Legal Aspects of Business
Unit-1 (Law of Contract)

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Content

Concept of Contract, offer and acceptance; valid contracts and its essential elements; void agreements; classification of contracts; Quasi contract; performance of contract; discharge of contract; remedies for breach of contract. Special Contracts: Indemnity, Guarantee, Bailment, pledge. Law of Agency: Essentials, kinds of agents, rights and duties of agent and principal, creation of agency, termination of agency

Contract

- “Every agreement and promise enforceable at law is contract.” by Pollack

- “A contract is an agreement creating and defining obligations between the parties” by Salmond

Flow of the definition:

- Contract ---- Agreement ---- Promise Accepted proposal ---- Proposal/offer

- A contract is an agreement that can be enforced in court. A contract may be formed when two or more parties each promise to perform or to refrain from performing some act now or in the future. A party who does not fulfill his or her promise may be subject to sanctions, including damages or, under some circumstances, being required to perform the promise.

Contract = Agreement + Enforceability

Agreement = Offer + Acceptance

Enforceability = Legal obligations b/w parties

- **Enforceability:** An agreement is enforceable if it is recognized by court. In order to be enforceable by law, the agreement must create legal obligations between the parties.
- **Intent :**The intent to enter into a contract is important in the formation of a contract. Intent is determined by the objective theory of contracts. The theory is that a party's intention to enter into a contract is judged by outward, objective facts as they would be interpreted by a reasonable person, rather than by the party's own secret, subjective intentions. Objective facts include: (1) what the party said; (2) how the party acted or appeared; and (3) the circumstances surrounding the transaction.

Contracts play an important role in our everyday life ranging from insurance policies to employment contracts. In Fact, we enter into contracts even without thinking, for example, while buying a movie ticket or downloading an app. The contract is oral or written agreements between two or more parties. Parties entering into a contract might include individual people, companies, non-profits or government agencies. The whole process of entering into a contract starts with an offer by one party, an acceptance by another party, and an exchange of consideration (something of value).

Proposal or offer

- The entire process of entering into a contract begins with the proposal or an offer made by one party to another. The proposal must be accepted to enter into an agreement.
- According to the Indian Contract Act 1872, proposal is defined in Section 2(a) as “when one person will signify to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer.”

Features of a valid offer

- The person making the offer/proposal is referred to as the "promisor" or the "offeror". And the person who accepts an offer is referred to as "promisee" or the "acceptor".
- The offeror must express his willingness to do or abstain from doing an act. Only willingness is not adequate. Or just an urge to do something or not to do anything will not be an offer.
- An offer can either be positive or negative. It can be a promise to do some act, and can also be a promise to abstain from doing any act/service. Both are valid offers.

The element of a valid offer

- **There must be two parties**

There have to be at least two parties a person making the proposal and the other person agreeing to it. All the persons are included i.e., Legal persons as well as artificial persons.

- **Every proposal must be communicated**

Communication of the proposal is mandatory. An offer is valid if it is conveyed to the offeree. The communication can either be express or implied. It can be communicated by terms such as word of mouth, messenger, telegram, etc. Section 4 of the Indian Contract Act says that the communication of a proposal is complete when it comes to the awareness of the person to whom it is made.

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

- **It must create Legal Relations**

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

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

- **It must be Certain and definite**

The terms of the offer must be certain and clear in order to create a valid contract.

- **It may be specific or general**

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

Classification of offer

Some types of offers can be based on the design, timing, purpose, etc.

- **Express Offer**

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

Example: When ‘A’ says to ‘B’, “will you purchase my car for Rs 2,00,000”?

- **Implied Offer**

An offer may be derived from the actions or circumstances of the parties. This is known as Implied offer.

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

- **General Offer**

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

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

- **Specific Offer**

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

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

- **Cross offer**

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

- **Counter-offer**

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

Acceptance

- Acceptance in Section 2 (b) as “When the person to whom the proposal is made signifies his assent thereto, the offer is said to be accepted. Thus the proposal when accepted becomes a promise.” An offer can be revoked before it is accepted.
- As specified in the definition, if the offer is accepted unconditionally by the offeree to whom the request is made, it will amount to acceptance. When the offer is accepted it becomes a promise.

