IPCC

Business Laws

The Indian Contract Act, 1872

Revision Summary based on Arihant Spiral and Bare Act

Special features:

- *Full coverage of The Indian Contract Act, 1872*
- *Strictly based on Bare Act and Arihant Spiral*
- *With summarize and easy to remember format*
- *Useful sections and Landmark judgments*
- *Very useful for Practical Questions*
- *Also covered CPT's selected chapters for enhanced conceptuality*

Written by: *Bhavin Pathak*

(Student, CA-IPCC, BN-14, Arihant Institute Pvt. Ltd.)

Special Thanks: *CS Gaurang Gandhi*

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Rules of My Life:
"Don't use anyone, but being useful for everyone."
"There is no tax on helping each other."
"Live for other is more joyful rather than live for yourself."
"If you light a lamp for somebody, it will also brighten your path."
"Happiness is a by-product of an effort to make someone else happy." ☺
– Me

DEDICATED TO MY FRIENDS

- Written by Bhavin Pathak

THE INDIAN CONTRACT ACT, 1872

Chapter 1 Nature of Contract

In this Chapter, we are going to discuss the following sections of the Indian Contract Act, 1872

➢ Section 2(b)	*Defines a 'promise'*
➢ Section 2(e)	*Defines an 'agreement'*
➢ Section 2(h)	*Defines a 'contract'*
➢ Section 2(g) & 2(j)	*Prescribe when an agreement, and a contract is said to be Void.*
➢ Section 2(i)	*Defines a 'voidable contract'*
➢ Section 9	*Prescribes when a promise is said to be express of implied*
➢ Section 10	*Lists elements, which are essential to form a contract and provides that in certain cases contracts are required to be written, or registered*
➢ Section 23	*Prescribes when a contract is unlawful*

What is contract?
Contract: An agreement enforceable by law. **[Section 2(h)]**
Agreement: Every promise and every set of promises forming the consideration for each other. **[Section 2(e)]**
***Promise*:** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a promise. **[Section 2(b)]**

Essential elements of a valid contract [Section 10]

1. Parties to have an intention to *create legal obligations through offer and acceptance*.
2. Presence of "*lawful consideration*" i.e. something in return (quid pro quo).
3. Parties to a contact must have *capacity* (legal ability) to make valid contract.
   Section 11 of Indian Contract Act specifies that every person is competent to contract provide.
   (a) Is of the age of majority according to the law to which he is subject, and
   (b) Who is of sound mind and
   (c) Is not disqualified from contracting by any law to which he is subject
   In other words
   a) A minor
   b) A person of unsound mind (a person of unsound mind can enter into a contract during his lucid intervals) and
   c) A person disqualified from contracting by any law to which he is subject, e.g. an alien enemy, foreign sovereigns and accredited representatives of a foreign state, insolvent and convicts are not competent to contract.
4. *Free consent* should be there. Consent means parties to a contract must agree upon the same thing in the some sense.
   Section 13: Two or more persons are said to have consented when they agree upon the same thing in the same sense: (Consensus-ad-idem). Consent is free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake (Section 14).
5. The *agreement must not be* one which the law declares to be either *illegal or void*. i.e. which is without any legal effects. Illegal i.e. an agreement expressly or impliedly prohibited by law.

Types of Contract:
According to validity:

1. ***Void contract*: [Section 2(j)]** A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable"

2. ***Voidable Contract:*** An agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract.
3. ***Illegal contract:*** The contract which the law forbids to be made. The court will not enforce such a contract also other connected contracts. All illegal agreements void but all void agreements or contracts are not necessarily illegal.
4. ***Unenforceable contract*:** Where a contract is good in substance but because of some technical defect i.e. absence in writing, barred by limitation etc. one or both the parties cannot sue upon it.

According to Formation

1. ***Express contracts:*** Which is made by words wither spoken or written. **[Section 9]** As the proposal or acceptance of any promise is made in words, the promise is said to be express.
2. ***Implied Contract:*** **[Section 9]** When a proposal or acceptance is made otherwise than in words.
3. ***Tacit Contract:*** When it has to be inferred from the conduct of the parties. e.g. obtaining cash through automatic teller machine.

On the basis of performance

i. ***Executed Contract:*** If the consideration for the promise in a contract is given or executed, such are known as contract with executed consideration.

ii. ***Executory Contract:*** When the reciprocal promises or obligation which serves as consideration is to be performed in future.

- *(a)* ***Unilateral Contract:*** It is a one-sided contract in which only one party has to perform his promise or obligation to do or forbear.
- *(b)* ***Bilateral contract:*** Where the obligation or promise in a contract is outstanding on the part of both the parties.

Formal contracts:

English law classifies the contract into i) Formal and ii) Simple

Formal contracts include a) Contracts of record and b) Contracts under Seal

a) ***Contract of Record:*** It is either a judgement of a court or a recognisance. A judgment is an obligation imposed by a court upon one or more persons. As a matter of fact it is not a contract in the real sense, since it is not based upon any agreement between the two parties. A recognisance is a written acknowledgement of a debt due to the State. It is usually met with in connection with criminal proceedings.

Contracts of record derive their binding force from the authority of the Court.

b) ***Contracts under Seal:*** It is one which derived its binding force from its from along. It is writing and is signed, sealed and delivered by the parties. It is also called a deed or a specialty contract.

Simple contract

All contracts other than the contracts by deed and contracts on record are simple contracts. These contracts may be made either expressly by word of mouth or in writing, or implied from the conduct of the parties. An example of the formation of a simple contract can be seen in the everyday life when a customer purchases goods from the shop. It is important to note that such a contract will be valid only if it is supported by consideration.

Some important comparisons

Agreement and Contract

Agreement	*Contract*
→ **Enforceability** – An agreement may or may not be enforceable at law. For example, social agreements are generally not enforceable while business agreements are enforceable at law.	→ A contact is an agreement, which is enforceable at law.
→ **Effect:** An agreement is not always a binding on the concerned parties.	→ A contract is always concluded and binding on the concerned parties.
→ **Scope:** All agreements are not contracts.	→ All contracts are agreements.

Illegal and Void agreements

Illegal Agreement	*Void Agreement*
→ **Scope:** These agreements are narrower in scope. All illegal agreements are void.	→ These agreements are wider in scope. An agreement may be void because of a reason other than illegality.
→ **Effect on collateral transaction**: Collateral transaction of an illegal contract also becomes illegal and cannot be enforced.	→ Collateral transaction of an agreement which is void for a reason other, than illegality are enforceable at law.
→ **Punishment:** Parties may be punished for making illegal agreement.	→ Being void does not make a contract punishable.

Void and Voidable Contract

Void Contract	*Voidable Contract*
→ **Definition:** When a contract ceases to be enforceable at law, it becomes a void contract.	→ It is a contract, which is enforceable by law at the option of one or more parties thereof, but not at the option of others.
→ **Status:** A void contract cannot create any legal rights. It is a total nullity.	→ A voidable contract takes its full and proper legal effect unless it is disputed and set aside by the person entitled to do so.
→ **Nature:** A void contact is valid when it is made. But subsequently it becomes void due to one reason or the other.	→ A contract may be voidable since very beginning or may subsequently become voidable.
→ **Rights:** A void contract does not provide any legal right to the parties to the contract.	→ A voidable contract gives right to the aggrieved party to rescind the contract and claim the damages, etc in certain cases.
→ **Effect:** When a contract is void because of illegality its collateral transactions also becomes void.	→ A voidable contract does not effect the collateral transactions.

Void Agreement and Void Contract

Void Agreement	*Void Contract*
→ It is an agreement.	→ It is a contract.
→ It never takes form of a contract. It is a nullity since very beginning.	→ When it is formed it is perfectly valid. Subsequently it becomes a nullity.

Chapter 2 *Proposal or Offer*

In this Chapter, we are going to discuss the following sections of the Indian Contract Act, 1872

➢ Section 2(a)	*Defines a proposal and conveys that when a proposal is (b) & (c) accepted it becomes a promise.*
➢ Section 3	*Provides that the communication of a proposal, its acceptance or revocation can be made by an act or omission.*
➢ Section 4	*Explains when the communication of a proposal, an acceptance and revocation is complete.*
➢ Section 5	*Explains when a proposal and an acceptance can be revoked.*
➢ Section 6	*Explains how a proposal can be revoked*
➢ Section 7	*Provides that an acceptance must be unconditional and should be accepted in the manner prescribed in the pro- postal*
➢ Section 8	*Enumerates certain acts, which amounts to the acceptance of the proposal.*
➢ Section 9	*Conveys that the promises (accepted proposals) may be express or implied.*

Proposal offer:
It is a medium through which a person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence [**Section 2 (a)**] Thus, for a valid offer, the party making it must express his willingness 'to do' or ' not to do' (abstinence) something.

<u>Rules as to offer:</u>

(i) The offer must be capable of creating legal relation:
(ii) The offer must be certain, definite and not vague:
(iii) The offer must be expressed or implied.
(iv) The offer must be distinguished from an invitation to offer.
(v) An offer may be specific or general.
(vi) The offer must be communicated.
(vii) The offer must be made with a view to obtaining the consent of the offeree
(viii) An offer may be conditional
(ix) The offer should not contain a term the noncompliance of which would amount to acceptance.

<u>Classification of offer:</u>

a) ***General Offer:*** It is an offer made to the public in general and hence anyone can accept and do the desired act.
b) ***Special Offer:*** When offer is made to a definite person, it is known as specific offer and such offers can be accepted only by that specified; person.
c) ***Cross offers:*** When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called Cross offers.
d) ***Counter offer:*** When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter-offer amounts to rejection of the original offer.
e) ***Standing, open or continuing offer:*** An offer which is allowed to remain open for acceptance over a period of times is known as a standing, open or continuing offer. Tender for supply of goods is a kind of standing offer.

Offer and Invitation to Offer:
The offeror must have expressed his willingness to contract in terms of his offer with such finality that the only thing to be awaited is the assent of the other party. Where a party without expressing

his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, he only invites the other party to make an offer on those terms. e.g. where a person has a stock of books to sell or houses to let, in this position he is just making an invitation to make an offer.

Acceptance

(a) Meaning*:* A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something [Section 2 (b)].

(b) Offer is a train of gunpowder while acceptance is lighted match: (Sri William Anson). After offer is accepted then only it becomes contract. So an offer may laps for want of acceptance or be revoked before acceptance.

