



THE **CONTRACT** **ACT, 1872**



CONTRACT




Agreement

According to Section 2(e) an agreement is defined as “ every promise and every set of promises forming the consideration for each other”.

A promise is defined as an accepted proposal as Section 2(b) says “ a proposal when accepted becomes a promise “ Therefore it can be said that an agreement is an accepted proposal.

In an agreement there is a promise from both the sides. For example, A promises to deliver his radio to B and in return B promises to pay a sum of Rs. 500 to A , there is said to be an agreement between A and B



An agreement is regarded as a contract when it is enforceable by law.


In other words, an agreement that the law will enforce is a contract.

The conditions of enforceability are stated in Section 10. According to this section “all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.”



Essentials of a valid contract


1. The ***agreement*** should be between two parties. An agreement is the result of a ***proposal*** or offer by one party followed by its ***acceptance*** by the other.
2. The agreement should be between the ***parties who are competent to contract.***
3. There should be a ***lawful consideration*** and ***lawful object*** in respect of that agreement.
4. There should be ***free consent of the parties***, when they enter into the agreement.
5. The agreement must ***not*** be one, which has been ***declared to be void.***



CONTRACT - According to sec.2(h), a contract is defined as an agreement enforceable before the law.

AGREEMENT - According to sec.2(e), every promise or set of promises forming consideration for each other.

PROMISE - According to sec.2(b), when a person made a proposal to another to whom proposal is made, if proposal is assented there to.

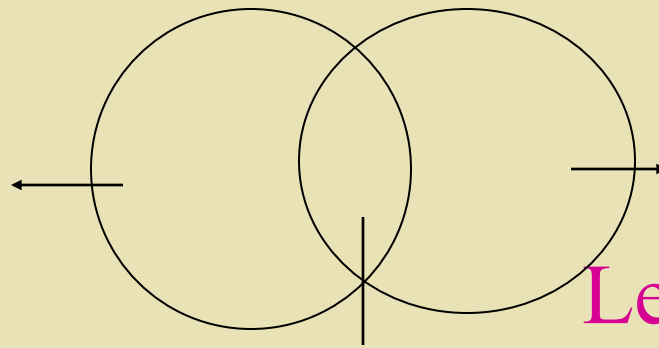


OFFER - According to Sec.2(a), when a person made a proposal, when he signifies to another his willingness to do or to abstain from doing something.

AGREEMENT = OFFER + ACCEPTANCE

CONSENSUS - AD – IDEM-

According to Sec.13, meeting of minds or identity of minds or receiving the same thing in same sense at same time.




Agreement

Legal Obligation

Contract

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

***CONTRACT = AGREEMENT +
ENFORCIBILITY BEFORE LAW***



ESSENTIAL ELEMENTS **OF A VALID CONTRACT** **(Sec.10)**


- 1.Offer & acceptance.
- 2.Intention to create legal relationship.
- 3.Consensus - ad - idem.
- 4.Consideration.
- 5.Capacity to contract.
- 6.Free consent.
- 7.Legality of object.
- 8.Possibility of performance.
- 9.Writing & registration.



TYPES OF CONTRACTS

VALID CONTRACTS

- ***Absolute contract***
- ***Contingent contract(Sec. 31-36)***
- ***Express contract***
- ***Implied/Quasi contract(Sec.68-72)***

A vertical collage of historical items is positioned on the left side of the slide. It includes a compass at the bottom, a star-shaped medal with a ribbon in the middle, and a circular object at the top.

Valid contract - If all the conditions are fulfilled it is called as a valid contract.

Contingent contract - In a contract to do or not to do something, if an event is collateral, does or doesn't happen.

Express contract - When contracts are either in writing or in oral.

Implied contract - When contracts are neither in writing nor in oral.

Absolute contract - A contract which is not dependent on fulfillment of any condition.



INVALID CONTRACTS

☐ Void contract

Is void(Void - ab - initio)

Becomes void

☐ Voidable contract

☐ Illegal contract

☐ Unenforceable contract



Invalid contract - In a contract if any one condition is not fulfilled.

Is void (Void-ab-initio) - An agreement which is not valid from the beginning.

Becomes void - An agreement which is valid in the beginning but due to some supervening impossibility the contract becomes void.



Voidable contract - A contract which is valid unless until avoided by either the party.

Illegal contract - An agreement forbidden by law.

Unenforceable contract - It is valid but due to some technical defect the contract becomes void. In case defects are removed the contract is enforceable.(lack of registration, lack of signature etc.,)



OTHER TYPES **OF CONTRACTS**

- ***Executed contract***
- ***Executory contract***
- ***Unilateral contract***
- ***Bilateral contract***



Executed contract - In a contract where both the parties have performed their obligation, there is remaining nothing to perform.

Executory contract - In a contract where both the parties are yet to perform their obligation.

Unilateral contract - In a contract one party has performed his obligation and other person is yet to perform his obligation.

Bilateral contract - In a contract where both the parties have performed their obligation. Bilateral & Executory are same and inter-changeable.

OFFER






OFFER

***According to Sec.2(a),
when a person made a
proposal, when he
signifies to another his
willingness to do or to
abstain from doing
something.***



TYPES OF OFFER

- *Express offer*
- *Implied offer*
- *Specific offer*
- *General offer*
- *Cross offer*
- *Counter offer*
- *Standing offer*



Express offer - When offer is given to another person either in writing or in oral.

Implied offer - When offer is given to another person neither in writing nor in oral.

Specific offer - When offer is given to a specific person.

General offer - When offer is given to entire world at a large.(Carlill Vs. Carbolic smoke ball Co.,)



Cross offer - When both the persons are making identical offers to each other in ignorance of other's offer.

Counter offer - When both the persons are making offers to each other which are not identical in ignorance of other's offer.

Standing offer - An offer which remains continuously enforceable for a certain period of time.



LEGAL RULES FOR OFFER

- ❖ *Offer must be given with an intention to create a legal relationship.(Balfour Vs. Balfour)*
- ❖ *Offer must be definite.(Taylor Vs. Portington)*
- ❖ *There is a clear cut difference between offer, invitation to offer, invitation to sale. (Harris Vs. Nickerson)*



❖ *Offer must be communicated. (Fitch Vs. Snedkar)*

❖ *Mere statement of price of price is not an offer.(Harvey Vs. Facey)*



ACCEPTANCE



ACCEPTANCE

According to sec.2(b), when a person made a proposal to another to whom proposal is made, if proposal is assented there to, it is called acceptance.