Example

- ‘A’ offer to buy B’s house for rupees 40 lakhs and ‘B’ accepts such an offer. Now, it has become a promise.
- When an offer is accepted and it becomes promise it also becomes irrevocable. No legal obligation created by an offer.

Types of Acceptance

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

Example

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

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

Example

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

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

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

Legal Rules and Conditions for Acceptance

- **Acceptance must be absolute and unqualified :** The offeree's approval cannot be conditional.

For example, 'A' wants to sell her car to 'B' for Rs 2 lakh, 'B' can't come back and says that she accepts the offer but will buy the same for Rs. 1 lakh.

- **Acceptance must be told to the offeror:** If the acceptor just accepts the offer in his head and he does not mention the same to the offeror, it can not be called an Acceptance, whether in an express manner or an implied manner.

- **Acceptance must be recommended in the following mode:** Acceptance is sometimes required in a prescribed/specified communication mode.
- **In a reasonable amount of time, the acceptance is given:** It's very rare that an offer is always to get acceptance at any time and at all times. Therefore, the offer defines a time limit. If it does not, it should not be acknowledged forever.
- **Mere silence is not acceptance:** If the offeree fails to respond to an offer made to him, his silence can not be confused with acceptance. But, there is an exception to this rule. It is stated that, within 3 weeks of the date on which the offer is made, the non-acceptance shall be communicated to the offeror. Otherwise, the silence shall be communicated as acceptance.

Valid contracts

A **valid** contract is a written or expressed agreement between two parties to provide a product or service. There are essentially six elements of a contract that make it a legal and binding document. In order for a contract to be enforceable, it must contain:

- An offer that specifically details exactly what will be provided
- Acceptance, or the agreement by the other party to the offer presented
- Consideration, or the money or something of interest being exchanged between the parties
- Capacity of the parties in terms of age and mental ability
- Intent of both parties to carry out their promise
- Object of a contract is legal and not against public policy or in violation of law

Void Agreements

- Void agreements are those agreements which are not enforced by law courts. Section 2(g) of the Indian Contract Act defines a void agreement as, “an agreement not enforceable by law”. Thus the parties to the contract do not get any legal redress in the case of void agreements.
- Void agreements arise due to the non-fulfillment of one or more conditions laid down by Section 10 of the Indian contract Act.
- All agreements are contracts if they are made with 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.

Classification of Contracts

According to the mode of formation of contracts, contracts may be classified into three namely,

- Express Contract,
- Implied Contract, and
- Quasi – Contract.

Express Contract: A contract is said to be an express contract, if the terms of a contract are expressly agreed upon between the parties (either by words spoken or written) at the time of formation of the contract. An express promise results in express contract. A promise is said to be an express promise, when the offer or acceptance of any promise is made in words.

Implied Contract: An implied contract is one for which the proposal or acceptance is made otherwise than in words. Where the proposal or acceptance of any promise is made otherwise than in words, the promise is known as implied promise. Implied contracts are inferred from the circumstances of the case and conduct of the parties.

For example, when A takes a cup of milk in a hotel, there is an implied contract.

Quasi – Contract: A quasi-contract is one, which is created by law. In the quasi-contract, there is no intention on either side to make a contract. In a quasi contract, rights and obligations arise not by an agreement but by operations of law.

For example, where certain letters are delivered to a wrong addressee, the addressee is under an obligation to return the letters.

Classification of Contracts according to performance

Unilateral Contract: It is also called as one-sided contract. In a unilateral contract, only one party has to satisfy his obligation at the time of the formation of it, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence.

For example, A takes a public auto to go to Mount Road. A contract comes into existence as soon as A was dropped in Mount Road. By that time, auto man has fulfilled his obligation, only A has to fulfill his obligation i.e. paying the auto- man.