1. Acceptance must be absolute and unqualified **(Section 7):** An acceptance with a variation is no acceptance.
2. Communicated to offeror by offeree
3. Acceptance must be in the mode prescribed
4. Time: Acceptance must be given within a reasonable time and before the offer lapses.
5. Mere silence is not acceptance: Acceptance may be expressed or implied. Acceptance must be given after knowing about the offer. Acceptance must be given by the person to whom the proposal is made.
6. Acceptance by conduct or by word of mouth

Communication of offer and acceptance

When the contracting parties are face to face then acceptance is made instantly but when there is a distance between parties and communication is to be made by telephone or post then we should know the exact time when the offer or acceptance is made or complete.

Communication of offer*:* The communication of an offer is complete when it comes to the knowledge of the person to whom it is made **(Section 4)**.

Communication of acceptance:

Communication of an acceptance is complete

(i) As against the proposer where it is put in course of transmission to him so as to be out of the power of the acceptor to withdraw the same.

(ii) As against the acceptor when it comes to the knowledge of the proposer.

- When a proposal is accepted by a letter sent by post the communication of acceptance will be complete as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer.
- Section 3 of the Act prescribes in general terms, two modes of communication namely; (1) by any act (conduct and words whether written or oral) or (2) by omission (such conduct or forbearance on one's part that the other person takes it as his willingness or assent.) intending thereby to communicate to the other or which has the effect of communicating it to the other.

Special Terms In A Contract

- Where any special terms are to be included in a contract, these must be duly brought to the notice of the offeree at the time when the proposal is made. If it is not done and if the contracts subsequently entered into, the offeree will not be bound by them. Also these terms should be presented in such a manner that a reasonable man can become aware of them before he enters into a contract.
- Certain conditions are attached to transactions like purchase of a ticket for a journey or deposit of luggage in a clock room. Wherever on the face of a ticket the words “For conditions see back” are printed, the person concerned is as a matter of law held to be bound by the conditions subject to which the ticket is issued whether he takes care to read them or not. The fact that he did not or could not read does not alter the legal position.

Communication of performance:

Sometimes, the conditions of the proposal may include a term requiring the offeree to communicate the performance to the offeror. In such a case, mere performance without communication will not amount to an acceptance of the proposal. But in the absence of such a term being included mere performance of an act specified by the proposer will constitute acceptance. Following was concluded in the Case of *Carlill v. Carbolic Smoke ball Co.*

(i) An offer, to be capable of acceptance must contain definite promise by the offeror that he would be bound provided the terms specified by him are accepted.
(ii) An offer may be made either to a particular person or to the public at large and
(iii) If an offer is made in the form of a promise in return for an act the performance of that act even without any communication there of is to be treated as an acceptance of the offer.

Revocation

Under Section 4, the communication of a revocation is complete;

(i) As against the person who makes it when it is put into a course of transmission to the person to whom it is made so as to be out of the power or the person who makes it;
(ii) As against the person to whom it is made when it comes to his knowledge.
(iii) Under Section5, a proposal may be revoked at any time, before the communication of its acceptance is complete as against the proposer. An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor

Revocation of proposal otherwise than by communication:

(1) By lapse of time fixed for acceptance or lapse of reasonable time if on time for acceptance has been specified **[Section 6 (2)]** A proposal is not bound to keep his proposal open indefinitely the reason being that it would amount to a promise without consideration and such a promise is unenforceable.
(2) By the failure of the acceptor to fulfill a condition precedent to acceptance Section 6 of the Act contains the law on this subject. A proposal is also revoked by the failure of the acceptor to fulfill conditions precedent to the acceptance.
(3) By the death or insanity of the proposer. Death or insanity of the proposer under the Indian law operates as the revocation of the proposal only if the fact to the death or insanity has come to the knowledge of the acceptor.

Chapter 3 **Consideration**

In this Chapter, we are going to discuss following sections of the Indian Contract Act, 1872

➢ Section 10	*Lists lawful consideration as one of the essential ingredients of a valid contract*
➢ Section 2(d)	*Defines consideration*

What is consideration?

Section 2(d) "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise."

(1) Consideration is the doing or not doing of something which the promisor desires to be done or not done.
(2) Consideration must be at the desire of the promisor.
(3) Consideration may move from one person to any other person.
(4) Consideration may past present or future.
(5) Consideration be not adequate, but should be real.

Whether gratuitous promise can be enforced?

A gratuitous promise to subscribe to a charitable cause cannot be enforced but if the promisee is put to some detriment as a result of his acting on the faith of the promisee and the promisor, knew that purpose and also knew that on the faith of the subscription an obligation might be incurred, the promisor would be bound by promise.

Legal Requirements regarding Consideration

(i) Consideration must move at the desire of the promisor
(ii) Consideration from promisee of any other person
(iii) Executed and executory consideration
(iv) Past consideration
(v) Adequacy of consideration :
(vi) Performance of what one is legally bound to perform :
(vii) Consideration must not be unlawful, immoral or opposed to public policy.

Suit by a third party on an agreement

The consideration for an agreement may proceed; from a third party, the third party cannot sue on agreement. Only a person who is party to a contract can sue on it.

Exception of the above rules:

(1) In the case of trust, a beneficiary can enforce his right under the trust, though he we not a party to the contract between the setter and the trustee.
(2) In the case of a family settlement, if the terms of the settlement are reduced into writing the members of family who originally had not been parties to the settlement, any enforce the agreement.
(3) In the case of certain marriage contracts, a female member can enforce a provision for marriage expenses made on the partition of the Hindu undivided family
(4) In the case of assignment of a contract when the benefit under a contract has been assigned, the assignee can enforce the contract.
(5) In the case of an estoppel by acknowledgment of liability or part performance thereof that is when one admits the liability.

(6) In the cases of covenant running with the land, the person who purchases land with notice that the owner of land is bound by certain duties affecting land the covenant affecting the land may be enforced by the successor of the seller.

Validity of an agreement without consideration

The general rule is that an agreement made without consideration is void **(Section25).** In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. ***Natural love and affection:*** A written and registered agreement based on natural love and affection between the parties standing in near relation to each other is enforceable even without consideration.
2. ***Compensation for past voluntary services:*** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor is enforceable under **Section 25(2).** The following are the essential factors for this condition.
   (i) The services should have been rendered voluntary.
   (ii) The services must have been rendered for the promisor.
   (iii) The promisor must be in existence at the time when services were rendered.
   (iv) The promisor must have intended to compensate the promisee.
3. ***Promise to pay time bared debt:*** Where a promise in writing signed by the person making it or by his authorised agent is made to pay a debt barred by limitation it is valid without consideration **[Section 25 (3)]**
4. ***Agency:*** According to **Section 185** of the Indian Contract Act, no consideration is necessary to create an agency.
5. ***Completed gift:*** In case of completed gifts the rule no consideration no contract does not apply. Explanation (1) to **Section 25** states nothing in this section shall affect the validity as between the donor and done of any gift actually made. Thus gifts do not require any consideration.

Chapter 4 Capacity to Contract

In this Chapter, we are going to discuss the following sections of the Indian Contract Act, 1872

➢ Section 10	*The essential element of contract*
➢ Section 11	*Enumerates who is competent to contract*
➢ Section 12	*Explains who is considered as a person of unsound mind*
➢ Section 68	*Provides that a claim can be made for the necessaries of life supplied to a person incompetent to contract*
➢ Section 184	*Provides that a minor or a person of unsound mind, if appointed agent is not responsible to his principal*

Section 10 of the Indian Contract Act provides that an agreement in order to be a contract must satisfy the following conditions:
(1) It must be made by the free consent of the parties;
(2) The parties must be competent to contract;
(3) It must be made for a lawful consideration and with a lawful object;
(4) It should not have been expressly declared as void by law.
Also, there must be *consensus ad idem* or identity of minds in the sense that parties have agreed about the subject matter of the contract at the same time and in the same sense, an evidenced by offer and acceptance **(Section 13)**.

Capacity to contract

(a) *Age of majority:* Every person in India attains majority on the completion of 18 years of age except Ceylon where it is 21 years. Where, however, a guardian is appointed to the person on property of a minor or when the Court of Wards take charge of the property of a minor before the minor has attained the age of 18 years, he or she attains majority on the completion of 21 years.

(b) *Is of sound mind*

Position of minor's agreement

→ An agreement entered into by a minor is altogether void as against the minor. *Mohori Bibee V. Dharmodar Ghose*.

→ Minor can be a beneficiary. A minor can be a partner with consent of all the partners, and be admitted for the benefit of partnership.

→ Minor can always plead minority: A minor's contract being void, any money advanced to a minor on a promissory note or otherwise, cannot be recovered. Even when a minor procures a loan by falsely representing that he is full age, it will not stop him from pleading his minority in a suit to recover the; amount, and the suit will be dismissed. *Mohri Bibee V. Dharmodas Ghose*.

→ Ratification on attaining majority is not allowed:

→ Contract by guardian-how far enforceable: Where the guardian makes a contract for the minor, which is within his competence and which is for the benefit of the minor, there will be valid contract which the minor can enforce.

→ If he has received any benefit under a void agreement, he cannot be asked to compensate or pay for it. Section 65 which provides for restitution in case of agreements discovered to be void does not apply to a minor.

→ There can be no specific performance of the agreements entered into by him as they are void ab initio. A contract entered into on his behalf by his parent/guardian or the manager of his estate can be specifically enforced by or against the minor provided the contract is (a) within the scope of the authority of the parent/guardian/manage, and (b) for the benefit of the minor.

→ He cannot enter into a contract of partnership. But he may be admitted to the benefits of an already existing partnership with the consent of the other partners. For a detailed discussion of minor as a partner, refer to the Chapter on Law of Partnership.
→ He cannot be adjusted insolvent. This is because he is incapable of contracting debts.
→ He is liable for 'necessaries' supplied or necessary services rendered to him or any whom he is legally bound to support.
→ He can be an agent. An agent is merely a connecting link between his principal and a third party. As soon as the principal and the third party are brought together, the agent drops out. A minor binds the principal by his acts without incurring any personal liability.
→ His parents / guardian are / is not liable for the contract entered into by him, even though contract t is for the supply of necessaries to the minor. But if the minor is acting as an agent for the parents / guardian, the parent / guardian shall be liable under the contract.
→ A minor is liable in tort (a civil wrong), but where a tort arises out of a contract a minor is not liable in tort as an indirect way of enforcing an invalid contract.

Minors' liability for necessaries: 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 claim arises not out of contract but out of what are called *Quasi-contracts*. Again, it is only the property of the minor which is liable for meeting the liability arising out of such contracts. He is not personally liable. The law has provided this exception intentionally because if it were not so, it would be impossible for minors even to live.

