonable time or as prescribed, according to some legal sources.

### **Essential Features of a Valid Offer:**

- **Definite and Certain Terms:** The offer should clearly state the terms of the proposed agreement, leaving no room for ambiguity or confusion.
- **Intention to Create Legal Relations:** The offeror must intend for the offer to be legally binding if accepted.
- **Communication to the Offeree:** The offer must be communicated to the intended recipient (offeree) for it to be valid.
- **Distinction from Invitation to Treat:** An offer must be distinguished from an invitation to treat, which is merely an invitation to make an offer.
- **Can be Revoked:** The offeror can revoke (withdraw) the offer before it has been accepted.

Essential Features of a Valid Acceptance:

- **Absolute and Unqualified:**

The acceptance must be a mirror image of the offer, agreeing to all the terms without any changes or additions.

- **Communication to the Offeror:**

The acceptance must be communicated back to the offeror in a way that is either prescribed or usual in business practice.

- **Within a Reasonable Time:**

If no time limit is specified, the acceptance must be made within a reasonable time frame.

- **Must be by the Offeree:**

Only the person to whom the offer was made can accept it.

- **Silence is not Acceptance:**

Generally, silence or inaction does not constitute acceptance unless the parties have previously agreed otherwise.

- **Prescribed Mode of Acceptance:**

If the offer specifies a particular way for acceptance, it must be followed.

## **\*ACCEPTANCE**

A valid acceptance in contract law must be absolute and unqualified, communicated to the offeror, occur within a prescribed or reasonable time, and follow any specified mode of acceptance. Additionally, the acceptance must be given by the offeree (or their authorized agent) and must be based on a genuine understanding of the offer.

Essentials of a Valid Acceptance:

- **Absolute and Unqualified:**

The acceptance must exactly match the terms of the offer without any changes or additions. Any alteration or condition added to the acceptance transforms it into a counteroffer, which terminates the original offer.

- **Communication to the Offeror:**

Acceptance must be communicated to the offeror, either expressly (through words or writing) or impliedly (through conduct). Mere mental assent or uncommunicated intention is not sufficient.

- **Within a Prescribed or Reasonable Time:**

If the offer specifies a time limit for acceptance, it must be within that timeframe. If no time is specified, acceptance must occur within a reasonable time, depending on the circumstances.

- **Following the Specified Mode:**

If the offeror specifies a particular mode of acceptance (e.g., by mail, email, or phone), the offeree must use that method. If no mode is specified, acceptance can be communicated through a reasonable and usual method.

- **Made by the Offeree or Authorized Agent:**

Only the person to whom the offer is made (or their authorized representative) can accept it.

- **Knowledge of the Offer:**

The offeree must be aware of the offer at the time of acceptance. Acceptance without knowledge of the offer is not valid.

- **Not Silence:**  
Generally, silence does not constitute acceptance. The offeror cannot impose acceptance based on the offeree's silence.

## **\*CONSIDERATION**

Consideration, in contract law, is something of value exchanged between parties to a contract. It's essential for a valid and enforceable agreement. The rules governing consideration require it to be something of value, exchanged between the parties, and sufficient, though not necessarily adequate. It must also be legal and not past consideration.

Key Rules of Consideration:

- **Something of Value:**  
Consideration must be something that has value in the eyes of the law. This could be a payment, a promise, an act, or a forbearance.
- **Bargained-For Exchange:**  
There must be a bargain between the parties, with both giving something of value to the other.
- **Sufficient, Not Adequate:**  
Consideration must be sufficient, meaning it has some value, but it doesn't need to be equal in value to what's being exchanged for it.
- **Must Not Be Past:**  
Consideration cannot be something that has already been given or done before the promise is made.
- **Must Be Legal:**  
Consideration must be legal and not against public policy.
- **Must Move at the Desire of the Promisor:**  
The act constituting consideration should be done at the request or desire of the person making the promise.
- **May Move from the Promisee or a Third Party:**  
Consideration can be provided by the person to whom the promise is made or by another person.
- **Can Be Executed or Executory:**  
Consideration can be an act already completed (executed) or a promise to do something in the future (executory).
- **May Be Past, Present, or Future:**  
Consideration can be something that was done before the promise was made (past), something done at the time the promise is made (present), or something to be done in the future (future).

## **EXCEPTIONS TO THE RULES:**

- **Charitable Subscriptions:**

Promises to donate to charities are often enforced even without strict consideration.

- **Promissory Estoppel:**

In certain situations, a promise may be enforced even without consideration if the other party relied on it to their detriment.

Inadequacy of Consideration:

While consideration must be sufficient, it does not need to be adequate (equal in value). Courts generally don't interfere with the fairness of the exchange, as long as there's some value exchanged.

Example:

If someone promises to pay \$100 for a car worth \$10,000, the \$100 is still valid consideration, even though it's not equal in value to the car.

## **\*CONTRACTUAL CAPACITY**

In the Indian Contract Act, 1872, contractual capacity refers to the legal ability of a person to enter into a valid contract. Essentially, it means a person must be of the age of majority, of sound mind, and not disqualified by law to be considered competent to contract.

Who is Competent to Contract?

According to Section 11 of the Indian Contract Act, a person is competent to contract if they meet these three criteria:

1. **1. Age of Majority:**

A person must have attained the age of majority, which is generally 18 years old, as defined by the Indian Majority Act.

2. **2. Sound Mind:**

A person must be of sound mind, meaning they must be capable of understanding the contract and its implications at the time of making it.

3. **3. Not Disqualified by Law:**

A person must not be disqualified from contracting by any law to which they are subject. This could include, for instance, an individual declared insolvent or a foreign sovereign.

Minors and Contracts:

- **Void Contract:**

Contracts with minors (those below 18) are generally considered void (not legally binding).

- **Exceptions:**

There are exceptions, such as contracts for necessities supplied to a minor, or beneficial contracts, which can be enforced.

- **Beneficiary:**

Minors can be beneficiaries in contracts, but they are not liable for any debts or obligations arising from the contract.

- **Guardians:**  
Guardians can enter into contracts on behalf of minors, but only for the minor's benefit.  
Sound Mind and Mental Capacity:
- **Understanding and Appreciation:**  
A person of sound mind must be able to understand the terms and conditions of the contract and appreciate its effect on their interests.
- **Periods of Lunacy:**  
If a person has fluctuating mental capacity (periods of lucidity and lunacy), the burden of proof lies on the party claiming the person was of sound mind at the time of contracting.  
Other Disqualifications:
- **Insolvency:** An adjudged insolvent can enter into certain contracts, but they may have limitations on their ability to deal with their property.
- **Alien Enemies:** Foreigners who are enemies of India cannot enter into contracts with Indian citizens during wartime.
- **Convicts:** Convicts may have certain restrictions on their contractual capacity.

### **\*FREE CONSENT OF PARTY**

In the Indian Contract Act, 1872, "free consent" means that a party's agreement to a contract is not influenced by coercion, undue influence, fraud, misrepresentation, or mistake. Essentially, for a contract to be valid, both parties must genuinely and willingly agree to the terms, without any external pressure or deceit.

What is Free Consent?

- **Definition:** Section 14 of the Indian Contract Act defines consent as "free" when it is not caused by coercion, undue influence, fraud, misrepresentation, or mistake.
- **Essential Element:** Free consent is a crucial element for a valid contract.
- **Meeting of the Minds:** For consent to be free, both parties must agree on the same thing in the same sense (consensus-ad-idem).  
Factors Vitiating Free Consent:
- **Coercion:**  
Using force or threat to obtain consent (Section 15).
- **Undue Influence:**  
One party abusing a position of power over another to gain unfair advantage (Section 16).
- **Fraud:**  
Intentional misrepresentation of facts to deceive the other party (Section 17).
- **Misrepresentation:**  
An incorrect statement of fact that induces consent, even if not intentionally fraudulent (Section 18).