Bilateral Contract: A contract is said to be a bilateral contract where the obligations of both the parties to the contract are pending at the time of formation of the contract. In this type of contract, a promise on one side is exchanged for a promise on the other.

For example, A promises to stitch a blouse and 0 promises to pay Rs.30. Here A promises to stitch the blouse and 0 promises to pay. Thus each party is both a promisor and a promisee.

Classification of Contracts according to execution

Executed Contract: A contract is said to be executed contract when both the parties to contract have performed their share of obligation.

Executory Contract: An executory contract is one, which is either wholly unperformed, or something remains in there to be done by both the parties to contract. Sometimes, a contract may be partly executed and partly executory.

Other Contracts

Besides the above said classification, there are other types of contract also. Contingent Contract is one such type.

- **Contingent Contract**

Contingent contract is one, which is collateral to do or not to do something, if some event collateral to such contract, does or does not happen. For example, A agrees to sell a certain piece of land to B, in case he succeeds in his litigation concerning that land. This is a contingent contract.

The essential elements of a contingent contract are:

1. There is an uncertain event,
2. The uncertain event is collateral to the contract,
3. The performance of the contract depends upon the contingency.

Contracts of insurance, indemnity and guarantee are the commonest instances of a contingent contract.

Performance of Contract

In general, an agreement between two parties that creates legal obligation and is enforceable by law is a contract. For entering into a contract, there are certain essentials

1. Agreement between two parties
2. The intent of Legal obligation
3. Lawful consideration
4. The condition should be certain with a legal object
5. Free Consent
6. Competency of parties

- The term ‘Performance of contract‘ means that both, the promisor, and the promisee have fulfilled their respective obligations, which the contract placed upon them. For instance, A visits a stationery shop to buy a calculator. The shopkeeper delivers the calculator and A pays the price.
- Section 27 of Indian contract Act says that

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or any other law.

- It is the primary duty of each contracting party to either perform or offer to perform its promise. For performance to be effective, the courts expect it to be exact and complete, i.e., the same must match the contractual obligations. However, where under the provisions of the Contract Act or any other law, the performance can be dispensed with or excused, a party is absolved from such a responsibility.

Example

A promises to deliver goods to B on a certain day on payment of Rs 1,000. A expires before the contracted date. A‘s representatives are bound to deliver the goods to B, and B is bound to pay Rs 1,000 to A‘s representatives.

Types of Performance

Actual Performance: When a promisor to a contract has fulfilled his obligation in accordance with the terms of the contract, the promise is said to have been actually performed. Actual performance gives a discharge to the contract and the liability of the promisor ceases to exist. For example, A agrees to deliver10 bags of cement at B's factory and B promises to pay the price on delivery. A delivers the cement on the due date and B makes the payment. This is actual performance.

Actual performance can further be subdivided into substantial performance, and partial Performance

Substantial Performance: This is where the work agreed upon is almost finished. The court then orders that the money must be paid, but deducts the amount needed to correct minor existing defect. Substantial performance is applicable only if the contract is not an entire contract and is severable. The rationale behind creating the doctrine of substantial performance is to avoid the possibility of one party evading his liabilities by claiming that the contract has not been completely performed. However, what is deemed to be substantial performance is a question of fact to be decided in both the case. It will largely depend on what remains undone and its value in comparison to the contract as a whole.

Partial Performance: This is where one of the parties has performed the contract, but not completely, and the other side has shown willingness to accept the part performed. Partial performance may occur where there is shortfall on delivery of goods or where a service is not fully carried out.

- **Attempted Performance:** When the performance has become due, it is sometimes sufficient if the promisor offers to perform his obligation under the contract. This offer is known as attempted performance or more commonly as tender. Thus, tender is an offer of performance, which of course, complies with the terms of the contract. If goods are tendered by the seller but refused by the buyer, the seller is discharged from further liability, given that the goods are in accordance with the contract as to quantity and quality, and he may sue the buyer for breach of contract if he so desires. The rationale being that when a person offers to perform, he is ready, willing and capable to perform. Accordingly, a tender of performance may operate as a substitute for actual performance, and can effect a complete discharge.