Contracts or persons of unsound mind:
Lunatics: A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. He suffers from intermittent intervals of sanity and insanity. He can enter into contracts during the period when he is of sound mind.
Idiots: An idiot is a person who has completely lost his mental powers. He does not exhibit understanding of even ordinary maters. Idiocy is permanent whereas lunacy denotes periodical insanity with lucid intervals. An agreement f an idiot, like that of a minor, is void.
Drunken or intoxicated persons: A drunken or intoxicated person suffers from temporary incapacity to contract, i.e. at the time when he is so drunk or intoxicated that he is incapable of forming a rational judgment. The position of a drunken or intoxicated person is similar to that of a lunatic.
Agreements entered into by persons of unsound mind are void:
However, persons of unsound mind are liable for necessities supplied to them or to anyone whom they are legally bound to support. But even in such cases, no personal liability attaches to them. It is only their estate which is liable.

OTHER PERSONS

Alien enemies: An alien (the subject of a foreign state) is a person who is not a subject of the Republic of India. He may be (I) an alien friend, or (ii) an alien enemy.
Contracts with an alien friend (an alien whose State is at peace with the Republic of India), subject to certain restrictions, are valid. Contracts with an alien enemy (an alien whose State is at war with the Republic of India) may be studied under two heads, namely-
(a) Contracts during the war, and contracts made before the war.
(b) Contracts made before the war.
→ During the continuance of the war an alien enemy can neither contract with an Indian subject nor can he sue is an Indian Court. He can do so only after he receives a licence from the Central Government.
→ Contracts made before the war may either be suspended or dissolved. They will be dissolved if they are against the public policy or if their performance would benefit the enemy. For this purpose even an Indian business there would be treated as an alien enemy.
→ Foreign sovereigns, their diplomatic staff and accredited representative of foreign States. They have some special privileges and generally cannot be sued unless they of their own submit to

the jurisdiction of our law Courts. They can enter into contracts and enforce those contracts in our Courts. But an Indian citizen has to obtain a prior sanction of the Central Government in order to sue them in our law Courts. An ex-king can, however, be sued against in our Courts without any such sanction.

Convicts: A convict when undergoing imprisonment is incapable of entering into a contract. He can, however, enter into, or sue on, a contract if he is lawfully at large under a licence called "ticket of leave". This incapacity to contract, or to sue on a contract, comes to an end when the period of sentence expires or when he is pardoned. The convict, however, does not suffer from the rigours the Law of Limitation. Limitation is held in abeyance during the period of his sentence.

Chapter 5 *Free Consent*

In this Chapter, we are going to discuss following sections of the Indian Contract Act, 1872

➢ Section 15	*Defines 'coercion'*
➢ Section 16	*Defines 'undue influence'*
➢ Section 17	*Defines 'fraud'*
➢ Section 18	*Defines 'misrepresentation'*
➢ Section 19	*Provides the legal effect of consent caused by coercion fraud or misrepresentation*
➢ Section 19A	*Provides the legal effect of consent caused by undue influence*
➢ Section 20	*Provides the legal effect of mistake as to fact*
➢ Section 21	*Provides the legal effect of mistake as to law*
➢ Section 22	*Provides the legal effect of unilateral mistake*

Section 13: Two or more persons are said to have consented when they agree upon the same thing in the same sense: (Consensus-ad-idem). Consent is free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake (Section 14).

Elements of Free Consent

(a) ***Coercion (Section 15)***

→ "Coercion" is the committing or threatening to commit any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain any property to the prejudice of any person whatever, with the intention to inter into contact.

→ A person to whom money has been paid or anything delivered under coercion must repay or return it. **(Section 17)**.

Features of Coercion

→ It is immaterial whether Indian penal code (IPC) is or is not in force in the place where the coercion is employed **[Explanation to Section 15]**

→ It is not required that coercion must proceed from the party to the contract. It may proceed from a third person also

→ It is not necessary that coercion be immediately directed against the party whom it is intended to induce to enter into a contract. It may be directed against any third person whatever.

→ Coercion must be done to induce the other party to enter into a contract

Threat to commit suicide

Calcutta High Court held that

"One committing suicide places himself or herself beyond the reach of the law, and necessarily beyond the reach of any punishment too. But it does not follow that suicide is not forbidden by the Indian Penal Code, Section 306 of the IPC punishes abetment of suicide, **Section 309** punishes an attempt to commit suicide. Thus, suicide as such is no crime, as indeed it cannot be, But its attempt is; its abetment too is. So it may very well be said that the Indian Penal Code does forbid suicide."

(b) ***Undue influence (Section 16)***

→ 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 of the other.

→ A person is deemed to be in a position to dominate the will of the other, when he holds authority real or apparent over the other, or he stands in a fiduciary relation to the other.

***Burden of proof (Section 16(3))**:*
Burden of proof lies on the stronger party to establish that the bargain is not unconscionable. The stronger party must act in good faith, end wee that the weaker party gets in dependent advance before entering into the contract.

Undue influence in money lending operation: In money lending operations, a debtor sometimes may agree to pay a very high rate of interest at the instance of the creditor. As between the parties of equal footing, the court will not hold a bargain to be unconscionable merely on the ground of high interest. Only where the lender is in a position to dominate the will of borrower, the relief is granted on the ground of undue influence.

(c) *<u>Fraud</u> (Section17)*

→ Freud means and includes any of the following acts committed by a party to a contract, or with his connivance or by his agent with intent to deceive another party thereto or his agent, or to induce him to enter into the contract.
  - (i) The suggestion, as to a fact, of what which is not true by one who does not believe it be true;
  - (ii) The active concealment of a fact by one having knowledge or belief of the fact.
  - (iii) A promise made without any intention of performing it,
  - (iv) Any other act fitted to deceive;
  - (v) Any such or omission as to law specially declared to be fraudulent.

→ Only the fraud which leads the other party to enter into a contract is not covered by this section.

→ Certain acts and omissions have been specifically declared to be fraudulent by various Acts; e.g. U/s 55 of the transfer for property Act, the seller of immovable property is required to disclose to the buyer any material defect in the property to be sold, an nondisclosure amount to fraud. Any other act, fitted to deceive, also will constitute fraud.

→ *Mere silence amounting to Fraud*: Mere silence as to facts likely to effect the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud. These are known as contracts uberrimae fidei, where Fraud entitles the injured party to avoid the contract.

Exception to this rule

(i) Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speao arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).

(ii) Where the silence is in itself, equivalent to speech

(d) *<u>Mis representation</u>* (Section 18)

Misrepresentation means and includes–

1. The positive assertion in a manner not warrant by the information of the person making it of that which is not true though he believe it to be true
2. Any breach of duty which without an intent to deceive, gains an advantage to the person committing it or any one claiming under him by misleading another to his prejudice or to the prejudice of anyone claiming under him;
3. Causing however innocently a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Difference between Coercion and Undue influence

Coercion	***Undue Influence***
a) It involves the physical force or threat. The aggrieved party is compelled to make the contract against its will.	a) It involves moral or mental pressure. The aggrieved party believes that he or she would make the contract.
b) It involves committing or threatening to commit an act forbidden by Indian Penal Code for detaining or threatening to detain property of another person.	b) No such illegal act is committed or a threat is given.
c) It is not necessary that there must be some sort or relationship between the parties.	c) Some sort of relationship between the parties is absolutely necessary.
d) Coercion need not proceed from the promisor nor need it be the directed against the promisor.	d) Where the consent is induced by undue influence, the contract is either voidable or the court may set it aside or enforce it in a modified form.
e) The contract is voidable at the option of the party whose consent has been obtained by coercion.	e) The court has the discretion to direct the aggrieved party to return the benefit in whole or in part of not to give any such directions.
f) In case of coercion where the contract is rescinded by the aggrieved party, as per Section 64 any benefit received has to be restored back to the other party.	

Distinction between fraud and misrepresentation

(i) In the case of fraud the person making representation does not believe it to be true. But in misrepresentation he believes so.
(ii) Misrepresentation misleads the party.
(iii) In Fraud one can avoid the contract, as well as the aggrieved party can bring an action in tort for damages where as misrepresentation merely affords a ground for avoiding the contract and not for bringing an action in tort.

Misrepresentation as to law

→ Misrepresentation as to fact renders a contract, voidable but misrepresentation to law does not. But a deliberate misrepresentation in matters of law is certainly a cause for avoiding a contract.

Consequences of coercion, fraud, misrepresentation etc. (Section 19)

→ Contract is Voidable at the option of the aggrieved party. The party, However, may also insist that the contract should be performed and that he should be put in the same position in which he would have been, if the representation made had been true.
→ But a person who had the means of discovering the truth with ordinary diligence cannot avoid a contract on the ground that his consent was caused by misrepresentation .
→ Where a party to a contract perpetrates fraud or misrepresentation, but the other party is not, in fact, misled by such fraud or misrepresentation, the contract cannot be avoided by the latter.
→ As to the consequences of the recession of voidable contracts, the party rescinding a voidable contract should, if he has receive any benefit thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom, it was received.

MISTAKE

Mistake is erroneous belief about something. It may be a (1) mistake of law, or (2) mistake of fact.

1. *Mistake of law*: It may be a (1) mistake of law of the country, or (2) mistake of law of a foreign country. The general rule as regards mistake of law of the country is that *ignorance of law is no excuse*. Mistake of law of a foreign country is regarded as a mistake of fact.
2. *Mistake of fact*: it may be a –
   (1) *Bilateral mistake.* Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void matter.
   Mistake of fact (bilateral mistake) may relate to :
   (a) *Subject-matter*. Mistake of fact regarding subject-matter may relate to existence of the subject-matter; *(ii)* price or the subject-matter ; *(iii)* quantity of the subject-matter; *(iv)* identity of the subject-matter ; *(v)* quality of the subject-matter, or *(vi)* title to the subject-matter
   (b) *Possibility of performance*. Mistake of fact may also relate to *(i)* physical, or *(ii)* legal, impossibility of performance.
   In both these cases, the agreement is void.
   (2) *Unilateral mistake*. Where only one of the parties is under a mistakes as to a matter of fact, the contract is not voidable. There are however two exceptions t this rule.
      (a) *Identity of the person contracted with*. If A intends to enter into a contract with B, C cannot give himself any right in respect of the contract by accepting the offer. In such a case the contract is void.
      (b) *Nature of contract.* Where a person is made to enter into a contract through the inducement of another but through no fault of his own, there is a mistake as to the nature of the contract, and the contract is void.