LEGAL RULES FOR **ACCEPTANCE**

- *Acceptance must be given as per the mode prescribed by the offerer.*
- *Acceptance must be given before the lapse of time or within reasonable time.*
- *Acceptance must be unconditional.*
- *Acceptance may be given by any person in case of general offer.*



- *Acceptance may be given by any specific person in case of specific offer.*
- *Acceptance must be communicated. (Bordgon Vs. Metropolitan Rly. Co.)*
- *Mental acceptance is no acceptance or acceptance must not be derived from silence.*
- *Acceptance must not be precedent to offer.*



CONSIDERATION

CONSIDERATION

According to sec 2(d) consideration is defined as “when at the desire of the promisor , or promisee or any other person has done or abstained from doing or does or abstains from doing ,or promises to do or to abstain from doing , something , such an act or abstinence or promise is called a consideration for the promise .



When a party to an agreement promises to do something he must get “something” in return .This “something” is defined as consideration.

LEGAL RULES AS TO CONSIDERATION

1)It must move at the desire of the promisor.

[Durga Prasad v. Baldeo]

2)It may move by the promisee .

[Chinnaya v. Ramayya]

3)It must be past ,present or future .

4)It need not be adequate .

5)It must be real .

6)It must not be illegal ,immoral or opposed to public policy .





STRANGER TO CONTRACT

It is general rule of contract that only parties to contract can sue & be sued on that contract. This rule is known as 'Doctrine of privity' i.e relationship between the parties to contract.

Exceptions

- 1) A trust or a charge.*
- 2) Marriage settlement, partition or other family arrangements.*
- 3) Estoppel*
- 4) Assignment of contract.*
- 5) Contract with agent.*
- 6) Covenants running with land.*



Contract without consideration is void – Exceptions

Love & affection .

[Venkataswamy v. Rangaswamy]

Compensation for voluntary service .

Promise to pay a time – barred debt .

Completed gift .

Agency sec (185) .

Charity .

Contract of bailment sec(148) .

No consideration no contract

- ◆ *[Abdul Aziz v. Masum Ali]*
- ◆ *[Kedarnath v. Gauri Mohamed]*





CAPACITY

TO

CONTRACT

Capacity to contract

Following are the condition for a person to enter into contract

- ♦ *He must be major*
- ♦ *He must be sound mind*
- ♦ *He must not be disqualified by any other law.*



Disqualified persons to enter into a contract

a) Minor

b) unsound person

c) others

i.e alien enemy,

insolvent,

convict,

company/corporation against MOA / AOA .



Minor

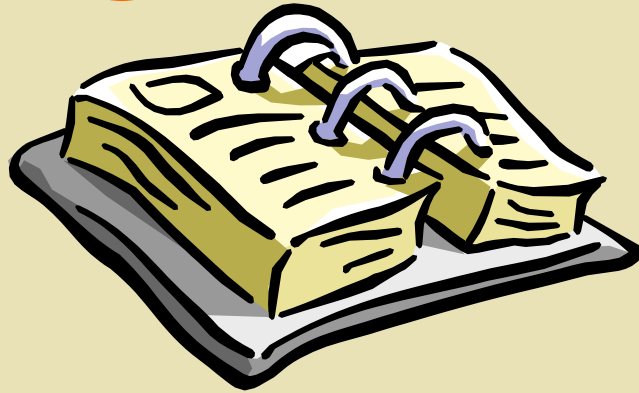


According to majority act sec(3) minor is defined as any person under the age of 18 years . In the following cases a person is said to be minor if he does not complete the age of 21 years

a) any person under the guardian & wards act ,1890

b)any person which comes under superintendence of law/legal representative

Rules governing minors agreement




- ◆ ***Rule 1 : judges are counsellors , jury is the servant , law is the guardian .***
- ◆ ***Rule 2:in case minor entered into a contract which is unlawful , illegal , immoral he is also prosecutable & punishable under the relevant law.***



Legal rules

- ♦ *An agreement with minor is void ab initio*
[Mohiri Bibi v. Dharmadas Ghase]
- ♦ *Minor can be promisee*
[Shrafat Ali v. Noor Mohd]
- ♦ *Minor cannot ratify his agreement on attaining the age of majority*
[Indra Ramaswamy v. Anthiappa Chettier]

- 
- ♦ *Minor as a shareholder ,*
 - ♦ *Minor as a partner,*
 - ♦ *Minor as a agent ,*
 - ♦ *Minor as a member of trade union ,*
 - ♦ *No estoppel against minor ,*
 - ♦ *He can plead his minority ,*
 - ♦ *He can enter into contract for his necessary*

[Robert v. Gray]

- ♦ *On behalf of minor his parents , guardian or any other person can enter into void contract to acquire movable property.*



Unsound person

- ◆ ***According to sec(12) a person generally sound , occasionally unsound can enter into a contract when he of sound mind***
- ◆ ***A person generally unsound occasionally sound can enter onto contract when he is sound mind .***

Persons of unsound mind

- 1) Lunatic ,**
- 2) Idiots ,**
- 3) Drunken or intoxicated persons .**



A collection of vintage items is arranged on a light-colored, textured surface. In the top left corner is a wooden checkered box with several small, round, light-colored objects (possibly buttons or coins) scattered on its surface. Below the box are two medals: one with a red ribbon and a circular emblem, and another with a blue ribbon and a circular emblem. To the right of these medals is a silver star-shaped medal with a central emblem. In the bottom left corner is a round, silver compass with a black face and white markings. In the bottom center is a pair of round, brown-rimmed glasses with thin metal temples. The text "FREE" is written in a large, bold, purple, italicized font with a black drop shadow, positioned above the text "CONSENT", which is also in a large, bold, purple, italicized font with a black drop shadow. The text is centered horizontally and partially overlaps the medals and glasses.

FREE
CONSENT

FREE CONSENT

According to Sec 10 of the Contract Act one of the essentials of a valid contract is “Free Consent”

Sec 13 defines “consent” as “Two or more persons are said to consent when they agree upon the same thing in the same sense”.

According to Sec 14, consent is said to be free when it is not caused by

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



COERCION



**According to Sec 15 coercion means
“Committing or threaten to commit any act
forbidden by Pakistan Penal Code 1860 or
unlawful detaining or threatening to detaining
any other persons property with a view to
enter into an agreement. It is immaterial
whether the PPC is or is not in force where
the coercion is employed”**

**The threat amounting to coercion need
not necessarily be from a party to contract ,
it may also proceed from a stranger to the
contract.**



Consent is said to be caused by coercion when obtained by:

- 1. The committing or threatening to commit any act forbidden by the Pakistan Penal Code**
- 2. The unlawful detaining or threatening to detain any property**

It is not important whether the PPC is or not in force where the coercion is taking place.