In this regard, Section 38 of Indian Contract Act says:

'Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. For example, A contracts to deliver to B, 100 tons of basmati rice at his warehouse, on 6 December 2015. A takes the goods to B's place on the due date during business hours, but B, without assigning any good reason, refuses to take the delivery. Here, A has performed what he was required to perform under the contract. It is a case of attempted performance and A is not responsible for non-performance of B, nor does he thereby lose his rights under the contract.'

Discharge of contract

- A contract creates certain obligations on one or all parties involved. The discharge of a contract happens when these obligations come to an end.

1] Discharge by Performance

- When the parties to a contract fulfill the obligations arising under the contract within the time and manner prescribed, then the contract is discharged by performance.
- Example: Peter agrees to sell his cycle to John for an amount of Rs 10,000 to be paid by John on the delivery of the cycle. As soon as it is delivered, John pays the promised amount.
- Since both the parties to the contract fulfill their obligation arising under the contract, then it is discharged by performance.

Now, discharge by the performance of a contract can be by:

- Actual performance
- Attempted performance

As shown in the example above, actual performance is when all the parties to a contract do what they had agreed for under the contract. On the other hand, it is possible that when the promisor attempts to perform his promise, the promisee refuses to accept it. In such cases, it is called attempted performance.

2] Discharge by Mutual Agreement

If all parties to a contract mutually agree to replace the contract with a new one or annul or remit or alter it, then it leads to a discharge of the original contract due to a mutual agreement.

Example: Peter owes Rs 100,000 to John and agrees to repay it within one year. They document the debt under a contract. Subsequently, he loses his job and requests John to accept Rs 75,000 as a final settlement of the loan. John agrees and they make a contract to that effect. This discharges the original contract due to mutual consent.

3] Discharge by the Impossibility of Performance

If it is impossible for any of the parties to the contract to perform their obligations, then the impossibility of performance leads to a discharge of the contract. If the impossibility exists from the start, then it is impossibility ab-initio. However, the impossibility might also arise later due to:

- An unforeseen change in the law
- Destruction of the subject-matter essential to the performance
- The non-existence or non-occurrence of a particular state of things which was considered a given for the performance of the contract
- A declaration of war

Example: Peter enters into a contract with John to marry his sister Olivia within one year. However, Peter meets with an accident and becomes insane. The impossibility of performance leads to a discharge of the contract.

4] Discharge of a Contract by Lapse of Time

The Limitation Act, 1963 prescribes a specified period for performance of a contract. If the promisor fails to perform and the promisee fails to take action within this specified period, then the latter cannot seek remedy through law. It discharges the contract due to the lapse of time.

Example: Peter takes a loan from John and agrees to pay installments every month for the next five years. However, he does not pay even a single installment. John calls him a few times but then gets busy and takes no action. Three years later, he approaches the court to help him recover his money. However, the court rejects his suit since he has crossed the time-limit of three years to recover his debts.

5] Discharge of a Contract by Operation of Law

A contract can be discharged by operation of law which includes insolvency or death of the promisor.

6] Discharge by Breach of Contract

If a party to a contract fails to perform his obligation according to the time and place specified, then he is said to have committed a breach of contract.

Also, if a party repudiates a contract before the agreed time of performance of a contract, then he is said to have committed an anticipatory breach of contract.

In both cases, the breach discharges the contract. In the case of:

- an actual breach, the promisee retains his right of action for damages.
- an anticipatory breach of contract, the promisee cannot file a suit for damages. It also discharges the promisor from performing his part of the contract.

7] Discharge of a Contract by Remission

A promisee can waive or remit the performance of promise of a contract, wholly or in part. He can also extend the time agreed for the performance of the same.