Chapter 6 Lawful object & Consideration

In this Chapter, we are going to discuss following sections of the Indian Contract Act, 1872

➢ Section 23	*Enumerates where consideration and object of a contract is deemed to be unlawful*
➢ Section 24	*Explains the effect of unlawfulness of part of consideration or object in contract*
➢ Section 25	*Enumerates the circumstances where a contract is valid even without consideration*
➢ Section 57	*Explains the effect of reciprocal promises to do lawful and unlawful things*
➢ Section 58	*Explains the effect of alternate promises to do lawful unlawful things*

Object: Means purpose or design.
Unlawful object:
An agreement, the object or consideration of which is unlawful, is void
Consideration is unlawful
→ When it is forbidden by law
→ If permitted then will defeat the provisions of any law
→ Fraudulent
→ Involves injury to the person or property of another
→ Immoral;
→ Opposed to public policy.
It will not be unlawful if it is by criminal or would given any cause of action to a third person injured by its operation; nevertheless it may be unlawful in the sense that the law will not enforce it.

Unlawful Consideration
(i) Forbidden by law
(ii) Defeat of any rule for the time being enforce in India:
(iii) Fraudulent:
(iv) Injury to the person or property of another
(v) Immoral
(vi) Agreement opposed to public policy

Some of the agreements which are, or which have been held to be, opposed to public policy and are unlawful are as follows:

1. *Agreements of trading with enemy*. An agreement made with an alien enemy in time of war is illegal on the ground of public policy. This is based upon one of the two reasons: either that the further performance of the agreement could involve commercial intercourse with the enemy, or that the continued existence of agreement would confer upon the enemy an immediate or future benefit. Contracts which are entered into the intention of the parties can or cannot be carried out by postponing performance till the end of hostilities.
2. *Agreement to commit a crime.* Where the consideration in an agreement is to commit a crime, the agreement is opposed to public policy. The Court will not enforce such an agreement. Likewise an agreement to indemnify a person against consequence of his criminal act is opposed to public policy and hence unenforceable.
3. *Agreements which interfere with administration of justice*. An agreement the object of which is to interfere with the administration of justice is unlawful, being opposed to public policy. It may take any of the following forms:
   (a) *Interference with the course of justice*. An agreement which obstructs the ordinary process of justice is unlawful. Thus an agreement for using improper influence of any kind with the judges or officers of justice is unlawful. But an agreement to refer present or future disputes to arbitration is valid.

(b) *Stifling prosecution.* It is in public interest that if a person has committed a crime, he must be prosecuted and punished. "You shall not make a trade of felony (a grave crime)."

(c) *Maintenance and champerty.* 'Maintenance' is an agreement to give assistance, financial or otherwise, to another to enable him to bring or defend legal proceeding when the person giving assistance has got no legal interest of his own in the subject-matter. 'Champerty' is an agreement whereby one party is to assist another to bring an action for recovering money or property, and is to share in the proceeds of the action. Under the English Law, both these agreements are void. If the object of a contract is just to assist the other party in making a reasonable claim arising out of a contract and them to have a fair share in the profit, the contract is valid.

4. *Agreements in restraint of legal proceedings.* Section 28 (as amended in 1996) which deals with these agreements renders void two kinds of agreements, viz.
   (a) Agreement restricting enforcement for rights. An agreement which wholly or partially prohibits any party from enforcing his rights under or in respect of any contract is void to that extent.
   (b) Agreements curtailing period of limitation. Agreements which curtail the period of limitation prescribed by the Law of Limitation are void because their object is to defeat the provisions of law.
5. *Trafficking in public offices and titles.* Agreements for the sale or transfer of public officers and titles or for the procurement of a public recognition like Padma Vibhushan or Parm Veer Chakra for monetary consideration are unlawful, being opposed to public policy.
6. *Agreements tending to create interest opposed to duty.* If a person enters into an agreement whereby he is bound to do something which is against his public or professional duty, the agreement is void on the ground of public policy.
7. *Agreements in restricting personal liberty.* Agreements which unduly restrict the personal freedom of the parties to it are void as being against public policy.
8. *Agreements in restraint of marriage.* Every agreement in restraint of the marriage of any person, other than a minor, is void (Section 26). This is because the law regards marriage and married status as the right of every individual.
9. *Marriage brokerage or brocage agreements.* An agreement by which a person, for a monetary consideration, promises in return to procure the marriage of another is void, being opposed to public polity. Similarly, an agreement to pay money to the parent or guardian or a minor in consideration of his/her consenting to give the minor in marriage is void, being opposed to public policy.
10. *Agreements interfering with martial duties.* Any agreement which interferes with the performance of martial duties is void, being opposed to public policy.
11. *Agreements to defraud creditors or revenue authorities.* An agreement the object of which is to defraud the creditors or the revenue authorities is not enforceable, being opposed to public policy.
12. *Agreements in restraint of trade.* An agreement which interferes with the liberty of a person to engage himself in any lawful trade, profession or vacation is called an 'agreement in restraint of trade.'

    Exceptions: The following are the exceptions to the rule that "an agreement in restraint of trade is void". :

(i) Sale of goodwill. A seller of goodwill of a business may be restrained from carrying on *(i)* a similar business, *(ii)* within specified local limits, *(iii)* so long as the buyer or any person deriving title to the goodwill from him carries on a like business: provided *(iv)* that such limits appear to the Court reasonable regard being had to the nature of the business (Exception to Section 27)

(ii) Partners' agreements.
   (a) A partner shall not carry on any business other than that of the firm while he is a partner [Section 11 (2) of the Indian Partnership Act, 1932].
   (b) An outgoing partner may agree with his partners not to carry on a business similar to that of the firm within a specified period or within specified local limits [Section 54 of the Indian Partnership Act. 1932]

(c) Partners may, upon or in anticipation of the dissolution, of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits (Section 54 of the Indian Partnership Act. 1932)

(d) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business. But, subject to agreement between him and the buyer, he may not (a) use the firm name, (b) represent himself as carrying on the business of the firm, or (c) solicit custom of persons who were dealing with the firm before its dissolution[Section 55(2) of the Indian Partnership Act, 1932]

(e) Any partner may, upon the sale of goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits [Section 55(3) of the Indian Partnership Act, 1932]

13. *Agreement the meaning of which is uncertain (Section 29):* An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid.
14. *Wagering agreement:* A promise to give money or money's worth upon the determination or ascertainment of an uncertain event in which the parties have no interest.

Essential of a wagering agreement

(a) *Promise to pay money or money's worth*. The wagering agreement must contain a promise to pay money or money's worth.

(b) *Uncertain event*. The promise must be conditional on an event happening or not happening. A wager generally contemplates a future event, but it may also relate to a past event provided the parties are not aware of its result or the time of its happening.

(c) *Each party must stand to win or lose.* Upon the determination of the contemplated event, each party should stand to win or lose. An agreement is not a wager if either of the parties may win but cannot lose or may lose but cannot win.

(d) *No control over the event.* Neither party should have control over the happening of the event one way or the other. If one of the parties has the event in his own hands, the transaction lacks an essential ingredient of a wager.

(e) *No other interest in the event.*

LOTTERY

A lottery, which is a game of chance, is a wagering agreement. An agreement to buy a ticket for a lottery is also a wagering agreement. Section 294-A of the Indian Penal Code, 1960 provides that anyone who keeps any office or place for the purpose of drawing any lottery (other than a State lottery or a lottery authorised by the State Government) shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both. If the lottery is authorised by the Government, the persons conducting the lottery will not be punished, but the lottery remains a wager all the same.

The following transactions are, however, not wagers:

(i) A crossword competition involving a good measure of skill for its successful solution. But if prizes of a crossword competition depend upon the correspondence of the competitor's solution with a previously prepared solution kept with the editor of a newspaper, it is a lottery and a wagering transaction competitions in games of skill are not wagers provided the amount of prize does not exceed Rs. 1000.

(ii) A subscription or contribution or an agreement to subscribe or contribute toward any plate (a cup or other prize for a race or other contest), prize or sum of money of the value of Rs. 500 or above to be awarded to the winner or winners of a horse race (Exception to Section 30).

(iii) Share market transactions in which delivery of stocks and shares is intended to be given and taken.

Effect of wagering agreements

(i) Wagering agreements have been expressly declared to be void in India. In the State of Maharashtra and Gujarat they have been declared to be illegal.

(ii) *Suit to recover money deposited*. Money deposited with a person (called stakeholder) to be paid to the party winning upon a wager cannot be recovered by the winner. On the other hand, the loser can recover his deposit from the stakeholder. But were the stakeholder pays the money to the winner, the loser cannot recover it from him.

(iii) *Collateral transactions*. Since wagering agreements are void, transactions collateral to them are not affected. However, in the State of Maharashtra and Gujrat, the wagering agreements have been declared to be illegal.

Chapter 7 *Performance of the Contract*

In this Chapter, we are going to discuss following sections of the Indian Contract Act, 1872

➢ Section 37	*Enumerates that parties to contract must either perform or make an offer to perform it*
➢ Section 38	*Prescribes rules regarding valid offer of performance; and effect of its refusal*
➢ Section 39	*Prescribes the effect of refusal of a party to perform promise wholly*
➢ Section 40	*Prescribes as to who can perform a contract*
➢ Section 41	*Prescribes the effect of accepting performance from third person*
➢ Sections 42 to 45	*Provide rules regarding joint promises*
➢ Sections 46 to 50	*Provide rules regarding time and place for performance of promise*
➢ Sections 51 to 54	*Provide rules regarding reciprocal promises*
➢ Section 55	*Prescribes the effect of failure to perform at fixed time when time is essence of the contract*
➢ Section 67	*Provide that performance is excused if promise neglects to facilitate it*

Introduction

→ Parties to the contract must either perform or offer to perform their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law. Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract.(Section 37).

→ So it may be concluded that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise.

By whom contract must be performed

1. Promisor himself: If terms so provide e.g. where contracts involve the exercise of personal skill or diligence, or based upon personal confidence. **(Section40)**. Such contracts come to an end on the death of promisor.
2. Agent: **(Section40)**
3. Representatives: On death, except the personal nature contracts defined in 1, legal representative is liable to perform the contract limited to the value of the property they inherit from the deceased.
4. Third persons: Where promisee accepts so then promisor get discharged from his duties.
5. Joint promisors: If provided so. If any of them or all die then legal representative of them.

Distinction between Secession and Assignment

Succession: When the benefits of a contract are given by succession then both burden and benefits attaching to the contract are passed to the successor.

Assignment: When the benefits are given by assignment only benefits are passed not the burdens. Also burdens of a contract can not be assigned to anyone.