- **Mistake:**  
A misunderstanding about the subject matter of the contract, with specific rules outlined in Sections 20, 21, and 22.  
Consequences of Lack of Free Consent:
- **Voidable Contract:** If consent is obtained through coercion, undue influence, fraud, or misrepresentation, the contract is voidable at the option of the party whose consent was not free.
- **Void Agreement:** If consent is caused by mistake, the agreement is void.

## **\*LEGALITY OF OBJECT**

In contract law, the "legality of object" refers to whether the purpose or subject matter of an agreement is lawful. An object is considered lawful if it complies with legal standards, is not forbidden by law, and doesn't go against public policy or morality.

What makes an object lawful?

- **Not forbidden by law:**  
The object of the agreement cannot be something specifically prohibited by law, including statutes, regulations, or judicial decisions.
  - **Not against public policy:**  
The object should not be harmful to the public, violate fundamental principles of justice, or undermine the general welfare of society.
  - **Not immoral:**  
The object should not be considered morally wrong or offensive by the community.  
Examples of unlawful objects:
    - **Forbidden by law:** Agreements involving illegal drugs, weapons, or child pornography.
    - **Against public policy:** Agreements to commit a crime, agreements that restrain trade, or agreements that interfere with the legal process.
    - **Immoral:** Agreements that promote prostitution or other activities considered immoral.
- Why is legality of object important?
- **Valid contract:** A contract is not legally binding if its object is unlawful.
  - **Enforceability:** Courts will not enforce agreements with unlawful objects.
  - **Consequences:** Entering into agreements with unlawful objects can have serious legal consequences.
- In summary, a lawful object is essential for a valid and enforceable contract. Agreements must be for legal purposes and not violate any laws or public policy.

## UNIT -2

### **\*CONTRACT OF INDEMNITY**

A contract of indemnity is a promise by one party (the indemnifier) to protect another party (the indemnity holder) from loss caused by the indemnifier's actions or the actions of a third party. Essentially, it's an agreement to compensate for a specific loss.

Key elements of a contract of indemnity:

- **Promise to Save Harmless:**

The core of the contract is the indemnifier's commitment to protect the indemnity holder from financial or legal harm.

- **Loss Must Occur:**

The indemnifier's obligation is triggered when the indemnity holder suffers a loss, as defined in the contract.

- **Parties Involved:**

- **Indemnifier:** The party who promises to compensate for the loss.

- **Indemnity Holder:** The party who is protected from the loss.

- **Loss can be caused by:**

- The indemnifier's own actions.
- The actions of a third party.
- Specific events outlined in the contract.

- **Examples:**

- Insurance contracts (where the insurer agrees to compensate for covered losses).
- Agreements where one party promises to cover the legal costs of another in a specific situation.

- **Insurance contracts:**

Often involve indemnity. The insurer promises to compensate the insured for losses covered by the policy, in exchange for premiums.

- **Indian Contract Act, 1872:**

Section 124 defines a contract of indemnity as a promise to save another from loss caused by the promisor or another person.

- **Rights of the Indemnity Holder:**

The indemnity holder has the right to recover costs, damages, and expenses incurred due to the covered loss.

- **Implied Contracts:**

While often explicit, indemnity can also be implied by the conduct of the parties or by law.

In essence, a contract of indemnity is a risk management tool that provides financial protection and security against potential losses.

## \* **CONTRACT OF GUARANTEE**

A Contract of Guarantee is a crucial concept under the **Indian Contract Act, 1872**, primarily dealt with in **Sections 126 to 147**. It's a tripartite agreement designed to secure a debt or obligation by providing a secondary source of payment in case the primary debtor defaults.

### **Definition (Section 126)**

Section 126 defines a "contract of guarantee" as: "**A contract to perform the promise, or discharge the liability, of a third person in case of his default.**"

It also defines the three essential parties involved:

- **Surety:** The person who gives the guarantee (also called the guarantor).
- **Principal Debtor:** The person in respect of whose default the guarantee is given.
- **Creditor:** The person to whom the guarantee is given.

**Example:** A borrows money from B. C promises B that if A fails to repay the loan, C will repay it. Here, C is the surety, A is the principal debtor, and B is the creditor.

### **Essential Features of a Contract of Guarantee**

1. **Three Parties:** As mentioned above, there must be a Creditor, a Principal Debtor, and a Surety.
2. **Three Contracts:** Though it appears to be one contract, a contract of guarantee involves three underlying contracts:
  - **Principal Contract:** Between the creditor and the principal debtor (the main transaction).
  - **Secondary Contract:** Between the surety and the creditor (the guarantee itself).
  - **Implied Contract:** Between the principal debtor and the surety (an implied promise by the principal debtor to indemnify the surety if the surety has to pay).
3. **Existence of a Debt/Liability:** There must be an existing, enforceable debt or obligation for which the guarantee is given. If the principal debt is void, the guarantee is also generally void.
4. **Consideration (Section 127):** Anything done, or any promise made, for the benefit of the principal debtor can be a sufficient consideration for the surety giving the guarantee. It is not necessary for there to be direct consideration between the creditor and the surety.
5. **Consent of the Surety:** The surety's consent must be free and not obtained by misrepresentation (Section 142) or concealment of material facts (Section 143).
6. **May be Oral or Written:** A contract of guarantee can be oral or written, although a written agreement is always advisable for evidentiary purposes.
7. **Contingent Liability:** The surety's liability is contingent upon the default of the principal debtor. The surety is only liable if the principal debtor fails to perform their obligation.

## Types of Guarantee

- **Specific Guarantee:** A guarantee given for a single, specific transaction or debt. The surety's liability ends once that specific transaction is completed or the debt is paid.
- **Continuing Guarantee (Section 129):** A guarantee that extends to a series of transactions. The surety's liability continues until it is revoked for future transactions.

## Nature and Extent of Surety's Liability (Section 128)

- **Co-extensive:** The liability of the surety is "co-extensive with that of the principal debtor, unless it is otherwise provided by the contract." This means the surety is liable for the same amount and to the same extent as the principal debtor.
- **Primary Liability (in a sense):** While the liability is secondary to the principal debtor's default, the creditor can proceed directly against the surety without first suing the principal debtor, unless the contract specifies otherwise.

## Rights of a Surety

The Indian Contract Act provides several rights to a surety to protect their interests:

1. **Rights against the Principal Debtor:**
  - **Right of Subrogation (Section 140):** Upon paying the debt or performing the obligation, the surety steps into the shoes of the creditor and is entitled to all the rights the creditor had against the principal debtor.
  - **Right to Indemnity (Section 145):** There is an implied promise by the principal debtor to indemnify the surety. The surety is entitled to recover from the principal debtor whatever sum they have rightfully paid under the guarantee.
2. **Rights against the Creditor:**
  - **Right to securities (Section 141):** The surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time the contract of suretyship is entered into, whether the surety knows of its existence or not. If the creditor loses or parts with such security without the surety's consent, the surety is discharged to the extent of the value of the security.
  - **Right to set-off:** The surety can claim any set-off which the principal debtor had against the creditor.
3. **Rights against Co-Sureties (Sections 146 & 147):**
  - **Right to Contribution:** Where there are co-sureties, they are liable to contribute equally to the extent of the default, unless the contract specifies otherwise.