8] Discharge by Non-Provisioning of Facilities

In many contracts, the promisee agrees to offer reasonable facilities to the promisor for the performance of the contract. If the promisee fails to do so, then the promisor is discharged of all liabilities arising due to non-performance of the contract.

Example: Peter agrees to fix John's garage floor provided he keeps his car out for at least 6 hours. Peter approaches him a few times but John is reluctant to get his car out. John fails to provide reasonable facilities to Peter (an empty floor). This discharges him of all obligations arising under the contract.

9] Discharge of a Contract due to the Merger of Rights

In some situations, it is possible that inferior and superior right coincides in the same person. In such cases, both the rights combine leading to a discharge of the contract governing the inferior rights.

Example: Peter rents John's apartment for two years. One year into the contract, he offers to buy the property from John, who agrees. The enter a sale contract and Peter becomes the owner of the apartment. Here Peter has two rights; one accorded by the lease agreement making him the renter and second by the sale agreement making him the owner. The former being an inferior right merges with the superior one and discharges the lease contract.

Q: Peter agrees to sell his laptop to John for an amount of Rs 15,000. He also promises to deliver it within 2 days. The next day, when Peter approached John with his laptop, John refuses to accept it without any valid reason. Is the contract discharged?

Remedies for breach of contract

What Damages Can Be Awarded?

There are two general categories of damages that may be awarded if a breach of contract claim is proved. They are:

1. Compensatory Damages. Compensatory damages (also called “actual damages”) cover the loss the nonbreaching party incurred as a result of the breach of contract. The amount awarded is intended to make good or replace the loss caused by the breach.

There are two kinds of compensatory damages that the nonbreaching party may be entitled to recover:

A. General Damages. General damages cover the loss directly and necessarily incurred by the breach of contract. General damages are the most common type of damages awarded for breaches of contract.

Example: Company A delivered the wrong kind of furniture to Company B. After discovering the mistake later in the day, Company B insisted that Company A pick up the wrong furniture and deliver the right furniture. Company A refused to pick up the furniture and said that it could not supply the right furniture because it was not in stock. Company B successfully sued for breach of contract. The general damages for this breach could include:

- refund of any amount Company B had prepaid for the furniture; plus
- reimbursement of any expense Company B incurred in sending the furniture back to Company A; plus
- payment for any increase in the cost Company B incurred in buying the right furniture, or its nearest equivalent, from another seller.

B. Special Damages. Special damages (also called "consequential damages") cover any loss incurred by the breach of contract because of special circumstances or conditions that are not ordinarily predictable. These are actual losses caused by the breach, but not in a direct and immediate way. To obtain damages for this type of loss, the nonbreaching party must prove that the breaching party knew of the special circumstances or requirements at the time the contract was made.

Example: In the scenario above, if Company A knew that Company B needed the new furniture on a particular day because its old furniture was going to be carted away the night before, the damages for breach of contract could include all of the damages awarded in the scenario above, plus:

• payment for Company B's expense in renting furniture until the right furniture arrived.

2. Punitive Damages. Punitive damages (also called "exemplary damages") are awarded to punish or make an example of a wrongdoer who has acted willfully, maliciously or fraudulently. Unlike compensatory damages that are intended to cover actual loss, punitive damages are intended to punish the wrongdoer for egregious behavior and to deter others from acting in a similar manner. Punitive damages are awarded in addition to compensatory damages.

Punitive damages are rarely awarded for breach of contract. They arise more often in tort cases, to punish deliberate or reckless misconduct that results in personal harm.

Special Contracts:
Contract of Indemnity (Section 124-125)

- Indemnity: To make good the loss or to compensate for the loss
- Indemnifier: who promise to compensate or Promisor
- Indemnity holder: Promisee

Examples

- Insurance Company and Insurance policy holder
- Share issuing company and share holder

Contract of Guarantee

- (Sec 126-147) A Contract to perform the promise, or discharge the liability, of a third person in case of his default is called Contract of Guarantee.
- A guarantee may be either oral or written.
- The person who gives the guarantee is called the Surety
- The person on whose default the guarantee is given is called the Principal Debtor.
- The person to whom the guarantee is given is called the Creditor.