Effect of refusal to accept offer of performance **(Section38)**

When offer is not accepted promisor is not responsible to fulfil his promise. Such offer must fulfil certain conditions which are as follows, namely;

(i) It must be unconditional

(ii) It must be made at a proper time and place under such circumstances that the persons to whom it is made, may have a reasonable opportunity of ascertaining that the person by whom it is made is able of and willing , there and then to do the whole of what he is bound by his promise to do.

(iii) It must is an offer to deliver any thing to the promise, then the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Effect of a refusal of party to perform promise

There arises two right of the aggrieved party

a) To terminate the contract;
b) To indicate by words or by conduct that he is interested in its continuance.

→ If he chooses first then the loss suffered by him will have to be made good by the promisor.
→ If he chooses other one then he would be entitled to claim damages which accrue on the date the contract is due to be performed.
→ If contract is rescinded then aggrieved party is to give back all the benefit he may have received, but is entitled to receive compensation for all damages that he has sustained by the breach. Muralidhar chatterjee V. International Film.

Liability of Joint promisors

If two or more persons have made a joint promise, ordinarily all of them during their life-time must jointly fulfill the promise. After death of any one of them, his legal representative jointly with the survivor or survivors should do so. After the death of the last survivor the legal representatives of all jointly must fulfill the promise.

If joint promisors don't discharge their obligation as per section 42 then provisions will be as follows as per **Section 43**

(i) Promisee may compel any one or more of such joint promisors to perform the whole of the promise.
(ii) When one of the joint promisors is made to perform the whole contract, he can call for a contribution from others.
(iii) If any of the joint promisors makes a default in making his contribution the remaining joint promisors must bear the loss arising from such a default in equal shares.

→ This rule does not apply in case of promise made by Principal debtor and surety to promisee. If surety pays anything he can recover from the debtor but if principal debtor pays anything to creditor he cannot recover this from surety as he is just discharging his own liability.
→ If original debtor is a single person then promisee will have to file suit against all the legal heirs on the death of debtor not to any of them.

Section 44

→ Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.
→ Also release of one joint holder does not release the other holders.

Right of joint promises

"*When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests with them during their joint lives, and after the death of any of them with the representatives of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly.*"

Time and place for performance of the promise

The law on the subject is contained in Sections 46 to 50 provisions whereof are summarised below:

- → If no time is specified in a contract for the performance of the promise, the promise must be performed within a reasonable time. **(Section 46)**
- → If a promise is to be performed on a specified date but the hour is not mentioned the promisor may perform it at any time during the usual hours of business, on such day. **(Section 47)**
- → When no place is fixed for the performance of a promise, it is the duty of the promisor to ask the promise to fix a reasonable place for the performance of the promise. **(Section 49)**
- → Where the promisor has not undertaken to perform the promise without an application by the promise, and the promise is to be performed on a certain day it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business. **(Section 48)**

Performance of reciprocal promises

- → General observations: where contract is consist of two promises which are consideration for each other then promises are called reciprocal promises.
- → Simultaneous performance of reciprocal promises or one after other. **(Section 51)**
- → Performance of reciprocal promise where the order of performance is expressly fixed **(Section 52)**
- → Performance of reciprocal promise when the order of performance is fixed by implication (implied order).
- → Effect of one party preventing another from performing promise **(Section 53)**: Then contract becomes voidable at the option of the party prevented.

Effect of default as to promise to be performed first (Section 54)

The person who is to perform first is liable for his non-performance and other person is entitled to put an end to the contract and claim compensation from the first party.

Reciprocal promise to do certain things that is legal, and also some other things that are illegal

Section57 When persons reciprocally promise, first to do certain things which are legal and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Alternative promises one branch being illegal. (Section 58)

In the case of the alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforce.

Effect of failure to perform at a time fixed in a contract in which time is essential: (Section 55)

- → Contract is voidable at the option of promisee.
- → Contract cannot be avoided when time is not essential.

Effect of acceptance of performance out of time:

If promisee chooses to continue the contract or he does not rescind it he can accept the performance and if he accepts the performance he cannot claim the compensation.

Impossibility of performance

Section 56; an agreement to do an impossible in itself is void. When an act subsequently becomes impossible then also it is void.

(1) Impossibility existing at the time of contract

(a) If known to the parties: Void
(b) If unknown to the parties: Void
(c) If known to the promisor only or he should have known with his due diligence then promisee claim for damages on account of non-performance.:

(2) Supervening impossibility

When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties the contract becomes void.

(a) Accidental destruction of the subject matter of the contract.
(b) Non existence or non occurrence of a particular state of things
(c) Incapacity to perform a contract of personal services
(d) Change in law
(e) Outbreak of war:
   (i) By emergency legislation controlling prices or otherwise relaxing restrictions of trade
   (ii) By prohibiting or restraining transaction with alien enemy.

Appropriation of payments

(i) ***Application of Payment where debt to be discharged is indicated:*** Then payment must be applied accordingly. **(Section 59)**

The Latin maxim is quick quid soivitur, sovitur secundum modum solventis. The meaning of this maxim is that whatever is paid, is paid according to the intention or manner of the party paying.

(ii) ***Application of payment where debt to be discharged is not indicated***: At the discretion of creditor for any lawful debt whether its recovery is or is not discovered by the law in force for the time being as to the limitation of suits. **(Section 60)**

(iii) ***Application of payment where neither party appropriates***: Application of money to discharge of the debts in order of time, whether they are or are not barred by the law in force. If the debts are of equal standing the payment shall be applied in discharge of each proportionately."

Contracts which need not be performed

Section 62: "*If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.*"

(a) Effect of novation: The parties to a contract may substitute a new contract for the old. If they do, so it will be a case of novation. By novation, the liability under a contract may be transferred to a third party with the consent of the party entitled to benefit thereby.

(b) Effect of rescission:
→ Both parties agree to rescind.
→ When one party fails to perform his obligation other party may rescind the contract & can claim damage.
→ Under available contract the aggrieved party can void contract.

(c) Remission:
→ Means- acceptance of lessor amount or lessor degree of performance for full discharge. (prices to date of performance)
→ For it consideration is not necessary.
→ Once made become irrevocable.
→ It may be conditional.

(d) Waiver: means dispute with performance; for this
→ Neither agreement
→ Nor consideration is necessary.

(e) Effect of alteration of contract: It should be done mutually. If such alteration is made by the single party contract becomes void.

Difference between Novation and alteration

→ In novation change may be in conditions as well as parties. But in alteration no change in the parties.

→ In novation there is a substitution of an existing contract with a new one. But in alteration it is not necessary.

Restoration of benefit under a voidable contract (Section 64)
When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise their in contained in which he is the promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received."

Obligation of person who has received advantage under void agreement or one becoming void (Section 65)
When an agreement is discovered to be void or when a contract becomes void, any person who received any advantage under such agreement or contract must restore it, make compensation for it to the person from whom he received it.

Communication of rescission (Section 66): In the same manner as a proposal is communicated U/s 4. Similarly a rescission may be revoked in the same manner as a proposal is revoked.

Effects of neglect of promisee (Section 67): The promisor cannot be held liable for the non-performance.

Discharge of a contract
→ Discharge by performance: i) Actual performance: When whatever promised is performed by the parties. ii) Attempted performance: When promisor attempt to fulfil his offer but promisee refuses to accept.
→ Discharge by mutual agreement Novation, rescission, alteration and remission.
→ Discharge by impossibility of performance:
→ Discharge by lapse of time:
→ Discharge by operation of law
→ Discharge by breach of contract
→ A promise may dispense with or remit the performance of the promise made to him or may accept any satisfaction he thinks fit. In the first case, the contract will be discharged by remission and in the second by accord and satisfaction **(Section 63)**
→ When a promisee neglects or refuses to afford the promisor reasonable a facility for the performance of the promise, the promisor is excused by such neglect or refusal. **(Section 67)**

Chapter 8 — *Breach of Contract*

In this Chapter, we are going to discuss following sections of the Indian Contract Act, 1872

Section 37	*Provides that the parties must perform a contract*
Section 39	*Enumerates the effects of refusal of a party to perform promise wholly*
Section 56	*Enumerates that effect of impossibility of performance of a contract*
Section 62	*Enumerates that novation, recession, or alteration discharges the original contract*
Section 63	*Provides that a promise may remit, or wave the performance by the other party*
Section 64	*Deals with the consequences of rescission of a voidable contract*
Section 65	*Provides that any advantage received by anybody under a void contract has to be restored back*
Section 70	*Provides that a person enjoying the benefit of non-gratuitous act must compensate for it*
Section 73	*Provides that in case of breach, the aggrieved party can claim compensation for the loss or damage caused because of such breaches like novation, recession, or alteration discharges the original contract breach.*
	Prescribes rules regarding damages caused by breach of an provides that when contract itself stipulates damages for breach, it severs as a maximum limit of the compensatory damages to be provided by court
Section 75	*Provides that a person rightfully rescinding the contract is entitled to compensatory damages.*

Anticipatory breach of contract:
When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach. Then, Promisee is entitled to claim for damages and may keep the contract continue upto the date of performance. But it is not necessary that loss will always be suffered by the promisor.

Actual breach of contract
- → When a refusal to perform the promise is made on the scheduled date. If any of the parties does that he is said to have committed a breach. In that case, the other party to the contract obtains a right of action against the one who has refused to perform his promise. But the party suffering from the breach is bound to take reasonable steps to minimise the loss.
- → When an obligation resembling those created by contract has been incurred and has not been discharged, the person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Liability for damages:

(a) Special damages:
Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

(b) Liability to pay vindictive or exemplary damages :
These are awarded
- → For breach of promise to marry; and
- → Wrongful dishonour by a banker of his customer's cheque.(A trader is assumed to have bigger losses than a non-trader)

(c) Liability to pay nominal damages:

Where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage. It is awarded just to establish the right to decree for the breach of contract.

(d) Damages for deterioration caused by delay:

It can be recovered from carrier even without notice. Deterioration not only means physical damages but also mean loss of special opportunity for sale.

How to calculate damage?

For a contract of sale of goods:

a) If buyer breaches, then the difference between the contract price and the market price at the date of breach.

   If the seller retains the goods after the contract has been broken by buyer, he cannot recover from the buyer any further loss, if the market falls, nor is he liable to have his damages reduced if the market rise.

b) If seller breaches, then the difference between the market price and the contract price at the date of breach.

Duty to mitigate the loss: by the party who has suffered a loss.