For example A and B, both Pakistanis are on a voyage trip to America when the ship is on the Atlantic ocean B threatens A that if doesn't transfer his property to B's name then he will push him into the water. Now though the PPC is not in force on the Atlantic ocean it is still considered a coercion.

Important cases:

1. Chikkim Ammiraju vs. Seshamma:

In this case a person threatened his wife and son that he would suicide if she doesn't transfer her property in his brother's favour. The wife and son executed the release of the deed under the threat . Held the threat of suicide amounted to coercion within Sec 15 and the release deed was therefore voidable.

This also is a very important case to prove that threat to commit suicide amounts to coercion





2. Ranganayakamma vs. Alwar Setty:

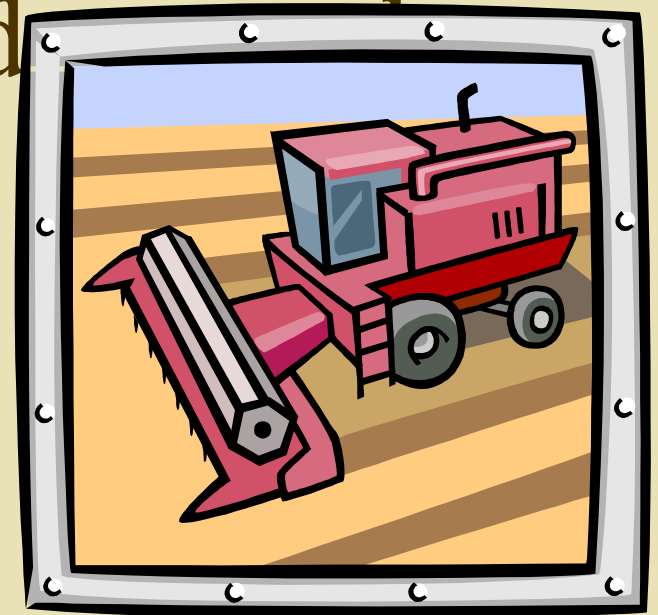
A young widowed girl of 13 years was forced to adopt a boy by her relatives who prevented the removal of his body for cremation until she consented. Held the consent was not free but was induced by coercion. Consequently the adoption was set aside.

3.Muthia vs. Muthu Karuppa:
An agent refused to hand over the account books of a business to the new agent unless the principal released him from all liabilities. The principal had to give a release deed. Held the deed was given under coercion and was voidable at the option of the principal.



4. Bansraj vs. Secretary of State:

The government gave a threat of attachment against the property of P for the recovery of the fine due from his son. P paid fine. Held contract was induced by coercion





UNDUE INFLUENCE

Sometimes a party is compelled to enter into a contract against his will as a result of unfair persuasion by the other party.

*Section 16 defines undue influence as follows
A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other*



Essentials of undue influence

1. There are two persons
2. The relations are satisfying between them
3. One must dominate the other
4. There must be unfair advantage
5. It involves the moral pressure

There is an undue influence between the following persons:

- Principal and agent
- Superior and subordinate
- Doctor and patient
- Father and son
- Teacher and student
- Promoter and company
- Master servant
- Spiritual advisor and devotee



Among the following relations there is no undue influence

- 1.wife and husband*
- 2.landlord and tenant*
- 3.debtor and creditor*



CASE: Raniannapurna vs. Swaminathan

A poor Hindu widow was persuaded by a money lender to agree to pay 100% rate of interest on money lent by him. She needed the money to establish her right to maintenance. It was a clear case of undue influence and the court reduced the rate of interest to 24%



FRAUD

According to Sec 17 fraud means and includes any of those acts committed by a party to contract or with his connivance or by his agent with an intent to deceive or induce a person to enter a contract:

- 1. The suggestion that a fact is true when it is not true and the person making it does not believe in it to be true*
- 2. The active concealment of a fact by a person having knowledge or belief of the fact*
- 3. A promise made without any intention of performing it*
- 4. Any other act fitted to deceive*
- 5. Any such act or omission as the law specially declares to be fraudulent*



The essentials of fraud are:

1. There must be a representation or assertion and it must be false
2. The representation must relate to a fact
3. The representation must have been made with the intention of inducing the other party to act upon it
4. the representation must have been made with a knowledge of its falsity
5. the other party must have subsequently suffered some loss



MISREPRESENTATION

According to Sec 18 there is misrepresentation:

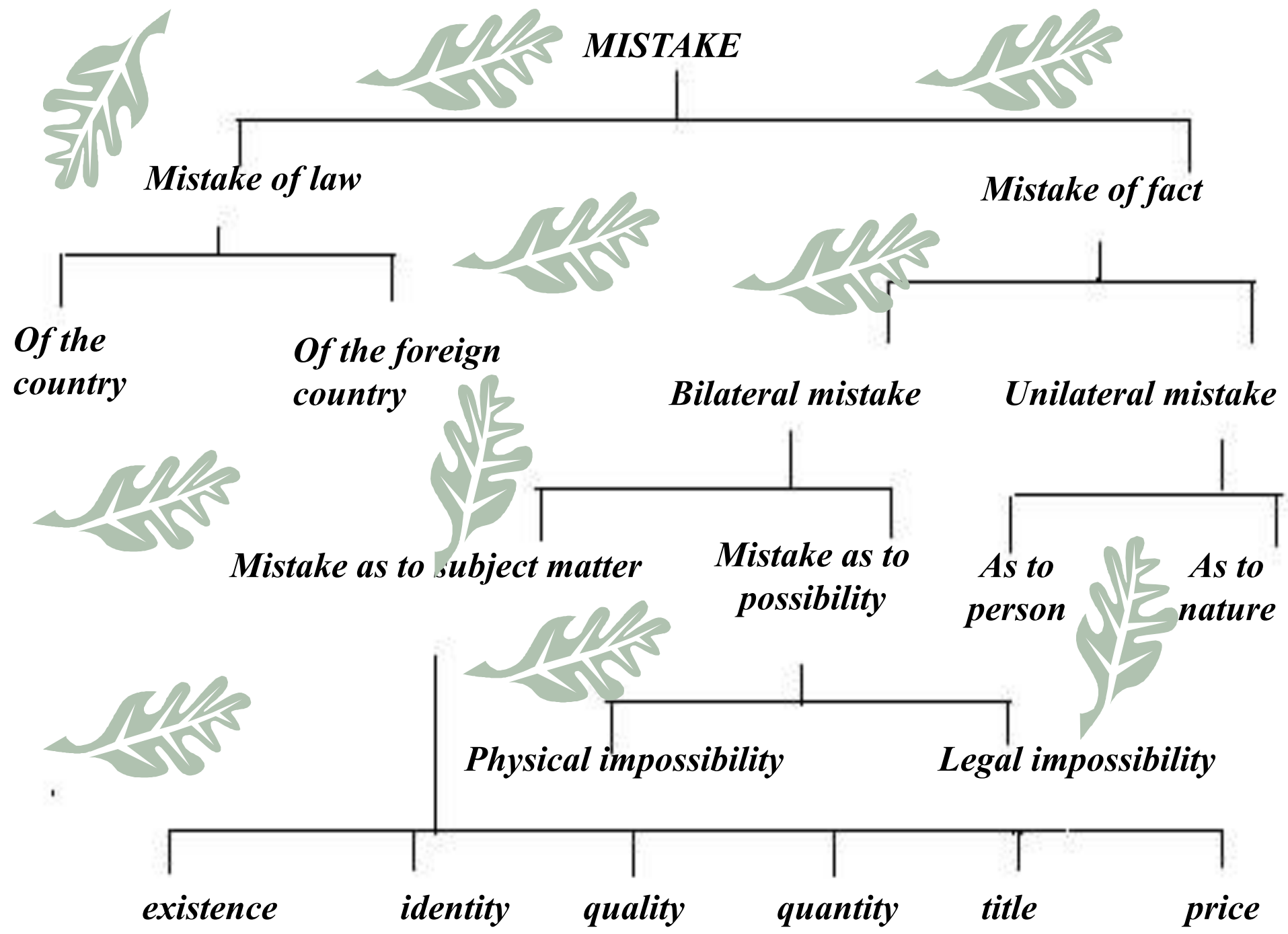
- 1. When a person positively asserts a fact is true when his information does not warrant it to be so, though he believes it to be true***
- 2. When there is any Breach of duty by a person which brings an advantage to the person committing it by misleading another to his prejudice***
- 3. When a party causes however innocently the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement***



Important case:

Babul vs. R.A.Singh:

M was a marriage broker who gave Y the photograph of a man and told him that the man was young and rich. Y conveyed the same to his daughter who agreed for the proposal. But on the day of marriage it was discovered that the man was the age of 60. There is fraud between M and Y. whereas there is misrepresentation between Y and his daughter.





***UNLAWFUL
OBJECTIVES***

&

VOID AGREEMENTS

Unlawful agreements

illegal

immoral

*Agreement opposing
public policy*

wager

*An agreement which
interferes with administration
of government*

*An agreement interfering
with the administration
of justice*

*An agreement interfering
with administration of
personal liberties*

*Restraint of
parental rights*

*Restraint of
profession*

*Restraint of
marriage*

*Restraint of
trade*

*Restraint of
marital duties*



UNLAWFUL OBJECT

- ◆ If the object of an agreement is the performance of an unlawful act, the agreement is unenforceable.
- ◆ For a contract to be valid only if the object and the consideration should be legal.
- ◆ The word object means purpose or design.



Unlawful agreements


An agreement forbidden by law [Sec 23]

An agreement defecting any provisions of law [Sec 24]

Case: Alexander vs. Rayson

A leased a flat to R at a rent of 1,200 pounds. with the object of deceiving the rating authority two agreements were entered, one for 450 pounds and one for 750 pounds. A sued R for recovery of an installment of 750 pounds.

Held A could not recover and R was entitled to remain in possession of the flat.



If it is immoral

Case: S.Yellappa vs. Y.Sabu

Cohabitation agreements are immoral

Sumitradevi vs. Sulekha Kundu

An agreement between a husband and wife to
separate in future is immoral and void

An agreement opposed to public policy



If it is fraudulent

If it is creating damage to person or property

Case: Ramswaroop vs. Bansimandir

B borrowed Rs. 100 from L and executed a bond promising to work for L without pay for a period of two years. In case of default B was to pay interest at a very exorbitant rate and the principal sum of once. Held the contract was void as it involved injury to the person of B.



ESSENTIAL ELEMENTS **OF WAGER**

- There are two persons.
- There must be an uncertain future event.
- No control over the event by both the parties.
- There must be a reciprocal promise.
- Others are not interested in the contract.



Wager Contract (Sec 30)

A wager contract is a contract in which one person promises to another to pay money or money's worth by the happening of an uncertain future event in consideration for other person's promise to pay if the event does not happen.

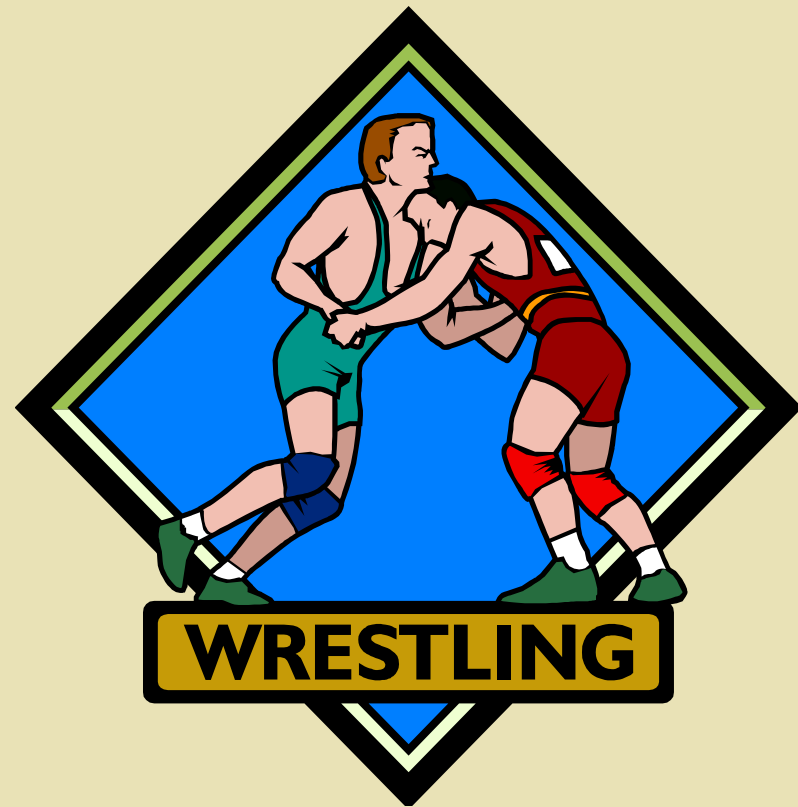


Essential Elements of Wagering

- ◆ There are two persons.
- ◆ There must be an uncertain future event.
- ◆ No control over the event by both the parties.
- ◆ There must be a reciprocal promise.
- ◆ Others are not interested in the contract.