- If A gives an undertaking stating that if ` 300 are lent to C by B and C does not pay, A will pay back the money, it will be a contract of guarantee. Here, A is the surety, B is the principal debtor and C is the creditor.
- Contract Act uses the word ‘surety’ which is same as ‘guarantor’ Prima facie, the surety is not undertaking to perform should the principal debtor fail; the surety is undertaking to see that the principal debtor does perform his part of the bargain.

- Section 127 : "Anything done or any promise made for the benefit of the principal debtor may be sufficient consideration to the surety for giving the guarantee.“
- Examples

1. A agrees to sell to B certain goods if C guarantees the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver goods to B. This is a sufficient consideration for C's promise.
2. A sells and delivers goods to B. C, afterwards, requests A to forbear to sue B for an year and promises that if A does so, he will guarantee the payment if B does not pay. A forbears to sue B for one year. This is sufficient consideration for C's guarantee.
3. A sells and delivers goods to B. Later on, C, without any consideration, promises to pay A if B fails to pay. The agreement is void for lack of consideration.

Contract of Bailment

- Section 148-171
- Possession of Moveable property, not ownership
- Possession to use or to further objectives
- Bailor, the owner of goods
- Bailee, the user
- Example: Repair of car or laptop, give book to read,

- Bailment: Types

❑ On the basis of consideration:

✓ Gratuitous Bailment (No Consideration)

Example: Give book to friend to read

✓ Non Gratuitous (Consideration)

Example: Repair of Mobile

❑ On the basis of benefits:

✓ Exclusive benefits of Bailor

✓ Exclusive benefits of Bailee

✓ Mutual benefits

Pledge

- Pledge is also known as Pawn. It is defined under section 172 of the Indian Contract Act, 1892. By pledge, we mean bailment of goods as a security for the repayment of debt or loan advanced or performance of an obligation or promise.
- The person who pledges the goods as security is known as Pledger or Pawnor and the person in whose favour the goods are pledged is known as Pledgee or Pawnee.

Essentials of Pledge

- There shall be a bailment for security against payment or performance of the promise,
- The subject matter of pledge is goods,
- Goods pledged for shall be in existence,
- There shall be the delivery of goods from pledger to pledgee,
- There is no transfer of ownership in case of the pledge.

Difference between Bailment and Pledge

Basis	Bailment	Pledge
Meaning	Transfer of goods from one person to another for a specific purpose is known as the bailment.	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
Defined In	It is defined under section 148 of the Indian Contract Act, 1872.	It is defined under section 172 of the Indian Contract Act, 1872.
Parties	The person who delivers the bailed goods is known as Bailor and the person receiving such goods is known as Bailee.	The person who delivers the pledged goods is known as Pledger or Pawnor and the person receiving such goods is known as Pledgee or Pawnee.

Consideration	The consideration may or may not be present.	Consideration is always there.
Right to Sell	Bailee has no right to sell the goods bailed.	Pledgee or Pawnee has the right to sell the goods.
Use of Goods	Bailee can use the goods only for a specific purpose only and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.
Purpose	The purpose of bailed goods is for safekeeping or repairs etc.	The purpose of pledged goods is to act as security for repayment of debt or performance of the promise.