Compensation for Breach of contract where the Penalty is stipulated for

If a sum is named in a contract as the amount to be paid in case of its breach, or if the contract contains any other stipulation by way of a penalty for failure to perform the obligations, the aggrieved party is entitled to receive from the party who has been broken the contract, a reasonable compensation not exceeding the amount so named (Section 74)

Liquidated damages and penalty

Sometimes parties to a contract stipulate at the time of its formation that on the breach of the contract by either of them, a certain specified sum will be payable as damages. Such a sum may amount to either 'liquidated damages' or a penalty'. '*Liquidated damages*' represent a sum, fixed or ascertained by the parties in the contract, which is a *fair* and *genuine pre-estimate of the payable loss* that might ensue as a result of the breach, if it takes place. A '*penalty*' is a sum named in the contract at the time of its formation, which is disproportionate to the damage likely to accrue as a result of the breach. It is fixed up with a view to securing the performance of the contract.

The rules for determining whether a stipulation is by way of a penalty or by way of liquidated damages are as follows:

1. The parties to a contract may use the words 'penalty' or 'liquidated damages' interchangeably. It must ascertain whether a sum is in truth a penalty or liquidated damages.
2. The essence of a penalty is the payment of money stipulated is to compel the performance of the contract by providing something by way of punishment if the contract is not performed. The essence of liquidated damages is *genuine per-estimate* of damage, which seems likely to be caused should the breach occur.
3. The sum stipulated is a penalty if-
   (a) It is extravagant or unconscionable (unreasonable) in amount compared with the greatest loss which could conceivably be proved to have followed from the breach;
   (b) The breach consists of not paying a sum of money by a certain time and the sum fixed is greater than the sum to be paid.
4. When a single limp-sum is made payable on the occurrence of one or more of several events, some of which may occasion serious and other trifling damage, there is a presumption that the sum is a penalty.

Payment of interest

The largest number of cases decided under Section 74 relate to stipulations in a contract providing for payment of interest. "The following rules are observed with regard to payment of interest:

1. *Payment of interest in case of default.*
2. *Payment of interest at higher rate-*

(a) *From the date of the bond*. A stipulation for increased interest from the date of the bond, and not from the date of default, is always in the nature of a penalty, and relief is granted against it.

(b) *From the date of default*. A stipulation for increased interest from the date of default may be a stipulation by way of penalty. When it is so, relief is granted against it. Whether such a stipulation is penal is a question of construction dependent on the terms of the contract and the circumstances of each case.

3. Payment of compound interest on default-

(a) *At the same rate as simple interest*: A stipulation in a bond for payment of compound interest on failure to pay simple interest at the same rate as was payable upon the principal is not a penalty.

(b) *At the rate higher than simple interest*: A stipulation in a bond for the payment of compound interest at a rate higher than that of simple interest is a penalty and would be relieved against.

→ **Recession of contract** :

When a contract is broken by one partly, the other party may treat the contract as rescinded. In such a case aggrieved party is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.

→ ***Suit upon Quantum Meruit*** :

The phrase 'quantum meruit' literally means" as much as is earned "or "according to the quantity of work done". When a person has begun the work and before the could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract. Same treatment when further performance becomes impossible. The claim is brought by the defaulter. However in certain cases, the party in default may also sue for the work done if the contract is divisible.

Cases for claim of Quantum Meruit

a. Where work has been done and accepted under a contract which is subsequently discovered to be void, in such a case, the person who has performed the part of the contract is entitled to recover the amount fort the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party **(Section 65)**.

b. Where, a person does some act or delivers something to another person with the intention of receiving payments for the same, in such a case, the other person is bound to make payment if he accepts such services or goods or enjoys their benefit **(Section 70)**.

c. The compensation for the work done may be recovered on the basis of quantum meruit. Where the contract is divisible and a party performs party of the contract and refuses to perform the remaining part, in such a case, the party in default may sue the other party who has enjoyed the benefits of the part performance. But if the contract is not divisible the party is default cannot claim remuneration on the ground of quantum meruit.

→ ***Suit for specific performance:***

Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct in party in breach, to carry out his promise according to the terms of the contract.

→ ***Suit for injunction:***

Where a party to contract is negativating the terms of contract, the court may by issuing an "injunction order" restrain him from doing what he promised not to do.

Liquidated damages & Penalty: Some differences

→ Liquidated damages are the amount assessed on the basis of actual or probable loss by both the parties payable in the event of breach. While in case of penalty it is not based on actual or probable loss. Penalty in provided to prevent a party from committing a breach.

→ Liquidated damage is imposed by way of compensation but penalty is imposed by way of punishment.

→ Court in England differs from **Section 74** of the Contract Act.

Chapter 9 Contingent & Quasi Contract

In this chapter, we are going to discuss the following sections of the Indian Contract Act, 1872.

➢ Section 31	*Contains the definition of a 'contingent contract'*
➢ Section 32	*Provides that a contingent contract be enforced unless the uncertain event happens.*
➢ Section 33	*Provides that a contingent contract based on the non-happening of certain event can be enforced only when such event becomes impossible*
➢ Section 34	*Explains when the future conduct of a person is considered impossible*
➢	*Prescribes when contracts dependent upon happening or not happening of some event within a fixed time become void or enforceable*
➢ Section 36	*Provides that a contingent contract dependent upon an impossible event is void.*
➢ Section 68	*Deals with the claim of a person who suppliers necessaries of life to the other*
➢ Section 69	*Says that when a person pays other's lawful dues, he is entitled to reimbursement*
➢ Section 70	*Lays down obligation of a person enjoying benefit of non gratuitous act of the other*
➢ Section 72	*Fixes liability of a person to whom money is paid or things delivered by mistake or under coercion*
➢ Section 73	*Provides that any person failed to meet obligation created by a quasi-contract is liable to pay compensation*
➢ Section 151	*Provides that a finder of lost goods is required to the due care of the goods.*
➢ Section 168	*Provides that a finder of goods is entitled to get lawful expenses incurred by him and reward, if any declared by the owner of such goods.*
➢ Section 169	*Provides that a finder of lost goods can resell the goods under certain circumstances*

Contingent contract

Section 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 e.g. contract of indemnity or of insurance.

Essentials of a Contingent Contract

1. Contract is *subject to happening or non-happening* of certain event.
2. The *event is collateral to contract*. So event is neither performance nor the consideration for a promise.
3. The contingent event *should not be the mere will of the promisor* , but event may be in within the promisor's will.

Rules relating to enforcement:

→ ***Enforcement of contract contingent on an event 'happening' (Section 32):*** If that event becomes impossible, such contracts become void.

→ ***Enforcement of contracts contingent on an event 'not-happening' (Section 33):*** Such contract is enforceable only when the happening of that event becomes impossible and not before.

→ ***When shall an event on which contract is contingent be deemed impossible, if it is the future conduct of a living person (Section 34):*** It will be deemed 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.

→ ***Agreement contingent on impossible event (Section 36):*** is void whether the impossibility of the event may be or may not be known to the parties to the agreement at the time when they entered into it.

Quasi-Contract:
In a contract, a promisor voluntarily undertakes an obligation in favour of the promisee. When a similar obligation is imposed by law upon a person for the benefit of another even in the absence of a contract. Such contracts are the quasi-contracts. These are based upon principles of equity, justice and good Conscience.

Features:
a) Such a right is always a right to money generally to a liquidated sum of money.
b) It does not arise from any agreement of the parties concerned, but is imposed by the law; and
c) It is a right against a particular person so looks like a contractual right.

Types of quasi-contracts:
(a) Claim for necessaries supplied to persons incapable of contracting (Section 68): e.g. minor or a person of unsound mind, the supplier is entitled to claim their price from the property of such a person. Same is the case if money has been advanced for the purchase of necessaries.
(b) Right to recover money paid for another person (Section 69):A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been made by him to protect his own interest.
(c) Obligation of a person enjoying benefits of non-gratuitous act (Section 70):Where, a person does some act or delivers something lawfully to another person with the intention of receiving payments for the same, in such a case, the other person is bound to make payment if he accepts such services or goods or enjoys their benefit **(Section 70)**
(d) Responsibility of a finder of goods: (Section71):" A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee."
Therefore, he is required
→ To take proper care of the thing found as his own goods
→ Not to appropriate it to his own use,
→ To restore it to the owner when the owner is traced.
Right of finder
→ Finder is entitled to retain it against whole world.
→ Finder has lien for express incurred in preserving goods & finding true owner.
→ However he can not file suit for recovery of this money.
→ It he can claim recovered. If it was offered.
→ If true owners refuses to pay lawful charge he May Sale.
⇒ When goods are of perishable nature.
⇒ When lawful charge amount to two third of its values or more.
(e) Liability for money paid or thing delivered by mistake or under coercion: (Section 72): "A person to whom money has been paid, or anything delivered, by mistake or under coercion must repay or return it:
In each of the above cases, contractual liability is the creation of law and does not depend upon any mutual agreement between the parties.

Wagering Agreement and contingent Contract: Some differences
1. Wagering Agreement: A promise to give money or money's worth upon the determination or ascertainment of an uncertain event, while contingent contract is a contract to do or not to do something if some event, does or does not happen.
2. A wagering agreement consists of reciprocal promises whereas a contingent contract may not contain reciprocal promises.

3. In a wagering agreement the uncertain event is the sole determining factor, while in a contingent contract the event is only collateral.
4. A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a wagering nature.
5. A wagering agreement is void where as a contingent contract is valid.
6. In wagering agreement is a game of chance. This is not so in case of a contingent contract.

Chapter 10 Contract of Indemnity & Guarantee

In this Chapter, we are going to discuss following sections of the Indian Con- tract Act, 1872

➢ Section 124	*Defines a contract of 'indemnity'*
➢ Section 125	*Prescribes rights of indemnity holder when sued*
➢ Section 126	*Defines a contract of 'Guarantee'*
➢ Section 127	*Provides what can be considered as consideration for guarantee*
➢ Section 128	*Says that the surety's liability is co-extensive with that of the principal debtor*
➢ Sections 129 to 131	*Deal with the rules regarding 'continuing guarantee'*
➢ Section 132	*Says that internal arrangement between joint debtors does not affect position of creditor*
➢ Sections 133 to 139	*Deal with the provisions relating to 'discharge of surety'*
➢ Sections 140 & 141	*Prescribe rights of surety*
➢ Sections 142 to 144	*Provide when a contract of guarantee is invalid*
➢ Sections 146 & 147	*Deal with the liability of co-sureties*

Contract of Indemnity (Section 124)
"A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any other person is called a " contract of indemnity". It is a type of contingent contract.

Rights of the indemnity-holder (promisee) when sued if acting within the scope of his authority (Section 125)
He is entitled to cover
- → All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify apples;
- → All cost for defending or bringing any suit if worked as a prudent person.
- → All sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

Contract of Guarantee (Section 126)
A contract of guarantee is a contract to perform the promise made or discharge liability incurred by a third person in case of his default.