Example:

In a wrestling bout, A tells B that wrestler no.1 will win. B challenges the statement of A. They bet with each other over the result of the bout. This is a wagering agreement.



A collection of vintage items is arranged on a light-colored, textured surface. In the top left corner, a portion of a wooden chessboard with a checkered pattern is visible, featuring several white and dark pieces. Adjacent to it is a red ribbon with a circular, sunburst-like emblem. Below the chessboard, a pair of round, gold-rimmed glasses with thin temples lies diagonally. In the bottom left corner, a circular compass with a white face and black markings is partially visible. The text 'CONTINGENT CONTRACTS' is superimposed in large, bold, purple capital letters across the center of the image, with a slight drop shadow.

CONTINGENT CONTRACTS



Contingent Contract(sec 31)

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. It is also called a conditional contract.



Essential Elements of a Contingent Contract:

- ◆ There are two persons.
- ◆ There must be an uncertain future event.
- ◆ Some control over the event but not absolute control.
- ◆ There is no reciprocal promise between the persons.
- ◆ Others may be interested in the contract.
- ◆ It is a valid contract.

Example:


- ◆ A contracts to pay B Rs.10,000 if B's house is burnt. This is a contingent contract.





Rules Regarding Contingent Contracts

- ◆ *Contingent contracts dependent on happening of an uncertain future event cannot be enforced until the event has happened.(Sec 32)*
- ◆ *Where a contingent contracts is to be performed if a particular event does not happen, its performance can be enforced when the happening of that event becomes impossible.(Sec 33)*
- ◆ *If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.(Sec 34)*

- 
- ◆ **Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced if the event does not happen or its happening becomes impossible before the expiry of that time.(Sec 35)**
 - ◆ **Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether or not the fact is known to the parties. (Sec 36)**



Differences Between a Wagering Agreement and a Contingent Agreement:

- | | |
|---|---|
| ◆ <u><i>Wager agreement</i></u> | ◆ <u><i>Contingent agreement</i></u> |
| ◆ <i>There is a reciprocal promise.</i> | ◆ <i>There is no reciprocal promise.</i> |
| ◆ <i>It is a void contract.</i> | ◆ <i>It is a valid contract.</i> |
| ◆ <i>Others are not interested in the contract.</i> | ◆ <i>Others are interested in the contract.</i> |
| ◆ <i>It is contingent in nature.</i> | ◆ <i>It may not be wagering in nature.</i> |



DISCHARGE OF A CONTRACT



DISCHARGE OF A CONTRACT

- ➔ ***DISCHARGE BY PERFORMANCE***
- ➔ ***DISCHARGE BY AGREEMENT OR CONSENT***
- ➔ ***DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE***
- ➔ ***DISCHARGE BY LAPSE OF TIME***
- ➔ ***DISCHARGE BY OPERATION OF LAW***
- ➔ ***DISCHARGE BY BREACH OF CONTRACT***



DISCHARGE BY PERFORMANCE

ACTUAL PERFORMANCE

*When both parties perform their promises
& there is nothing remaining to perform*

ATTEMPTED PERFORMANCE

*When the promisor offers to perform his
obligation ,but promisee refuses to accept the
performance. It is also known as tender*



DISCHARGE BY **AGREEMENT OR CONSENT**

- ◆ **NOVATION (Sec 62):** New contract substituted for old contract with the same or different parties
- ◆ **RESCISSION (Sec 62) :** When some or all terms of a contract are cancelled
- ◆ **ALTERATION (Sec 62):** When one or more terms of a contract is/are altered by the mutual consent of the parties to the contract
- ◆ **REMISSION (Sec 63) :** Acceptance of a lesser fulfilment of the promise made.
- ◆ **WAIVER :** Mutual abandonment of the right by the parties to contract
- ◆ **MERGER :** When an inferior right accruing to a party to contract merges into a superior right accruing to the same party

DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE

- ◆ KNOWN TO PARTIES
- ◆ UNKNOWN TO PARTIES
- ◆ SUBSEQUENT IMPOSSIBILITY
- ◆ SUPERVENNING IMPOSSIBILITY (Sec 56)

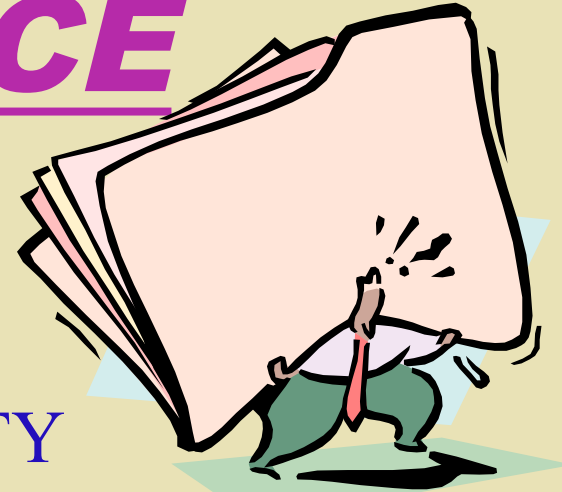
Destruction of subject matter

Non-existence of state of things

Death or incapacity of personal services

Change of law

Outbreak of war



DISCHARGE BY LAPSE OF TIME

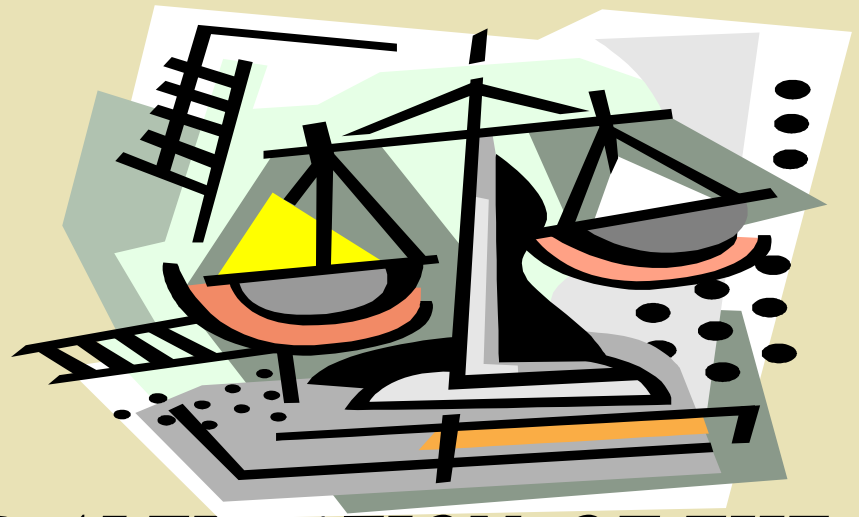
◆ *THE LIMITATION ACT 1963, CLEARLY STATES THAT A CONTRACT SHOULD BE PERFORMED WITHIN A SPECIFIED TIME CALLED PERIOD OF LIMITATION*