Illustrations

- **Illustration 1:** Mr A gives his watch for repair to Mr B., In this case, Mr A is bailor, Mr B is Bailee and the goods bailed is watch.
- **Illustration 2:** Harry bailed his bike to David for riding for himself to go to college. David used it for racing purpose. Now David will be liable for unauthorized use of the bike bailed.
- **Illustration 3:** Mr X gave his cat to Mr Y for looking after over some days. Cat in that while gave birth to kittens. Now Mr Y is liable to return the cat along the accretions.
- **Illustration 4:** Mr A bailed his carriage for Mr B for hire for a few days. But there was a default in the carriage of which Mr A was not aware. And subsequently, Mr B suffered injuries because of the same. Now Mr A is liable to pay damages to Mr B.
- **Illustration 5:** Y mixes his sweets with that of Z without Z's consent. Since the sweets can be separated so the cost to separate the sweets will be borne by Y.
- **Illustration 6:** Mark took a loan from the bank against a security of gold. In this case, Mark is a pledger, the bank is a pledgee and gold is the pledged goods.
- **Illustration 7:** Z pledged his goods with A. But now Z refuses to make the payment of the same. A now can either sell his goods or can initiate a suit proceeding against Z.

Law of Agency

- an agent is a person (“agent”) who is “employed” by another (“principal”) to bring that other person into contractual relations with a third party e.g. estate agent, travel agent. P (principal) enters a contract engaging A (agent) to negotiate contracts with T (third party); which creates a legal contract between P and T.
- The authority given by principal to agent is the most important feature in an agency relationship. The extent of the authority will be a term in the contract between agent and principal. What the agent can and cannot do on behalf of the principal.
- Remember, Agent has contract with principal. Principal has contract with third party.

Classification of an Agent

- **General Agent:** can bind a principal in normal course of business e.g. bar manager buying drink, crisps;
- **Special Agent**: for specific purpose or time e.g. auctioneer;
- **Universal Agent :** bind principal in all/any contracts e.g. an agent appointed by Power of Attorney.
- **Sub-Agent:** An agent appointed by an agent.
- **Co-Agent:** Agents together appointed to do an act jointly.
- **Factor:** An agent who is remunerated by a commission (one who looks like the apparent owner of the things concerned)
- **Broker:** An agent whose job is to create a contractual relationship between two parties.
- **Auctioneer**: An agent who acts a seller for the Principal in an auction.
- **Commission Agent:** An appointed to buy and sell goods (make the best purchase) for his Principal
- **Del Credere:** An agent who acts as a salesperson, broker and guarantor for the Principal. He guarantees the credit extended to the buyer.

- **Who is an Agent?**

The Indian Contract Act, 1872 defines an ‘Agent’ in Section 182 as a person employed to do any act for another or to represent another in dealing with third persons.

- **Who is a Principal?**

According to Section 182, The person for whom such act is done, or who is so represented, is called the “principal”. Therefore, the person who has delegated his authority will be the principal.

Illustrations

- A, a businessman, delegates B to buy some goods on his behalf. Here, A is the principal and B is the agent, and the person from whom the goods are bought is the ‘Third Person’.
- Joe appoints Mary to deal with his bank transactions. In this case, Joe is the Principal, Mary is the Agent and the Bank is the Third Party.
- Lavanya lives in Mumbai, but owns a shop in Delhi. She appoints a person Susan to take care of the dealings of the shop. In this case, Lavanya has delegated her authority to Susan, and she becomes a Principal while Susan becomes an agent.

- **Who can appoint an Agent?**

According to Section 183, any person who has attained the age of majority and has a sound mind can appoint an agent. In other words, any person capable of contracting can legally appoint an agent. Minors and persons of unsound mind cannot appoint an agent.

- **Who may be an Agent?**

according to Section 184, the person who has attained the age of majority and has a sound mind can become an agent. A sound mind and a mature age is a necessity because an agent has to be answerable to the Principal.

Creation of Agency

- **Direct (express) appointment–** The standard form of creating an agency is by direct appointment. When a person, in writing or speech appoints another person as his agent, an agency is created between the two.
- **Implication–** When an agent is not directly appointed but his appointment can be inferred from the circumstances, an agency by implication is created.
- **Necessity–** In a situation of necessity, one person can act on behalf of another to save the person from any loss or damage, without expressly being appointed as an agent. This creates an agency out of necessity.