Implied promise to indemnify surety: (Section 145)
"In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Consideration in case of a guarantee: (Section 127)
"Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee".

Nature of surety's liability (Section 128)
"The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract."

When the liability of the debtor is discharged, the liability of the surety is automatically discharged. However, a surety's liability to pay the debt is not discharged even if the creditor omits to sue the principal debtor since the surety is separately liable on the promise of guarantee.

Continuing guarantee (Section129)

→ "A guarantee which extends to a series of transactions is called a "continuing guarantee" **(Section 129)**

→ "The continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor". **(Section130)**

→ But where a continuing relationship is established on the faith of a guarantee the guarantee cannot be annulled during the continuance of that relationship.

→ "The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions." **(Section 131)**

Discharge of surety

→ By variance made without surety's consent in terms of contract, between principal debtor and credit. **(Section 133)**.

→ By any contract between the principal debtor and the creditor by which the principal debtor is released or by any act or omission of the creditor the legal consequence of which is the discharge of the principal debtor **(Section 134)**.

→ Where a creditor makes a composition (i.e., settlement) with, or promises to give time to the principal debtor, or promises not to sue the principle debtor, by a contract between the creditor and the principal debtor the surety is absolved from the liability under the guarantee, unless the surety assents to such new contract **(Section 135)**.

→ Where, however, a contract to give time to the principal debtor is entered into by the creditor with a third person and not with principal debtor, the surely will not be discharged **(Section 136)**.

→ Further if there are co-sureties, a release by the creditor of one of them does not discharge the other co-surety or co-sureties; also that as between the other co-sureties per se it does not absolve the surety so released from his responsibility to another or others **(Section 138)**.

→ When the creditor does any act which is inconsistent with the rights of the surety or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety against the principal debtor is thereby impaired **(Section 139)**.

Right of surety against principal debtor and/or creditor

1) Against principal debtor:

→ Where a guarantee debt has become due on default of the debtor and surety is required to pay it then he comes in the shoes of creditor.

→ Surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of surety ship was entered into whether or not the surety was aware of the existence of such security.

→ In every contract of guarantee, there is an implied promise by the principal debtor to damnify the surety; and the surety is entitled to recover from the principal debtor whatever sums he has rightfully paid under the guarantee but not sum which he has paid wrongfully. (Section 145)

→ However surety can claim money only when he has actually paid not at the execution of promissory note only.

2) Against creditor:

→ On payment of the amount by surety or performance of all that he is liable for, the surety is subrogated to all the right that the creditor had against the debtor. **(Section 140)**

→ Security has the right over every security which debtor has provided to creditor whether it is in the knowledge of surety or not. If creditor has lost something of that than surety's liability will get reduced upto that amount. But not so in case creditor has parted with that security subsequent to the contract of guarantee.

- → At the time before the guaranteed debt has become due and before the surety is called upon to pay the amount he has guaranteed, he has the right to require the creditor to sue for and recover the guaranteed debt. Such a right is described as a right to file a " Quia timet action" against the debtor. However, in such a case, the surety must undertake to indemnify the creditor for the risk, delay and expense which he may incur in doing so. Sanderson v. Aston- where a surety has guaranteed the fidelity of person and he finds that such a person is persistently dishonest, he can call upon the creditor to dismiss him from his service.
- → Surety is entitled to plead any set-off which the principal debtor may have against the creditor.

Guarantee when invalid

- → When guaranty has been obtained by means of mis-representation made directly by the creditor or made with his knowledge and assent concerning a material part of the transaction. **(Section 142)**
- → When the creditor has obtained any guarantee by means of keeping silence as to material circumstances. **(Section 143)**
- → Silence means an intentionally concealment as different from a mere nondisclosure thereof. There must exist some element of fraud.
- → When a contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has jointed in it as co-surety and that other party fails to join as such. **(Section 144)**

Contribution as between co-sureties:

- → "*When two or more persons are co-securities then they are jointly and severally liable to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor." It is in the absence of contract contrary.*"
- → A co-surety is entitled to recover from other sureties the amount that he has paid in excess of his share.
- → Liability of two sureties is not affected by mutual arrangements.
- → **Section 132:** When two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person is not concerned about second contract and liability of those two person is not affected in first contract towards the third person.

Distinction between a contract of Indemnity and a contract of guarantee

- → In a contract of indemnity the promisor undertakes an independent liability; where as a contract of guarantee is a contract to discharge the liability of a third person in case of default made by him.
- → A contract of guarantee requires the concurrence of three people viz. the principal debtor, the creditor and the surety; whereas a contract of indemnity requires the concurrence of only two persons, viz., the indemnifier and the indemnity-holder.
- → The promise of the indemnifier is to save the person indemnifier from a contingent risk; where as
- → The surety undertakes to discharge the liability of the principal debtor, which is not contingent, but is subsisting.
- → In a contract of guarantee, the surety, after he has discharge the debt owing to the creditor, can proceed against the other case, the guarantor is totally unconnected with contract guaranteed except through the medium of his guarantee. In the case of indemnity, there is one contract, but in the case of guarantee there are at least three contract. The contract of indemnity is for the reimbursement of the loss, where as the contract of guarantee is for the security of the creditor.

Chapter 11 *Contract of Bailment & Pledge*

In this Chapter, we are going to discuss following sections of the Indian Contract Act, 1872

➢ Section 148	*Defines 'bailment'*
➢ Section 149	*Explains mode of delivery to the bailee*
➢ Section 150	*Says that it is duty of the bailor to disclose faults in goods bailed*
➢ Section 151	*Prescribes when bailee is not liable for loss, etc. of bailed goods*
➢ Section 152	*Provides for the liability of bailee making unauthorised use of bailed goods*
➢ Section 153	*Prescribes condition when contract of bailment becomes voidable*
➢ Section 154	*Provides that bailor is required to pay necessary expenses to a gratuitous bailee*
➢ Sections 155 to 157	*Provides for the liability of bailee making unauthorised use of bailed goods*
➢ Section 158	*Provides that bailor is required to pay necessary expenses to a gratuitous bailee*
➢ Sections 159 & 160	*Provides rules regarding restoration of goods bailed*
➢ Section 161	*Prescribes bailees responsibility when goods are not duly returned*
➢ Section 162	*Says that death terminates a gratuitous bailment*
➢ Sections 163 & 164	*Provides that bailor is entitled to any profit or loss incurred by bailee from bailed goods*
➢ Section 165	*Deals with the bailment by several joint owners*
➢ Sections 166 & 167	*Deals with the cases when bailor has no title to the bailed goods*
➢ Sections 170 & 171	*Prescribe when 'particular lien' or 'general lien' can be applied to the bailed goods*
➢ Section 172	*Defines Pledge*
➢ Sections 173 to 176	*Deals with Pawnee s rights and duties with respect to the pledged goods*
➢ Sections 177	*Deals with the defaulting powers right to redeem*
➢ Sections 178 & 179	*Deal with pledge by non-owners*
➢ Sections 180 & 181	*Deal with suits by bailer or bailee and apportionment of compensation from it*

What is bailment?

→ A bailment is defined under Section 148, as an act whereby goods are delivered by one person to another for some purpose on a contract that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person who delivers the goods is known as the "bailor" and the person to whom the goods are delivered is known as the 'bailee'

A bailment may be gratuitous or for reward.

⇒ A person who has custody without possession is not a bailee.

⇒ A constructive delivery may also amount to delivery for bailment.

The essential characteristics of bailment are:

→ Bailment is always based upon a contract. However, it may in some cases be implied by law e.g. finder of goods.

→ Only for movable goods. It cannot be for either immovable property of money.

→ It requires temporary delivery of goods, actual or constructive.

→ In bailment, ownership is not transferred.

→ Goods are delivered upon a condition that they are to be returned in specie on the accomplishment of the contract of bailment, same and not similar goods (the very goods in their original form) are to be returned by the bailee or are otherwise to be disposed of according to the directions of the bailor.

Different forms of bailment

1. Delivery of goods by one person to another to be held for the bailor's use.
2. Goods given to a friend for his own use without any charge.
3. Hiring of goods.
4. Delivering goods to a creditor to serve as security for a loan.
5. Delivering goods for repair with or without remuneration.
6. Delivering goods for carriage.

Bailor's *duties* and *rights*:

Duties

→ *Bound to disclose to the bailee faults*, if any, in the goods bailed of which the bailor is aware and which materially interfere with use of those goods or expose the bailee to extraordinary risks. In case of hire even if he does not aware of the existence of the faults he is still liable for all the damages.

→ Where goods are given to the bailee to be kept, carried or to be worked upon and the bailment is gratuitous, the bailor must *reimburse the bailee for the expenses incurred by him* for the purpose of the bailment (Section 158)

→ If the bailor was to entitled to make the bailment or to receive back the goods or to give directions in respect of them, he must compensation the bailee for any loss which the bailee may sustain in consequence thereof **(Section 164)**

→ The bailor must *compensate the bailee for the loss or damage suffered by the bailee* that is in excess of the benefit received, where he had lent the goods gratuitously and decides to terminate the bailment before the expiry of the period of bailment **(Section 159)**

→ The *bailor is bound to accept the goods when they are returned by the bailee* after the purpose is accomplished. If the bailor fails to accept back the goods, he shall be responsible for any loss or damage to the goods and shall also be responsible to the bailee of necessary expenses which the bailee might have incurred in keeping the goods safely.

Rights

1. ***To enforce bailee's duties***: such as right *to claim compensation and damages*
   → For loss caused to the goods by the negligence of bailee.
   → For loss caused by an unauthorised use of the goods bailed;
   → Arising out of mixing the goods of the bailor with his own goods.
2. ***To terminate the contract of bailment:*** if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.
3. ***To demand back goods:*** In case of gratuitous bailment of good, the bailor can demand back the goods at any time, but if any loss is suffered by the bailee in this case then it is to be borne by the bailor.
4. ***To claim increase or profit from goods bailed.***

Care to be taken by bailee

As the goods were his own goods. If he does so then he is not liable for any damages incurred. Otherwise he is liable for the damages and losses.

Termination of bailment by bailee's act inconsistent with conditions: Contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of bailment.

***Duties* and *right* of a bailee:**

Duties

→ Not to make an unauthorised use of the goods bailed.