◆ *IF IT IS NOT PERFORMED AND IF THE PROMISEE TAKES NO ACTION WITHIN THE LIMITATION TIME, THEN HE IS DEPRIVED OF HIS REMEDY AT LAW*



DISCHARGE BY **OPERATION OF LAW**

- ❖ *DEATH*
- ❖ *MERGER*
- ❖ *INSOLVENCY*
- ❖ *UNAUTHORISED ALTERATION OF THE TERMS OF A WRITTEN AGREEMENT*
- ❖ *RIGHTS & LIABILITIES VESTING IN THE SAME PERSON*



DISCHARGE BY BREACH OF CONTRACT

❖ *ACTUAL BREACH :*

- At the time of performance
- During the performance

❖ *ANTICIPATORY BREACH*

- By the act of promisor
(implied repudiation)
- By renunciation of obligation
(express repudiation)





REMEDIES FOR BREACH OF CONTRACT



REMEDIES OF INJURED PARTY

- ◆ A remedy is a means given by law for the enforcement of a right
- ◆ Following are the remedies
- ◆ [1] Rescission of damages.
- ◆ [2] Suit upon quantum meruit.
- ◆ [3] Suit for specific performance.
- ◆ [4] Suit for injunction.



RESCISSION

When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance. In such a case, he is absolved of all his obligations under the contract.

The court may give rescission due to

1) contract is voidable. 2) contract is unlawful

The court may refuse to rescind if

1) Plaintiff has ratified the contract. 2) Parties cannot be restored to the original position. 3) The third party has acquired for value. 4) When only a part is sought to be rescinded. (sec 27 of specific relief act 1937)



DAMAGES

Damages are a monetary compensation allowed to the injured party by the court for the loss or injury suffered by him by the breach of the contract. The objective of awarding damages for the breach of contract is to put the injured party in the same position as if he had not been injured. This is called the doctrine of restitution. The fundamental basis is awarding damages for the pecuniary loss.



QUANTUM **MERUIT**

The phrase quantum meruit literally means ‘as much as earned’. A right to sue on a quantum meruit arises when a contract, partly performed by one party, has been discharged by breach of contract by the other party. This right is performed not on original contract but on implied promise by other party for what has been done.



SPECIFIC **PERFORMANCE**

- ◆ In certain cases of breach of contract damages are not an adequate remedy. The court may, in such cases, direct the party in breach to carry out his promise according to terms of the contract. This is a direction by the court for specific performance of the contract at the suit of the party not in breach
- ◆ Cases for specific performance to be enforced
- ◆ 1) when the act agreed to be done is such that compensation is not adequate relief. 2) when there is no standard for ascertaining the actual damage
- ◆ 3) when it is probable that compensation cannot
- ◆ be agreed to be done.



INJUNCTION

When a party is in breach of a negative term of contract the court may, by issuing an order, restrain him by doing what he promised him not to do. Such an order of the court is called injunction

Court refuses grant of injunction

[1] whereby a promisor undertakes not to do something

[2] which is negative in substance though not in form



QUASI CONTRACTS



TYPES OF QUASI CONTRACTS

- Supply of necessities (Sec 68)
- Payment by a interested person (Sec 69)
- Obligation to pay for non gratuitous acts (Sec 70)
- Responsibility of finder of goods (Sec 71)
- Mistake or Coercion (Sec 72)



SUPPLY OF **NECESSARIES**

According to sec 68 a minor is liable to pay out of his property for ‘necessaries’ supplied to him or to anyone whom he is legally bound to support. The significance of this is that it does not arise out of a contract as much so as it arises out of a contract. The minor is not personally liable and ‘necessaries’ include food, clothing as well as education, They also include watch bicycle etc.



OBLIGATION TO PAY FOR **NON GRATUITOUS ACTS**

According to Sec 70 when a person lawfully does or delivers anything for the other ,not intending to do so gratuitously,and the person derives any benefit from it,he is liable to compensate,or restore the thing so done or delivered.

Here three conditions must satisfy

- [1] The thing must have been done lawfully
- [2] The person intending to do it must not have done it gratuitously
- [3] The person must have derived benefit from the act



PAYMENT BY A INTERESTED PERSON

According to Sec 69 a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

The essential elements center around

- [1] The payment made should be bona fide of one's interest
- [2] The payment should not be a voluntary one
- [3] The payment must be such that the other is bound by law to pay



RESPONSIBILITY OF THE FINDER OF GOODS

According to Sec 71 a person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as the bailee is bound to take as much care of the goods as a man of ordinary prudence would, In addition to that he must make efforts to trace the owner. If he does not, he will be guilty of wrong conversion, and till the owner is found out the property will vest with the finder, he can sell in case of

[1] goods are of perishable nature

[2] owner cannot be found out

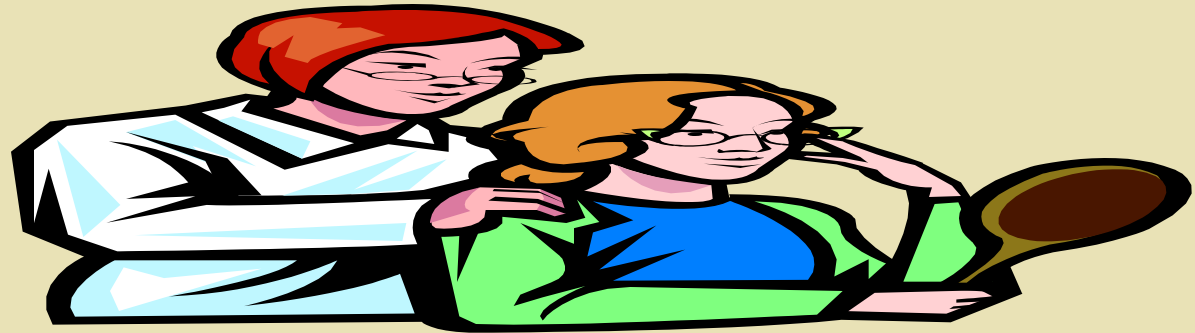
[3] when owner refuses to pay for the lawful charges