## Discharge of a Surety from Liability

A surety can be discharged from their liability under various circumstances:

1. **By Revocation:**
  - **By Notice (Section 130):** In the case of a continuing guarantee, the surety can revoke it for future transactions by giving notice to the creditor.

- **By Death of Surety (Section 131):** The death of the surety automatically revokes a continuing guarantee for future transactions.
2. **By Conduct of the Creditor:**
- **By Variance in Terms of Contract (Section 133):** If the creditor and principal debtor vary the terms of the contract without the surety's consent, the surety is discharged as to transactions subsequent to the variation.
  - **By Release or Discharge of Principal Debtor (Section 134):** If the creditor releases the principal debtor or does any act that legally discharges the principal debtor, the surety is also discharged.
  - **By Composition, Extension of Time, or Promise Not to Sue (Section 135):** If the creditor makes a settlement with, gives time to, or promises not to sue the principal debtor without the surety's consent, the surety is discharged. (Unless the surety assents or the agreement is made with a third person).
  - **By Creditor's Act or Omission Impairing Surety's Eventual Remedy (Section 139):** If the creditor does something that is inconsistent with the rights of the surety or omits to do something that their duty to the surety requires them to do, and the eventual remedy of the surety against the principal debtor is thereby impaired, the surety is discharged.
  - **Loss of Security by Creditor (Section 141):** As mentioned under rights, if the creditor loses or parts with any security held against the principal debtor without the surety's consent, the surety is discharged to the extent of the value of that security.
3. **By Invalidating the Contract:**
- **Guarantee obtained by Misrepresentation (Section 142):** A guarantee obtained by misrepresentation of a material part of the transaction is invalid.
  - **Guarantee obtained by Concealment (Section 143):** A guarantee obtained by the creditor by means of keeping silence as to material circumstances is invalid.
  - **Failure of Co-surety to Join (Section 144):** If a contract of guarantee stipulates that a creditor shall not act upon it until another person has joined as a co-surety, the guarantee is not valid if that other person does not join.

## Difference from Contract of Indemnity

While both contracts deal with security, key differences exist:

Feature	Contract of Guarantee	Contract of Indemnity
<b>Parties</b>	Three (Creditor, Principal Debtor, Surety)	Two (Indemnifier, Indemnified)
<b>Nature of Liability</b>	Secondary; arises on default of principal debtor	Primary; arises on the happening of a loss
<b>Number of Contracts</b>	Three (between each pair of parties)	One (between indemnifier and indemnified)
<b>Purpose</b>	To secure a debt/obligation for a third party	To compensate for a loss suffered by the indemnified
<b>Right to Sue Third</b>	Surety can sue principal debtor	Indemnifier generally cannot sue a

Feature	Contract of Guarantee	Contract of Indemnity
<b>Party</b>	after paying	third party directly

In essence, the Contract of Guarantee under the Indian Contract Act is a vital legal tool that provides assurance to creditors and facilitates commercial transactions by mitigating the risk of default.

## \*CONTRACT OF BAILMENT

A Contract of Bailment is another significant concept under the **Indian Contract Act, 1872**, primarily dealt with in **Sections 148 to 171**. It's a specific type of contract where one person delivers goods to another for a particular purpose, with the understanding that the goods will be returned or disposed of according to the deliverer's instructions once the purpose is accomplished.

### Definition (Section 148)

Section 148 defines "bailment" as: "The **delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.**"

It also defines the parties involved:

- **Bailor:** The person who delivers the goods.
- **Bailee:** The person to whom the goods are delivered.

### Example:

- You give your clothes to a dry cleaner. You are the bailor, and the dry cleaner is the bailee.
- You leave your car at a parking lot. You are the bailor, and the parking lot attendant/owner is the bailee.
- You lend a book to a friend. You are the bailor, and your friend is the bailee.

### Essential Features of a Contract of Bailment

1. **Delivery of Goods:** There must be an actual or constructive delivery of goods by the bailor to the bailee.
  - **Actual Delivery:** Physical transfer of possession (e.g., handing over a book).
  - **Constructive Delivery:** Where there is no physical transfer but something is done which has the effect of putting the goods in the possession of the bailee (e.g., handing over the key to a locker where goods are stored).

- **Possession, not Ownership:** Only the possession of goods is transferred, not the ownership. The bailor remains the owner of the goods.
- 2. **Specific Purpose:** The goods are delivered for a specific purpose. This purpose can vary widely, from repair, safekeeping, carriage, use, etc.
- 3. **Return or Disposal:** Once the purpose for which the goods were delivered is accomplished, the bailee is bound to return the identical goods to the bailor or dispose of them according to the bailor's directions. This is a crucial element distinguishing bailment from a sale or exchange.
- 4. **Contract:** There must be a contract, express or implied, between the bailor and the bailee. This contract defines the terms and conditions of the bailment. While consideration is usually present, a bailment can also be gratuitous (without consideration).
- 5. **Movable Goods:** The subject matter of bailment must be movable goods. Immovable property cannot be bailed.

### **Kinds of bailment (based on reward/benefit)**

Bailments can be classified based on whether they are for reward or gratuitous:

1. **Gratuitous Bailment (without reward):**
  - **For the exclusive benefit of the bailor:** E.g., You ask a friend to keep your valuable for safekeeping without paying them.
  - **For the exclusive benefit of the bailee:** E.g., You lend your car to a friend for their use without charge.
2. **Non-Gratuitous Bailment (for reward/consideration):**
  - **For the mutual benefit of bailor and bailee:** This is the most common type. E.g., Giving clothes to a dry cleaner (you pay for the service, the dry cleaner gets business), depositing goods in a paid warehouse.

### **Duties of a bailee**

The Indian Contract Act outlines several duties of the bailee:

1. **Duty to take reasonable care of the goods (Section 151 & 152):** The bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value. If he takes such care, he is not responsible for their loss, destruction, or deterioration (unless there's a special contract).
2. **Duty not to make unauthorized use of goods (Section 153 & 154):** The bailee must not use the goods bailed for purposes inconsistent with the terms of the bailment. If he does, the contract is voidable at the option of the bailor, and the bailee is liable for any loss caused by such unauthorized use.
3. **Duty to return the goods (Section 160 & 161):** The bailee is bound to return the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished. If he fails to do so, he is responsible for any loss, destruction, or deterioration of the goods from that time.

4. **Duty not to mix bailor's goods with his own (Sections 155, 156, 157):**
  - If mixed with consent, bailor and bailee will have proportionate shares in the mixture.
  - If mixed without consent and goods can be separated, the bailee is liable for the expenses of separation and for any damage caused.
  - If mixed without consent and goods cannot be separated, the bailee must compensate the bailor for the loss of the goods.
5. **Duty to return any accretion to the goods (Section 163):** The bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed. (e.g., if a cow is bailed and gives birth to a calf).

## **Rights of a Bailee**

1. **Right to receive necessary expenses (Section 158):** If the bailment is gratuitous, the bailee is entitled to recover from the bailor all necessary expenses incurred for the purpose of the bailment.
2. **Right to remuneration (in non-gratuitous bailment):** If the bailment is for reward, the bailee is entitled to the agreed remuneration.
3. **Right to lien (Sections 170 & 171):**
  - **Particular Lien (Section 170):** Where the bailee has, in accordance with the purpose of the bailment, expended labor or skill on the goods bailed, he has a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them. (e.g., a tailor can retain clothes until paid for stitching).
  - **General Lien (Section 171):** Certain bailees (bankers, factors, wharfingers, attorneys of High Court, and policy-brokers) have a general lien, meaning they can retain any goods of the bailor for a general balance of account, not just for services rendered on those specific goods. This right is usually established by custom or express contract.
4. **Right to sue third parties (Section 180 & 181):** If a third party wrongfully deprives the bailee of the use or possession of the goods, or causes injury to them, the bailee can sue the third party. Either the bailor or the bailee can sue, but recovery by one bars the other.