- **Estoppel–** An agency can also be created by estoppel. In a situation where one person behaves in such a manner in front of a third person, as to make someone believe he is an authorized agent on behalf of someone, an agency by estoppel is created.
- **Ratification–** When an act of a person, who acted as another person's agent (on his behalf) without his knowledge is later ratified by that person, this creates an agency by ratification between the two.

Authority of an Agent

- **Express authority**

According to Section 187, the authority is said to be express when it is given by words spoken or written.

- **Implied authority**

According to Section 187, authority is said to be implied when it is to be inferred from the facts and circumstances of the case. In carrying out the work of the Principal, the agent can take any legal action. That is, the agent can do any lawful thing necessary to carry out the work of the Principal.

Implied authority is of four main types

- Incidental authority- doing something that is incidental to the due performance of express authority
- Usual authority- doing that which is usually done by persons occupying the same position
- Customary authority- doing something according to the pre-established customs of a place where the agent acts
- Circumstantial authority- doing something according to the circumstances of the case

Illustration

- Ali owns a shop in Bihar but lives in Mumbai. His shop is managed by a person named John. John takes care of the deals regarding the shop and buys goods from a person named Ram, with Ali's knowledge. In this case, John has *implied authority* from Ali to buy these goods.
- Soham employed Abhay, who is a shipbuilder to build ships for him. In doing so, Abhay may legally buy all the material necessary to build the ships.

Case

Chairman L.I.C v. Rajiv Kumar Bhaskar

In this case, as per the salary saving scheme of L.I.C, the employer was supposed to deduct the premium from the employee's salary and deposit it with L.I.C. Upon the death of the employee, it was found by his heirs that the employer has defaulted in doing so, causing the policy to lapse. A clause in the acceptance letter was referred to, in which the employer had said that he would act as the agent of the employee and not as that of L.I.C. It was held that the employer was acting as the agent of the company, thereby making the company (L.I.C) responsible as a Principal due to the fault of the Agent (the employer).

Agency between Husband and Wife

Generally, there exists no agency between a husband and wife, except in cases where it has expressly or impliedly been sanctioned that either of them would do certain acts or transactions as the agent of the other. That is, a relationship of agency can come into existence between the two through contract, appointment, or ratification. A husband is responsible for necessaries to his wife when they are living apart due to the husband's fault. This results in an agency of necessity where the wife can use her husband's credit for what is necessary for her to live. But in cases where they are separated because of the wife's own whims or faults, for no just reason, the husband is not liable for the wife's necessaries.

Duties of an Agent

- Perform the tasks required of him;
- Act with due care and skill and if agent is an expert, then, apply appropriate standard that a reasonable person with that skill would do;
- Don’t exceed authority;
- Avoid conflicts of interests and make full disclosure of all material info;
- Don’t make secret profit;
- Don’t delegate;
- Duty to account;
- Duty of confidentiality;
- Duty not to disclose/misuse info

Rights of an Agent

- Be paid;
- Be reimbursed expenses;
- Indemnified by principal in respect of the contract and all losses/liabilities provided the agent acted within his authority;

Liability of Agent to Third Parties

- Agent is not personally liable for a contract, (the principal is), provided he acted within his authority.
- NOTE: – may be liable to Third Party if Third Party was unaware of agency but agent would be entitled to be indemnified by principal.
- If Agent acts > authority = personally liable.

Principal's duties

- The Principal is bound to indemnify the agent against any lawful acts done by him in the exercise of his authority as an agent.
- The Principal is bound to indemnify the agent against any act done by him in good faith, even if it ended up violating the rights of third parties.
- The Principal is not liable to the agent if the act that is delegated is criminal in nature. The agent will also in no circumstances be indemnified against criminal acts.
- The Principal must make compensation to his agent if he causes any injury to him because of his own competence or lack of skill.

Termination of an Agency

By Action of Parties:

- Performance;
- Completion;
- Mutual Agreement;
- Revocation by principal;
- Renunciation by agent;
- On giving reasonable notice

By Operation of Law:

- Death, incapacity, bankruptcy;
- Expiry of agency agreement;
- Change in Law (illegality).