[4] when the lawful charges amount to two thirds of thing



INDEMNITY

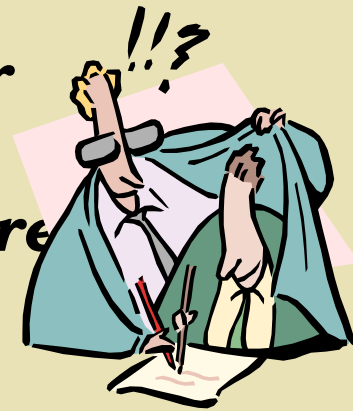
INDEMNITY (Sec 124)



A CONTRACT BY WHICH ONE PARTY PROMISES TO ANOTHER TO SAVE HIM FROM LOSS CAUSED TO HIM BY THE CONDUCT OF THE PROMISOR HIMSELF , OR BY THE CONDUCT OF ANY OTHER PERSON IS CALLED A CONTRACT OF INDEMNITY

ESSENTIAL FEATURES **OF INDEMNITY**

- ✓ ***There are two persons , the indemnifier the indemnified or the indemnity holder***
- ✓ ***There must be loss either by the promisor's conduct or by any other person's conduct***
- ✓ ***It is a contingent contract by nature***
- ✓ ***It may be express or implied***



Sec125 deals with the commencement of the indemnifier's liability. His liability commences when the event causing the loss occurs or when the event saving the indemnified from the loss becomes impossible



GUARANTEE



GUARANTEE

(Sec 126)

A CONTRACT OF GUARANTEE IS A CONTRACT TO PERFORM THE PROMISE, OR DISCHARGE THE LIABILITY, OF A THIRD PERSON IN CASE OF HIS DEFAULT. THE PERSON WHO GIVES THE GUARANTEE IS KNOWN AS THE 'SURETY', THE PERSON IN RESPECT OF WHOM THE GUARANTEE IS GIVEN IS KNOWN AS THE 'PRINCIPAL DEBTOR', AND THE PERSON TO WHOM THE GUARANTEE IS GIVEN IS CALLED THE 'CREDITOR'. A GUARANTEE MAY BE EITHER ORAL OR WRITTEN.

ESSENTIAL FEATURES **OF GUARANTEE**

- ◆ Concurrence of three contracts
- ◆ Primary liability is that of the principal debtor
- ◆ In case the debtor is a minor , the surety's liability becomes primary
- ◆ All the essentials of a valid contract
- ◆ It may be in writing or oral
- ◆ There need not be full disclosure of facts to the surety before he gives the guarantee





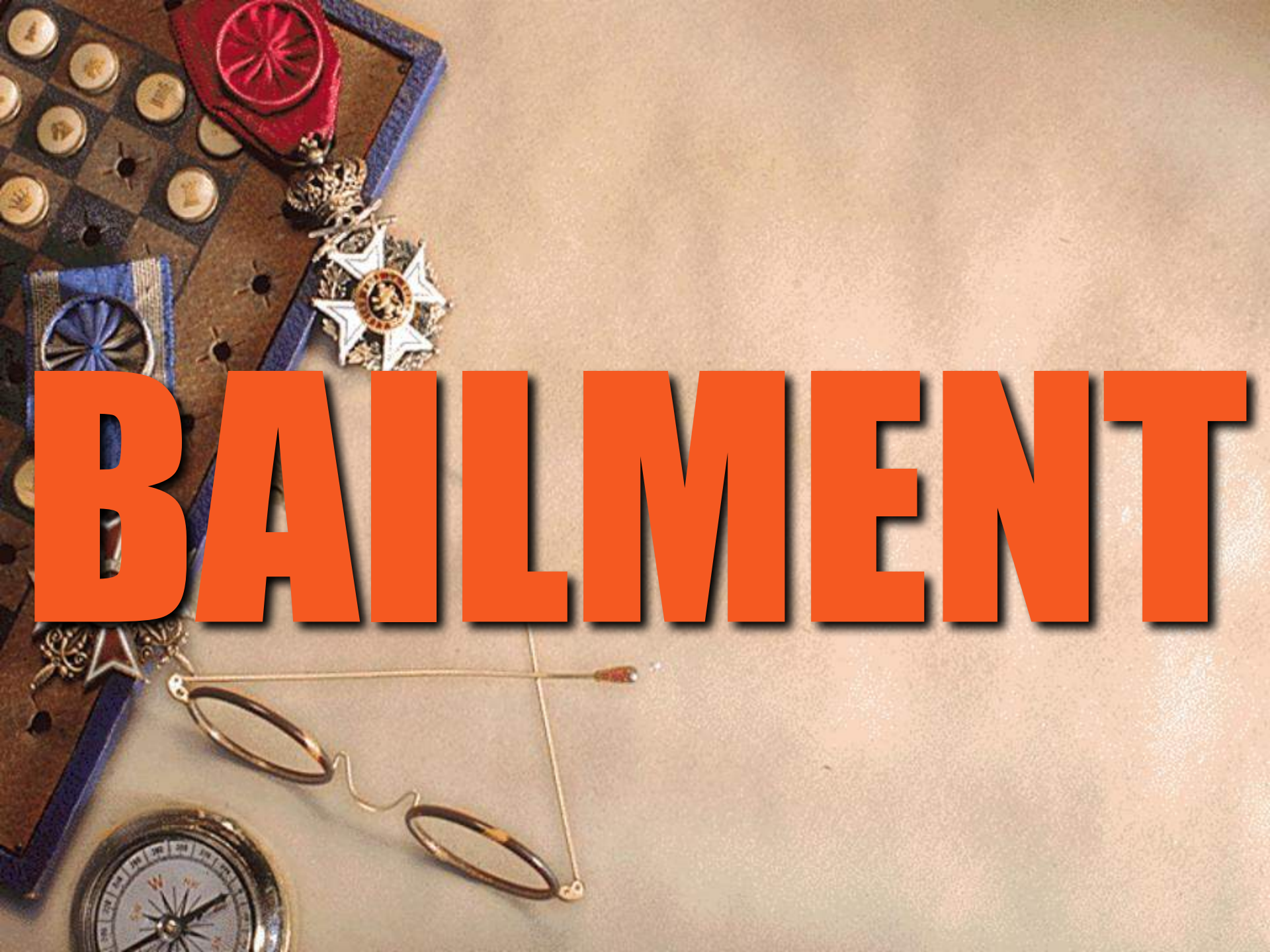
TYPES OF GUARANTEE

- ◆ **SPECIFIC GUARANTEE :**

When a guarantee extends to a single transaction or debt it is known as a specific or simple guarantee