## **Duties of a Bailor**

1. **Duty to disclose faults in goods (Section 150):**
  - **In gratuitous bailment:** The bailor is bound to disclose to the bailee all faults in the goods of which he is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks. If he fails to do so, he is responsible for damage arising to the bailee directly from such faults.
  - **In non-gratuitous bailment:** The bailor is responsible for all damages caused by any defect in the goods, whether he was aware of it or not.
2. **Duty to indemnify the bailee for loss caused by defective title (Section 164):** If the bailor has no right to bail the goods and the bailee suffers loss as a consequence, the bailor must indemnify the bailee.

3. **Duty to repay necessary expenses (Section 158):** In a gratuitous bailment, the bailor must repay the bailee all necessary expenses incurred.
4. **Duty to compensate for premature termination of gratuitous bailment (Section 159):** If a gratuitous bailment is terminated before the specified time and the bailee has incurred expenses exceeding the benefit derived, the bailor must indemnify the bailee.

### **Termination of Bailment**

A contract of bailment terminates under the following circumstances:

1. **Expiry of the specified period:** If the bailment was for a fixed period.
2. **Accomplishment of the purpose:** Once the purpose for which the goods were bailed is achieved.
3. **By Bailee's unauthorized act (Section 153):** If the bailee acts inconsistently with the terms of the bailment.
4. **Death of either party (in gratuitous bailment) (Section 162):** A gratuitous bailment is terminated by the death of either the bailor or the bailee.
5. **Notice by Bailor (in gratuitous bailment) (Section 159):** A gratuitous bailment can be terminated by the bailor at any time, subject to compensating the bailee for any loss incurred due to premature termination.

The Contract of Bailment is a fundamental aspect of commercial law, governing a wide array of everyday transactions involving the temporary transfer of goods.

### **\*CONTRACT OF AGENCY**

A Contract of Agency is a fundamental concept under the **Indian Contract Act, 1872**, primarily governed by **Sections 182 to 238**. It establishes a legal relationship where one person acts on behalf of another, creating legal relations between that other person (the principal) and third parties.

#### **Definition (Section 182)**

Section 182 of the Indian Contract Act defines "agent" and "principal": "An '**agent**' is a person **employed to do any act for another, or to represent another in dealings with third persons.** The person for whom such act is done, or who is so represented, is called the '**principal**'."

**Essentially:** An agent acts as a link or channel between the principal and third parties, enabling the principal to engage in legal transactions without being physically present or directly involved in every step.

#### **Example:**

- A appoints B to sell his house. A is the principal, B is the agent. When B sells the house to C, the contract is between A and C.
- You ask a real estate broker to find you a tenant for your property. You are the principal, the broker is the agent.

### Key Elements and Characteristics of a Contract of Agency

1. **Principal and Agent:** There must be at least two parties – a principal and an agent.
2. **Representative Capacity:** The core of agency is the agent's power to represent the principal in dealings with third parties. The agent is not acting on their own account but on behalf of the principal.
3. **Creation of Legal Relations:** The agent's actions, within the scope of their authority, bind the principal to third parties. This means the principal can sue or be sued by the third party for contracts entered into by the agent.
4. **No Consideration Required (Section 185):** Unlike most contracts, a contract of agency does not necessarily require consideration. A gratuitous agency (where the agent acts without remuneration) is valid. However, if remuneration is agreed upon, it forms part of the contract.
5. **Competency of Parties:**
  - **Principal (Section 183):** The principal must be of the age of majority and of sound mind to employ an agent. Essentially, anyone competent to contract can employ an agent.
  - **Agent (Section 184):** An agent need not be competent to contract (i.e., even a minor or a person of unsound mind can be an agent). However, such an agent cannot be held personally liable to the principal for their actions. The contract is between the principal and the third party, so the agent's competency in this regard is not critical.
6. **"Delegatus non potest delegare" (A delegate cannot further delegate):** Generally, an agent cannot delegate their authority to another person, unless custom, trade usage, or the nature of the agency permits it, or if the principal explicitly allows it.

### Modes of Creation of Agency

Agency can be created in several ways:

1. **By Express Agreement (Section 187):** This is the most common method, where the principal explicitly appoints the agent, either orally or in writing.
2. **By Implied Agreement (Section 187):** Agency can be inferred from the conduct of the parties, the circumstances of the case, or the relationship between them. This includes:
  - **Agency by Estoppel (Section 237):** When a person, by their words or conduct, leads a third party to believe that another person is their agent, they are "estopped" from denying that agency.
  - **Agency by Holding Out:** Similar to estoppel, where the principal's affirmative conduct implies agency.

- **Agency by Necessity:** Arises in emergency situations where an agent acts to protect the principal's property or interests without prior authority (e.g., a master of a ship selling perishable goods to prevent their spoilage).
  - **Agency by Relation (e.g., husband and wife):** A wife living with her husband is presumed to have implied authority to pledge his credit for necessities.
3. **By Ratification (Sections 196-200):** When an agent acts without authority or exceeds their authority, the principal can later approve or confirm the unauthorized act. Once ratified, the act is treated as if it was authorized from the beginning.
    - Conditions for valid ratification: The principal must be in existence, competent to contract, have full knowledge of material facts, and ratify the entire transaction.
  4. **By Operation of Law:** In certain cases, the law creates an agency relationship (e.g., a partner acting as an agent of the firm).

## Authority of an Agent

The authority of an agent can be:

- **Actual Authority (Section 186):**
  - **Express Authority:** Given by words, spoken or written.
  - **Implied Authority (Section 187):** Inferred from the circumstances, the nature of the act, the customs of trade, or the usual course of dealing.
- **Ostensible or Apparent Authority:** Authority that a third party reasonably believes the agent has, even if the agent doesn't have actual authority. This often arises from the principal's conduct.
- **Authority in an Emergency (Section 189):** An agent has authority to do all such acts as a person of ordinary prudence would do for the purpose of protecting the principal from loss in an emergency.

## Duties of an Agent (Sections 211-218)

1. **Duty to follow instructions or custom (Section 211):** The agent must act within the scope of authority and follow the principal's instructions. If no instructions, they must act according to the custom of the trade. Deviation makes the agent liable for loss.
2. **Duty to act with reasonable care and skill (Section 212):** The agent must conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business and with ordinary prudence.
3. **Duty to render proper accounts (Section 213):** The agent is bound to render proper accounts to the principal on demand.
4. **Duty to communicate with the principal (Section 214):** In cases of difficulty, the agent must use all reasonable diligence to communicate with the principal and obtain instructions.
5. **Duty not to deal on their own account (Sections 215 & 216):** An agent cannot deal in the business of the agency on their own account without the principal's consent and full disclosure. If they do, the principal can repudiate the transaction or claim any benefit that may have resulted to the agent.

6. **Duty not to make secret profit (Section 216):** The agent must not make any secret profit out of the agency business. All profits belong to the principal.
7. **Duty to protect and preserve the principal's property:** The agent must take reasonable steps to safeguard the principal's property entrusted to them.
8. **Duty not to delegate authority (unless allowed):** As per the general rule of *delegatus non potest delegare*.

### **Rights of an Agent (Sections 217-225)**

1. **Right to remuneration (Sections 219 & 220):** The agent is entitled to receive the agreed remuneration or, in its absence, reasonable remuneration for services rendered. Remuneration becomes due on the completion of the act.
2. **Right to retain sums (Section 217):** An agent can retain, out of sums received on the principal's account, all monies due for advances made or expenses properly incurred, and also remuneration.
3. **Right of lien (Section 221):** An agent has a particular lien on the principal's goods, papers, and other property (movable or immovable) received by them until their commission, disbursements, and services have been paid or accounted for.
4. **Right to be indemnified (Sections 222-224):**
  - **For lawful acts (Section 222):** The principal is bound to indemnify the agent against the consequences of all lawful acts done in the exercise of their authority.
  - **For acts done in good faith (Section 223):** The principal must indemnify the agent for consequences of acts done in good faith, even if they injure third persons.
  - **No indemnity for criminal acts (Section 224):** The principal is not liable to indemnify the agent for criminal acts.
5. **Right to compensation (Section 225):** The principal must make compensation to the agent in respect of any injury caused to the agent by the principal's neglect or want of skill.

### **Duties of a Principal**

1. **Duty to pay remuneration (Section 219):** To pay the agent the agreed-upon or reasonable remuneration.
2. **Duty to indemnify the agent (Sections 222, 223):** To protect the agent from losses incurred due to lawful acts or acts done in good faith within the scope of agency.
3. **Duty to compensate the agent for injury (Section 225):** To compensate for injuries caused by the principal's neglect or lack of skill.
4. **Duty to act in good faith and cooperate:** To provide the agent with necessary information and not hinder their performance.

### **Rights of a Principal**

1. **Right to repudiate contract (Section 215):** If the agent deals on their own account without disclosure.
2. **Right to demand accounts (Section 213):** To demand proper accounts from the agent.

3. **Right to recover secret profits (Section 216):** To recover any secret profits made by the agent.
4. **Right to disallow remuneration:** If the agent is guilty of misconduct or fraud.
5. **Right to revoke authority (Section 203):** Subject to certain conditions (see termination).

## **Termination of Agency (Sections 201-210)**

An agency can be terminated by:

### **1. Act of Parties:**

- **By Revocation by Principal (Section 203):** The principal can revoke the agent's authority at any time before the authority has been exercised so as to bind the principal. Reasonable notice must be given (Section 206).
- **By Renunciation by Agent (Section 207):** The agent can renounce the business of the agency by giving reasonable notice to the principal.
- **By Mutual Agreement:** The principal and agent can mutually agree to terminate the agency.
- **Completion of Business:** When the specific purpose for which the agency was created is accomplished.
- **Expiry of Time:** If the agency was created for a fixed period, it terminates upon the expiry of that period.

### **2. Operation of Law:**

- **Death of Principal or Agent (Section 201):** The agency automatically terminates upon the death of either party.
- **Insanity of Principal or Agent (Section 201):** If either party becomes of unsound mind.
- **Insolvency of Principal (Section 201):** When the principal is adjudicated as insolvent.
- **Destruction of Subject Matter:** If the subject matter of the agency is destroyed.
- **Agency Becoming Unlawful:** If the acts of the agency become illegal.

**Irrevocable Agency (Sections 202-204):** An agency is generally irrevocable if:

- The agent has an interest in the subject matter of the agency.
- The agent has partly exercised their authority (as to acts already done).
- The agency is coupled with an interest (e.g., an agent appointed to sell goods and recover their own debt from the proceeds).

The Contract of Agency is crucial for the functioning of modern business and legal transactions, allowing individuals and organizations to extend their reach and conduct affairs through representatives.

## **\*THE CONSUMER PROTECTION ACT**

The Consumer Protection Act in India is a significant piece of legislation aimed at safeguarding the rights and interests of consumers. The most recent and currently in force Act is the **Consumer Protection Act, 2019**, which replaced the Consumer Protection Act, 1986.

Here's a breakdown of its key aspects:

### **1. Objectives:**

- To provide for the better protection of the interests of consumers.
- To establish authorities for the timely and effective administration and settlement of consumer disputes.

### **2. Key Features and Provisions of the Consumer Protection Act, 2019:**

- **Expanded Definition of "Consumer":** The 2019 Act broadens the definition to include transactions conducted through all modes, including offline, online (e-commerce), teleshopping, multi-level marketing, and direct selling. This addresses the rise of digital commerce.
- **Central Consumer Protection Authority (CCPA):** A major addition is the establishment of the CCPA, an executive agency with wide-ranging powers to:
  - Protect, promote, and enforce consumer rights as a class.
  - Regulate matters related to violation of consumer rights, unfair trade practices, and misleading advertisements.
  - Conduct investigations, impose penalties, and order the recall of hazardous goods or withdrawal of services.
  - Initiate class action suits.
  - The CCPA has an investigation wing headed by a Director-General.
- **Product Liability:** This is a crucial new provision. It holds manufacturers, service providers, and sellers accountable for any harm or injury caused to a consumer by a defective product or deficient service. Consumers can seek compensation for such harm.
- **Enhanced Consumer Rights:** The Act explicitly recognizes six consumer rights:
  1. Right to be protected against the marketing of goods and services which are hazardous to life and property.
  2. Right to be informed about the quality, quantity, potency, purity, standard, and price of goods or services.
  3. Right to be assured, wherever possible, access to a variety of goods or services at competitive prices.
  4. Right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums.
  5. Right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers.
  6. Right to consumer awareness.

- **Consumer Disputes Redressal Commissions (CDRCs):** The three-tier quasi-judicial system (District, State, and National Commissions) for consumer dispute redressal continues, but with revised pecuniary jurisdictions:
  - **District Commission:** Complaints where the value of goods/services does not exceed ₹1 crore.
  - **State Commission:** Complaints where the value is between ₹1 crore and ₹10 crore.
  - **National Commission:** Complaints where the value exceeds ₹10 crore.
- **E-filing of Complaints:** Consumers can now file complaints electronically, offering greater convenience.
- **Territorial Jurisdiction:** A complaint can be filed in the CDRC having jurisdiction over the complainant's residence or place of business, in addition to the traditional options.
- **Mediation as Alternative Dispute Resolution (ADR):** The Act promotes mediation as an ADR mechanism for quicker and amicable settlement of disputes. Consumer Mediation Cells are to be established.
- **Penalties for Misleading Advertisements:** Stricter penalties are imposed on manufacturers and endorsers for false or misleading advertisements, including fines and imprisonment. The CCPA can also prohibit endorsers from further endorsing specific products or services.
- **Unfair Contracts:** The Act includes provisions to address "unfair contracts" which can be challenged by consumers.

**3. Importance of the Act:** The Consumer Protection Act, 2019, aims to provide a more comprehensive and effective framework for consumer protection in the evolving market, particularly with the growth of e-commerce and digital transactions. It empowers consumers by granting them new rights and establishing clearer responsibilities for businesses, manufacturers, and service providers.

## UNIT -3

### SALE OF GOODS ACT, 1930

The **Sale of Goods Act, 1930** is a crucial piece of Indian legislation that governs the contracts for the sale of goods. It defines and amends the law relating to the sale of movable property in India. Before this Act, the provisions related to the sale of goods were part of the Indian Contract Act, 1872.

#### 1. Scope and Applicability:

- The Act extends to the whole of India.
- It deals with "goods," which are defined as every kind of movable property other than actionable claims and money. This includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.
- It does not apply to immovable property or services.