CONTINUING GUARANTEE :

When a guarantee extends to a series of transactions
It is called continuing guarantee



BAILMENT



BAILMENT Sec 148

- ◆ The word Bailment is derived from the French word “ballier” which means “to deliver” .
- ◆ Bailment means 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 instructions of the person delivering them. The person delivering the goods is called the ‘*bailor*’ and the person to whom they are delivered is called the ‘*bailee*’.



Essentials of bailment

- There are two persons namely Bailor and Bailee.
- Bailor means the person delivering the goods, Bailee means the person to whom the goods are delivered.
- There must be delivery of goods .
- The goods must be in deliverable condition.



- Only the goods are delivered but not the ownership of goods, their must be purpose.
- Bailey can use the goods.
- Goods must be returned or disposed off after the purpose is accomplished.



Duties and rights of Bailor and Bailee

Duties of bailor.

- ☞ To disclose known faults.
- ☞ To bear extraordinary expenses of bailment.
- ☞ To indemnify bailee for loss in case of premature termination of gratuitous bailment.
- ☞ To receive back the goods.
- ☞ To indemnify the bailee.



Rights of bailor

⌘ Enforcement of rights.

② Avoidance of contract. (*Sec 153*)

Ž Return of goods lent gratuitously. (*Sec 159*)

④ Compensation from a wrong –doer. (*Sec 180*)



Rights of bailee

- ◆ ***Delivery of goods to one of several joint bailor of goods. (Sec 165).***
- ◆ ***Delivery of goods to bailor without title. (Sec 166).***
- ◆ ***Right to apply to court to stop delivery. (Sec 167)***
- ◆ ***Right to action against trespassers. (Sec 180)***
- ◆ ***Bailee' s lien.***

A collection of vintage items is arranged on a light-colored, textured surface. In the top left corner, there is a checkered board with several small, round, light-colored pieces. Below the board, a blue ribbon with a circular medal is visible. To the right of the ribbon, a pair of round, gold-rimmed glasses with thin temples lies on the surface. In the bottom left corner, a round, silver-colored compass with a black face and white markings is partially visible. The word "PLEDGE" is written in large, bold, green, italicized capital letters across the center of the image, with a slight shadow effect.

PLEDGE



PLEDGE (SEC 172)

The bailment of goods as security for payment of a debt or performance of a promise is called “Pledge”.

The bailor in this case is called the “pledger” or “pawnor” and the bailee is called the “pledgee” or “pawnee”



RIGHTS AND DUTIES OF PAWNOR AND PAWNEE

Rights of Pawnee.

- Right of retainer.
- Right of retainer for subsequent advances.
- Right to extraordinary expenses.
- Right against true owner, when the Pawnor's title is defective.
- Pawnee's rights where pawnor makes default .



Rights of Pawnor

- ◆ Right to get back goods.
- ◆ Right to redeem debt.
- ◆ Presentation and maintenance of the goods.
- ◆ Rights of an ordinary debtor.



AGENCY



AGENT

Sec 182 defines an agent as a person employed to do any act for another , or to represent another in dealings with third personsthe person for whom such act is done is s called the principal



ESSENTIALS OF RELATIONSHIP OF AGENCY

- ◆ Agreement between principal & agent
- ◆ Intention of agent to act on behalf of the principal
- ◆ Anyone can be an agent
- ◆ Anyone can employ an agent



CREATION OF AGENCY

- ◆ BY EXPRESS AGREEMENT
- ◆ BY IMPLIED AGREEMENT
 - Agency by estoppel
 - Agency by holding out
 - Agency by necessity
- ◆ AGENCY BY RATIFICATION
- ◆ AGENCY BY OPERATION OF LAW



REQUISITES OF VALID RATIFICATION

- ◆ *Agent must act as an agent for his principal*
- ◆ *Principal must be in existence at the time of contract*
- ◆ *Ratification must be with full knowledge of facts*
- ◆ *Ratification should be done within a reasonable time of the performance of the act*
- ◆ *The act to be ratified should be of lawful nature*
- ◆ *The ratification can be done only to the whole transaction & not any part of it (Sec 199)*
- ◆ *Ratification should be communicated with the party to contract*
- ◆ *Ratification should not cause any damages to a third party*
- ◆ *Ratification can only be of acts which principal had the right to do*



SUB-AGENT & **SUBSTITUTED AGENT**

A sub agent is a person employed & acting under the control of the agent in the business of the agency (Sec 191)

A substituted agent is a person named by the agent, on an express or implied authority from the principal, to act for the principal (Sec 194)



DIFFERENCES BETWEEN SUB- AGENT & SUBSTITUTE-AGENT

SUB-AGENT

- 1. He works under the agent***
- 2. There is no contact between the agent & the principal***
- 3. Agent is wholly & solely responsible for the acts of the sub-agent***

SUBSTITUTE AGENT

- 1. He works under the principal***
- 2. There is a contract between him & the principal***
- 3. Agent is in no way responsible for the acts of the substituted agent***



Termination of agency

- ◆ **By act of parties**

- Agreement*

- Revocation by the principal*

- Revocation by the agent*

- ◆ **By operation of law**

- Performance of the contract*

- Expiry of time*

- Death of either party*

- Insanity of either party*

- Insolvency of either party*

- Destruction of the subject matter*

- Principal becoming an alien enemy*

- Dissolution of a company*

- Termination of sub-agents authority*



**THANK
YOU**

A collage of various symbols is visible on the left side of the image. It includes a portion of a chessboard with several pieces, a red ribbon with a circular emblem, a blue ribbon with a circular emblem, two star-shaped medals with intricate designs, a pair of thin-rimmed glasses, and a circular compass rose.

***THIS PRESENTATION IS BROUGHT TO YOU
BY:***

Zafar Iqbal Kalanauri

Mediator & Advocate Supreme Court of Pakistan