#### 2. Key Concepts and Definitions:

- **Contract of Sale:** Defined as a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. It encompasses both:
  - **Sale:** Where the property (ownership) in goods is transferred from the seller to the buyer immediately at the time of the contract. This is an executed contract.
  - **Agreement to Sell:** Where the transfer of property in goods is to take place at a future time or subject to some condition thereafter to be fulfilled. This is an executory contract.
- **Goods:** As mentioned above, movable property. Can be:
  - **Existing Goods:** Goods that are in existence at the time of the contract of sale (specific, ascertained, or unascertained).
  - **Future Goods:** Goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.
  - **Contingent Goods:** A type of future goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.
- **Seller:** A person who sells or agrees to sell goods.
- **Buyer:** A person who buys or agrees to buy goods.
- **Price:** The money consideration for a sale of goods.

#### 3. Essential Elements of a Contract of Sale:

- **Two Parties:** A buyer and a seller.
- **Goods:** The subject matter must be "goods."
- **Transfer of Property:** There must be a transfer or agreement to transfer the ownership of the goods from the seller to the buyer.
- **Price:** The consideration for the goods must be money.

- **Other Essentials of a Valid Contract:** All the general elements of a valid contract under the Indian Contract Act, 1872, such as free consent, lawful object, etc., must also be present.

#### 4. Conditions and Warranties (Crucial for Buyer Protection):

- **Condition:** A stipulation essential to the main purpose of the contract, the breach of which gives the aggrieved party a right to treat the contract as repudiated (cancel the contract and claim damages).
- **Warranty:** A stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated.
- **Implied Conditions and Warranties:** The Act implies certain conditions and warranties into contracts of sale unless specifically excluded, such as:
  - **Implied condition as to title:** The seller has the right to sell the goods.
  - **Implied condition as to description:** Goods must correspond with the description.
  - **Implied condition as to quality or fitness:** Goods must be fit for the particular purpose if the buyer makes known that purpose to the seller and relies on the seller's skill or judgment, or be of merchantable quality if bought by description from a seller who deals in goods of that description.
  - **Implied condition as to sample:** If sale is by sample, the bulk must correspond with the sample, and the buyer must have a reasonable opportunity to compare.
  - **Implied warranty as to quiet possession:** The buyer shall have and enjoy quiet possession of the goods.
  - **Implied warranty as to freedom from encumbrances:** Goods are free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is made.

#### 5. Transfer of Property (Ownership) and Risk:

- The Act lays down rules for when ownership of goods passes from the seller to the buyer. This is significant because, generally, "risk follows ownership" (Res perit domino). This means that the party who owns the goods at the time of loss or damage bears the risk.
- Rules vary depending on whether the goods are specific, unascertained, or future goods, and whether they are in a deliverable state.

#### 6. Performance of the Contract:

- Outlines the duties of the seller (to deliver the goods) and the buyer (to accept and pay for them).
- Covers rules regarding delivery (modes, time, place, acceptance).

#### 7. Rights of an Unpaid Seller:

- An "unpaid seller" is a seller who has not received the whole of the price.

- Against the goods: Right of lien (to retain possession), right of stoppage in transit (to resume possession if buyer becomes insolvent), and right of resale.
- Against the buyer personally: Right to sue for the price or for damages for non-acceptance.

## 8. Remedies for Breach of Contract:

- **Buyer's Remedies:**
  - Damages for non-delivery.
  - Specific performance (in certain cases, for specific or ascertained goods).
  - Remedy for breach of warranty.
- **Seller's Remedies:**
  - Suit for price.
  - Damages for non-acceptance.

## Relationship with the Consumer Protection Act:

While the Sale of Goods Act, 1930, forms the foundational law for commercial transactions involving goods, the **Consumer Protection Act (CPA)**, particularly the 2019 Act, acts as supplementary legislation providing additional and more specific protections for *consumers*.

- **Scope:** The Sale of Goods Act applies to all contracts of sale of goods, irrespective of whether the buyer is a consumer or not, or whether the sale is for commercial purposes. The CPA, on the other hand, specifically protects "consumers" (individuals buying goods or services for personal use, not for resale or large-scale commercial purposes).
- **Purpose:** The Sale of Goods Act defines the rights and obligations of buyers and sellers in general commercial transactions. The CPA provides a mechanism for quick and easy redressal of grievances for consumers, addressing issues like defective goods, deficient services, unfair trade practices, and misleading advertisements.
- **Redressal Mechanism:** Under the Sale of Goods Act, disputes typically require filing a civil suit, which can be lengthy and expensive. The CPA establishes quasi-judicial bodies (Consumer Commissions) at district, state, and national levels, offering a simpler and more expeditious dispute resolution process for consumers.
- **Implied Terms vs. Explicit Rights:** While the Sale of Goods Act implies conditions and warranties, the CPA explicitly grants consumers a set of rights (e.g., right to safety, right to be informed, right to choose, right to be heard, right to seek redressal, right to consumer education) and also introduces product liability.

In essence, the Sale of Goods Act, 1930, provides the bedrock principles for sales contracts, while the Consumer Protection Act, 2019, builds upon this by offering stronger and more accessible protections for the end consumer. They work in tandem, with the CPA offering a specialized forum and expanded rights for a particular class of buyers – consumers.

## \*SALE AND AGREEMENT TO SALE

A "sale" and an "agreement to sell" are two distinct concepts in contract law, particularly when dealing with the sale of goods or property. While both involve a transfer of ownership, the key difference lies in the **timing of that transfer**.

### SALE

A sale is a completed transaction where the ownership of the goods or property is transferred from the seller to the buyer immediately. It is an **executed contract**, meaning all the obligations of both parties are fulfilled at the time of the contract.

- **Transfer of Ownership:** Ownership passes to the buyer instantly.
- **Risk of Loss:** The risk of loss or damage to the goods passes to the buyer as soon as the sale is complete, even if the physical possession of the goods remains with the seller.
- **Nature of Contract:** A sale is an executed contract.
- **Right to Resell:** The seller cannot resell the goods, as ownership has already been transferred to the buyer. If the seller attempts to do so, the original buyer can sue for the price of the goods and their ownership rights.
- **Consequences of Breach:** If the buyer fails to pay the price, the seller can sue the buyer for the price of the goods.

### Agreement to Sell

An agreement to sell is a contract to transfer the ownership of goods or property at a future date or upon the fulfillment of certain conditions. It is an **executory contract**, meaning the transaction is yet to be completed.

- **Transfer of Ownership:** Ownership does not transfer immediately. It remains with the seller until the specified future date or until the conditions are met.
- **Risk of Loss:** The risk of loss or damage remains with the seller until the ownership is transferred, even if the goods are in the possession of the buyer.
- **Nature of Contract:** An agreement to sell is an executory contract.
- **Right to Resell:** The seller can resell the goods to a third party. The original buyer's only recourse is to sue the seller for damages for breach of contract.
- **Consequences of Breach:** If the buyer breaches the contract, the seller can only sue for damages, not for the price of the goods, because ownership has not yet transferred.

### Summary Table

Feature	Sale	Agreement to Sell
<b>Transfer of Ownership</b>	Immediate	Future date or upon conditions
<b>Nature of Contract</b>	Executed	Executory
<b>Risk of Loss</b>	Passes to the buyer	Remains with the seller

Feature	Sale	Agreement to Sell
<b>Right to Resell</b>	Seller cannot resell	Seller can resell
<b>Remedy for Breach</b>	Seller can sue for the price	Seller can only sue for damages

## \*CONDITION AND WARRANTY

In the context of contract law, particularly under the Sale of Goods Act, a **condition** and a **warranty** are both stipulations in a contract. However, they differ significantly in their importance to the contract's main purpose and the remedies available for their breach.

### Condition

A **condition** is a stipulation that is **essential to the main purpose of the contract**. It is a fundamental term, and its fulfillment is a prerequisite for the completion of the contract.

- **Essence of the Contract:** A condition goes to the very root of the agreement. If a condition is not met, the entire foundation of the contract is affected.
- **Breach of Condition:** The breach of a condition is considered a **material breach**.
- **Remedy for Breach:** When a condition is breached, the aggrieved party (usually the buyer) has two main remedies:
  1. **Repudiate the contract:** They can treat the contract as ended and reject the goods.
  2. **Claim damages:** They can also sue for damages for the loss suffered.

**Example of a Condition:** A buyer wants to purchase a car that can reach a speed of 150 km/h. This is an essential requirement. If the seller provides a car that can only reach 120 km/h, the buyer can reject the car, terminate the contract, and demand a refund.

### Warranty

A **warranty** is a stipulation that is **collateral to the main purpose of the contract**. It is a secondary promise or assurance.

- **Secondary Promise:** A warranty is not as vital as a condition. Its breach does not nullify the main purpose of the contract.
- **Breach of Warranty:** The breach of a warranty is a less serious breach of contract.
- **Remedy for Breach:** The only remedy available for the breach of a warranty is to **claim damages**. The aggrieved party cannot reject the goods or terminate the contract. They must accept the goods and then sue for the financial loss caused by the breach.

**Example of a Warranty:** A seller sells a car and warrants that the car's air conditioning system is working perfectly. The main purpose of the contract is the sale of the car. The A/C system, while important, is a secondary promise. If the A/C system turns out to be faulty, the buyer

cannot return the car. They must keep the car but can sue the seller for the cost of repairing the A/C.

## Summary Table

Feature	Condition	Warranty
<b>Importance</b>	Essential to the main purpose of the contract	Collateral to the main purpose of the contract
<b>Nature of Breach</b>	Material breach	Less serious breach
<b>Remedy for Breach</b>	Right to repudiate the contract (reject goods) and/or claim damages	Right to claim damages only
<b>Consequence</b>	The contract can be terminated	The contract cannot be terminated
<b>Waiver</b>	A breach of condition can sometimes be treated as a breach of warranty by the buyer's choice.	A breach of a warranty can never be treated as a breach of condition.

## \*TRANSFER OF OWNERSHIP OF GOODS

The transfer of ownership of goods is a fundamental concept in contract law, particularly under the Sale of Goods Act. The general principle governing this is captured by the Latin maxim:

*Nemo dat quod non habet* (No one can give what he does not have)

This means that a person who is not the owner of goods cannot transfer a better title to them than what they themselves possess. If a thief sells stolen goods, the buyer, even if they acted in good faith, does not get a good title and the true owner can recover the goods. This rule is designed to protect the rights of the original owner.

However, a strict application of this rule would be a major impediment to commercial transactions. Therefore, a number of exceptions have been created by law to protect innocent buyers in certain circumstances. These exceptions balance the protection of property rights with the need for security in commercial dealings.

### Exceptions to the "Nemo Dat" Rule

Here are some of the key exceptions where a non-owner can pass a good title to a buyer:

1. **Sale by a Mercantile Agent:** A mercantile agent (e.g., a factor, auctioneer, or broker) who is in possession of goods or a document of title to goods with the owner's consent

can pass a good title to a buyer. The buyer must act in good faith and have no notice that the agent lacked the authority to sell.

2. **Sale by Estoppel:** If the true owner of the goods, by their words or conduct, leads a buyer to believe that the seller has the authority to sell the goods, the owner is "estopped" or prevented from later denying the seller's authority. The buyer, having relied on the owner's representation, gets a good title.
3. **Sale by a Joint Owner in Possession:** If one of several joint owners has sole possession of the goods with the consent of the other owners, a buyer who purchases the goods from that joint owner in good faith and without notice of the seller's lack of full authority will acquire a good title.
4. **Sale under a Voidable Title:** When a seller has obtained possession of goods under a voidable contract (e.g., a contract induced by fraud, coercion, or misrepresentation) and sells them to an innocent third party before the original owner has rescinded the contract, the third-party buyer gets a good title. The buyer must have acted in good faith and without notice of the defect in the seller's title.
5. **Sale by a Seller in Possession after Sale:** If a seller has already sold goods to a buyer but remains in possession of the goods or the documents of title, and then sells them to a second buyer who acts in good faith and without notice of the prior sale, the second buyer gets a good title. The original buyer's only recourse is to sue the seller for damages.
6. **Sale by a Buyer in Possession after Sale:** When a buyer, with the seller's consent, obtains possession of goods (even if the ownership has not yet passed to them) and then sells or pledges them to a third party who buys in good faith and without notice of any lien or right of the original seller, the third party obtains good title.
7. **Resale by an Unpaid Seller:** An unpaid seller who has exercised their right of lien (the right to retain possession of the goods) or stoppage in transit (the right to stop the goods while they are in transit to the buyer) can, under certain circumstances, resell the goods. The second buyer gets a good title, and the original buyer loses their rights to the goods.

## **\*PERFORMANCE OF A CONTRACT OF SALE**

The performance of a contract of sale is the fulfillment of the duties of both the seller and the buyer as outlined in the contract and the relevant legal framework (e.g., the Sale of Goods Act). In simple terms, it's the process by which the seller delivers the goods and the buyer accepts and pays for them.

The key aspects of performance are:

### **1. Duties of the Seller and Buyer**

- **Seller's duty:** The primary duty of the seller is to **deliver the goods** to the buyer. This involves putting the goods into a deliverable state and making them available to the buyer.
- **Buyer's duty:** The primary duty of the buyer is to **accept the goods and pay the price** for them.

These duties are **concurrent conditions**, meaning they are expected to be performed simultaneously, unless the contract specifies otherwise. The seller must be ready and willing to deliver in exchange for the price, and the buyer must be ready and willing to pay in exchange for possession of the goods.

## 2. Rules Regarding Delivery of Goods

Delivery is the voluntary transfer of possession of goods from the seller to the buyer. It can take several forms:

- **Actual Delivery:** The physical transfer of the goods from the seller to the buyer or their authorized agent.
- **Symbolic Delivery:** When the goods are bulky or difficult to physically move, something that gives the buyer control over the goods is delivered. For example, handing over the keys to a warehouse where the goods are stored.
- **Constructive Delivery:** This occurs without any physical transfer. It happens when a third party who is holding the goods for the seller agrees to hold them for the buyer. The legal character of the possession changes from holding for the seller to holding for the buyer.

### Key rules governing delivery:

- **Place of Delivery:** The contract should specify the place of delivery. If not, the goods are delivered at the place where they were at the time of the sale (for existing goods) or at the place of manufacture/production (for future goods).
- **Time of Delivery:** If a time is fixed in the contract, delivery must be made within that time. If no time is specified, delivery must be made within a "reasonable time," which is a question of fact depending on the circumstances.
- **Goods in possession of a third party:** Delivery is only complete when the third party acknowledges to the buyer that they are now holding the goods on the buyer's behalf.
- **Expenses of Delivery:** The seller is responsible for the expenses of putting the goods into a deliverable state, while the buyer is generally responsible for the expenses of receiving them.
- **Delivery of a wrong quantity:** If the seller delivers a quantity of goods that is different from what was contracted for (less, more, or mixed with other goods), the buyer has options. They can:
  - Reject the whole consignment.
  - Accept the correct quantity and reject the rest.
  - Accept the entire quantity (in which case they must pay for it at the contract rate).

## 3. Acceptance of Goods by the Buyer

The buyer is considered to have accepted the goods in the following situations:

- When they inform the seller that they have accepted them.

- When they perform an act on the goods that is inconsistent with the seller's ownership (e.g., reselling them, pledging them).
- When they keep the goods for a "reasonable time" without informing the seller that they have rejected them.

It's important to note that the buyer has a right to examine the goods to ascertain if they are in conformity with the contract. The seller must provide a reasonable opportunity for this examination.

#### **4. Consequences of Breach of Contract**

If either the seller or the buyer fails to perform their duties as per the contract, the other party has legal remedies.

- **Seller's Breach (Non-Delivery):** If the seller wrongfully neglects or refuses to deliver the goods, the buyer can sue for damages for non-delivery. In some cases, the court may even order specific performance, compelling the seller to deliver the goods.
- **Buyer's Breach (Non-Acceptance or Non-Payment):** If the buyer wrongfully refuses to accept and pay for the goods, the seller can sue for damages for non-acceptance. If the ownership of the goods has already passed to the buyer, the seller can sue for the price.

In essence, the performance of a contract of sale is a straightforward process governed by a set of clear rules and principles that ensure a fair and predictable transaction for both parties.

#### **\*UNPAID SELLER**

An "unpaid seller" is a critical concept in the law of sale of goods. It refers to a seller who has not received the full price for the goods they have sold. This can happen in two primary situations:

1. **The whole of the price has not been paid or tendered.** This includes cases where a portion of the price, no matter how small, remains unpaid.
2. **A bill of exchange or other negotiable instrument (like a check) was received as conditional payment, and it has been dishonored.** This means the payment failed, and the seller's claim for the price is revived.

The law grants special rights and remedies to an unpaid seller to protect their interests and ensure they are not left at a disadvantage. These rights are broadly categorized into two types:

##### **1. Rights Against the Goods**

These are rights that the unpaid seller can exercise over the goods themselves, as long as they are still in their possession or control.

- **Right of Lien (or Retention):** This is the right of the unpaid seller to retain possession of the goods until the price is paid. This right can be exercised even if the ownership of the goods has passed to the buyer. It is available in the following situations:
  - The goods were sold without any credit terms.
  - The goods were sold on credit, but the credit period has expired.
  - The buyer becomes insolvent. The right of lien is lost once the seller delivers the goods to the buyer or a carrier without reserving a right of disposal.
- **Right of Stoppage in Transit:** This right allows the unpaid seller to stop the goods while they are in transit to the buyer, regain possession of them, and hold them until the price is paid. This right is available only under three conditions:
  - The seller is unpaid.
  - The buyer has become insolvent.
  - The goods are in the course of transit (meaning they have left the seller's possession but have not yet reached the buyer's possession).
- **Right of Resale:** An unpaid seller who has exercised their right of lien or stoppage in transit can resell the goods to another buyer under certain circumstances. This right can be exercised:
  - If the goods are of a perishable nature, the seller can resell them immediately without notice to the original buyer.
  - If the goods are not perishable, the seller must first give notice to the buyer of their intention to resell and a reasonable time to pay. If the buyer still fails to pay, the seller can resell.
  - If the seller has expressly reserved the right of resale in the original contract.
- **Right to Withhold Delivery:** If the ownership of the goods has not passed to the buyer, the unpaid seller has a right to withhold delivery, which is similar to and co-extensive with the right of lien and stoppage in transit.

## 2. Rights Against the Buyer Personally

These are personal remedies that the unpaid seller can enforce against the buyer through a court of law to recover financial losses.

- **Suit for Price:** If the ownership of the goods has passed to the buyer and the buyer wrongfully refuses to pay, the seller can sue the buyer for the price of the goods.
- **Suit for Damages for Non-Acceptance:** If the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller can sue the buyer for damages for non-acceptance. This remedy is available whether or not the ownership of the goods has passed to the buyer.
- **Suit for Repudiation of Contract before Due Date (Anticipatory Breach):** If the buyer repudiates the contract before the date of delivery, the seller can treat the contract as rescinded and sue for damages immediately, or they can wait until the due date and then sue.
- **Suit for Interest:** The seller can also sue for interest on the unpaid amount from the date payment was due, either as per the contract or at a reasonable rate as determined by the court.

## UNIT-4

### **\*THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999**

The Foreign Exchange Management Act, 1999, popularly known as FEMA, is a landmark piece of legislation in India that governs foreign exchange transactions. It came into force on June 1, 2000, replacing the more stringent Foreign Exchange Regulation Act (FERA), 1973.

#### **Historical Context: FERA vs. FEMA**

To understand the significance of FEMA, it's essential to look at its predecessor, FERA. FERA was enacted in an era of a closed and controlled economy, with the primary objective of conserving the country's foreign exchange reserves. It treated foreign exchange violations as criminal offenses, leading to severe penalties, including imprisonment.

With India's economic liberalization in the 1990s, FERA's restrictive nature became a hindrance to a globalized economy. FEMA was introduced as a result, shifting the focus from "regulation" to "management" of foreign exchange. This change reflects a more open, transparent, and business-friendly approach.

#### **Main Objectives of FEMA**

The core objectives of FEMA are:

- **Facilitating External Trade and Payments:** FEMA aims to simplify and streamline the process of international trade and cross-border payments.
- **Promoting Orderly Development of the Foreign Exchange Market:** The act seeks to create a stable and well-regulated foreign exchange market in India, encouraging foreign investment and global economic integration.

#### **Key Provisions and Features of FEMA**

**1. Transactions are Classified into Two Categories:** FEMA categorizes all foreign exchange transactions into two types:

- **Current Account Transactions:** These are transactions that are necessary for ordinary business, trade, and services. Examples include payments for imports and exports, interest on loans, and remittances for education, travel, or medical care. For the most part, these transactions are freely permitted, though the Central Government, in consultation with the Reserve Bank of India (RBI), may impose reasonable restrictions.
- **Capital Account Transactions:** These are transactions that alter the assets or liabilities of a person residing in India or a person residing outside India. Examples include foreign direct investment (FDI), overseas direct investment, and borrowing in foreign currency.

These transactions are subject to greater control and require specific regulations from the RBI.

**2. Shift from Criminal to Civil Offenses:** This is one of the most significant changes introduced by FEMA. Violations under FEMA are now treated as civil offenses, punishable with monetary penalties, which are typically up to three times the amount involved in the contravention. In contrast, FERA violations were criminal, and could lead to imprisonment.

**3. Role of the Reserve Bank of India (RBI):** The RBI is the primary authority responsible for administering FEMA. It is empowered to pass regulations, issue guidelines, and oversee all foreign exchange transactions. The Central Government, however, retains the power to impose restrictions on current account transactions.

**4. "Authorized Persons":** All foreign exchange transactions must be conducted through "Authorized Persons," such as banks and financial institutions that are licensed by the RBI to deal in foreign exchange. This ensures a transparent and controlled flow of foreign currency.

**5. Realization and Repatriation of Foreign Exchange:** FEMA mandates that foreign exchange due to a person resident in India must be realized and repatriated to India within a specified time. This helps in maintaining the country's foreign exchange reserves.

**6. Directorate of Enforcement (ED):** The Directorate of Enforcement (ED) is the central government agency responsible for enforcing FEMA and investigating violations. The ED has the authority to initiate legal proceedings and impose penalties for non-compliance.

**7. Liberalized Remittance Scheme (LRS):** FEMA introduced the Liberalized Remittance Scheme (LRS), which allows resident individuals to remit a certain amount of money abroad per financial year for various purposes, including travel, education, and gifts, without requiring prior approval from the RBI.

In summary, FEMA represents a modern, liberal, and transparent legal framework for managing foreign exchange in India. It has been instrumental in India's economic integration with the global economy, promoting external trade and attracting foreign investment while maintaining a stable and orderly foreign exchange market.

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