→ Not to mix the goods bailed with his own goods, without consent of the bailor. If he does so and goods are separable then bailee is to bear the expenses of separation otherwise he is to bear the losses.
→ To return the goods bailed on the expiration of the period of bailment or the accomplishment of the purpose of bailment without any demand being made.
→ To deliver to the bailor any increase or profit accruing from the goods.
→ Not to do anything inconsistent with the conditions of bailment **(Section 153)**

Rights

1. ***To enforce bailor's duties:*** and claim
   → Compensation for any loss arising from non disclosure of known defects in the goods
   → To claim indemnification for any loss or damage as a result of defective title of the bailor.
2. ***To deliver goods to one of several joint owners***
3. ***Delivery of goods to bailor without title***
4. ***Right of action against third parties:*** If a third person wrongfully deprives bailee of the use or possession of the goods bailed.
5. ***Right of lien:*** Right to retain the goods until the charges due in respect of those goods are paid.

***Rights* and *duties* of a finder of good:**
Rights

→ May claim compensation for the trouble and expenses incurred by him to preserve the goods and to find out the true owner.
→ If the owner refuses to pay compensation then may retain the goods until he receives it.
→ But he cannot make a suit for this.
→ If any reward has been announced by the owner he has a right to claim such reward. He can even sue for the reward.
→ Normally he cannot sale the goods but when real owner is not found out with reasonable diligence, or if owner refuses to pay lawful charges then he can sale in the market if it normally sold in the market if
- When the article is in anger of being perished or losing the greater part of its value; or
- When the lawful charges of the finder amount to two-thirds or more of the value of the article found **(Section 169)**

Bailee's particular lien

If he uses his skill and labour to serve to bailor and bailor does not pay his remuneration he can retain the goods with him. Also he can make a sue for his remuneration.

General lien

→ General lien is the right to retain the property of another for a general balance of account; but a particular lien is a right to retain it only for a charge on account of labour employed or expenses incurred in improving the property bailed.
→ Bankers, factors, wharfingers etc. has the general lien.
→ General and particular both kind of liens can be waived of.

Particular lien vs. General lien
Some differences:

→ A particular lien gives a right to retain the goods in respect of which the amount is due. While general lien is for the balance of payment.
→ Particular lien is only when some labour or skill has been expended on the goods which has improved their value, while a general lien can be exercised even though no labour or skill has been used in respect of the goods.

→ Particular lien is given to bailee only while general to persons named in **Section 171**. Bailee can get general lien only when there is a express contract of this effect.

What is pledge?
It is the bailment of goods as security for payment of debt or performance of a promise. When goods have been pledged, the bailor is called the pawner and bailee the pawnee. In case of pledge no transfer of any interest in property takes place; but a special right to property is carved out in favour of the pledge, i.e. he has right to dispose of the property in certain circumstances.

Pawnee's rights
a) ***Pawnee's right of retainer (Section 173):*** Not only for the payment of the debt or the performance of the promise, but also fir the recovery of the interest on the debt and other expenses for preservation of goods
b) ***Pawnee's right of retention in regard to subsequent advances (Section 174):*** Subject to contrary, pawnee would not be entitled to retain the goods to subsequent advances made by the pawnee.
c) ***Pawnee's right to extraordinary expenses incurred (Section 175):*** Expenses for preservation of the goods pledged but no special right to retain the goods for such expenses. But he can take the action for such expenses.
d) ***Pawnee's right where pawnor makes default (Section 176):*** The pawnee may bring a suit against the pawnor upon the debt or the promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pawnor a reasonable notice of the sale. These two remedies are the alternatives not the cumulative.
If receipts are less then the debt amount then pawnee may make a suit for the balance if more then he will have to refund back the money.

Pawnor's right to redeem (Section 177)
→ If there is a time limit for the payment of the debt and pawnor make default,, he may redeem the goods pledged at any subsequent time before the goods are sold, but in that case, he must pay, in addition, any expenses occasioned by the default.
→ The period for a suit against a pwanee to recover the things pledged is 3 years from the date of pawnee's refusal to do so after demand (The Limitation Act-1963)

Pledge by mercantile agent (Section 178 & 178A)
→ General pledge is made by the owners only. But mercantile agent with the lawful possession can also pledge in ordinary course of business and with the authority of the owners. If he does so without authority and pawnee is aware of it, he would not be allowed to plead that the pawnor bad authority to pledge. A mercantile agent ordinarily has the authority to sell or buy goods or to raise money on the security of the goods. A pledge of the documents of title to goods amounts to pledge of goods.
→ Even a pledge by a person in possession of goods under a voidable contract will be valid, provided the pawnee has acted in good faith and without any knowledge of the defect in pawnor's title.

Suit by bailees or bailors against wrong doers
If a third person wrongly deprive the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitle to use such remedies as the; owner might have used in the like case if no bailment had been made, and either the bailor or the bailee may bring a suit against the third party for such deprivation or injury **(Section 180).** Such compensation will be dealt as per **[Section 181]** between bailor and bailee.

Distinction between bailment and pledge

1. ***As to purpose:*** Pledge is a bailment for the purpose i.e. to provide a security for a loan or for the fulfillment of an obligation, whereas there is no such purpose in case of bailment. A bailment is for a purpose other than the above purposes.
2. ***As to right of sale:*** Pawnee has the right on default of pawnor while bailee has no right.
3. ***As to right of using the goods:*** In pledge there is no right to use the goods while in bailment normally there is no restriction on use of goods delivered.

Chapter 12 — *Contract of Agency*

In this Chapter, we are going to discuss following sections of the Indian Contract Act, 1872.

➢ Section 182	*Defines 'agent' and 'principal'*
➢ Sections 183 & 184	*Provide who may be a principal and an agent*
➢ Section 185	*Says consideration is' not necessary for a contract of agency*
➢ Sections 186 to 189	*Deal with the agent's authority*
➢ Sections 190 to 195	*Deal with the rules regarding 'sub-agent'*
➢ Sections 196 to 200	*Deal with the rules regarding 'ratification' of acts of an agent done without authority*
➢ Sections 201 to 210	*Deal with the rules regarding 'termination of agency'*
➢ Sections 211 to 221	*Deal with the agents duties to principal*
➢ Sections 222 to 225	*deal with the principal's duties to agent*
➢ Sections 226 to 238	*Deal with the effect of agency on contracts with third persons.*

What is agency?
It is the relationship between two person where one person is employed (Known as Agent) by another (known as Principal) to act on behalf of that another with the third person.

Salient features of agency

→ ***Basis***: Agent can render the principal answerable to a third person. A person does not therefore become an agent of another merely because he is named as his agent unless the above mentioned characteristic is present.

→ ***Consideration not necessary***: The existence of consideration is not at all necessary for its validity [Section 185]

→ ***Capacity to employ an agent***: Only a person who has contractual capacity (a major and a person of sound mind) can lawfully employ and agent. (Section 183)

→ ***Capacity to become an agent***: Any person can become an agent irrespective of whether he has contractual capacity or not but a person who is not of the age of majority and of sound mind cannot be agent so as to be responsible to his principal.

Modes of creation of agency relationship

(i) ***Agency by actual authority***: A contract of agency may be express (with spoken or written words) or implied (from the circumstances of a case things spoken or written or the ordinary course of dealing).

(ii) ***Agency by ratification***: [Section 196] Where a person acts for someone but without his knowledge or authority and the other person subsequently accepts or ratifies the act agency be ratification arises and ratifier is bound by the act as if he had expressly authorised the person to do the act on his behalf.

Rules regarding ratification

→ Ratification must be by a person of whom the agent professes to act Ratification can't be done for any act for which any principals is not permissible

→ Ratification can be made only by a person who was in existence at the time of the act which was subsequently sought to be ratified.

→ A valid ratification relates back to the actual date of the act ratified.

→ Ratification may either be express of it may even be implied in the conduct of the person on whose behalf the acts are done **(Section 197)**

→ No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective **(Section 198)**

→ Ratification can not be done for a part of the act if it is so done then it will amount the ratification for full. **[Section 199]**
→ One cannot ratify an act done without his authority which if done with authority would have subjected a third person to damages or terminated any right or interest of a third person **(Section 200)**.
→ An illegal act cannot be ratified. Also a ratification cannot be made of a transaction which is void ab initio.
→ Where an act has to be performed within a certain limit the ratification also must be made within that time limit.
→ Ratification may be made of an act done by an agent in excess of his authority.

(iii) ***Agency by ostensible authority:*** The conduct of the principal may give rise to a scope for an inference that an authority has been conferred upon an agent even though no authority in fact was given. In such as situation the agent contracts within his ostensible authority and the principal is bound to third parties for the acts of his agent. Agency by ostensible authority may happen in two ways.

(a) *By estoppel:* If a person permits or represents another to act on his behalf, so that a reasonable person would infer that the relationship of principal and agent had been created, then he will be stopped from denying his agent's authority and getting himself relived from his obligation to a third party by proving that no such relationship in fact existed. A principal cannot privately limit or revoke an authority which he has allowed his agent publicly to assume.
(b) *By cohabitation*: Where a married woman is cohabiting with her husband, there is a presumption of fact that she has authority to pledge his credit for necessaries.
(c) *By Holding out:* Principal is bound by the act of agent if on the earlier occasion, he has made other person to believe that such acts are done with his authority.

(iv) ***Agency by necessity***: Under certain circumstances, a person may be compelled to act as a agent to the other without requiring the consent of the principal. To constitute a valid agency of necessity, following condition must be satisfied.

(a) There is no opportunity to communicate with his principal within the time available.
(b) There should have been actual and definite commercial necessity for the agent to act promptly.
(c) The agent should have acted bonafide and for the benefit of the principal.
(d) The agent should have adopted the most reasonable and practicable course under the circumstances, and
(e) The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

(v) ***Actual authority and apparent authority***:

→ Actual authority results from a manifestation of consent that he should represent or act for the principal made by the principal to agent himself. It may be express or implied
→ Apparent authority is where it results from a manifestation made by the principal to third parties. It involves the assumption that there is in fact no authority at all. Under this where a principal represents, or is regarded by law as representing, that another has authority, he may be bound as against a third party by the acts of that other person within the authority which that person appears to have, though he had not given. This emphasises to the relationship between principal and third party.

Extent of agent's authority

→ ***In normal circumstances***: An agent having an authority to do an act or business has authority to do every lawful thing which necessary for the purpose, usually done in the course of conducting such business **(Section 188)**
→ Above may be expressly excluded by mutual contract.

→ ***In emergency*:** To do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances. **(Section 189)**

→ ***Notice to an agent:*** If any information is obtained by an agent or any notice is given to him in the course of the business of agency it will be deemed to have been obtained by or given to the principal **(Section 229)**.

Obligations cast on agent: (Duties of an agent)

→ ***Duty in conducting principal's business***: According to the directions given by the principal, or in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When agent acts otherwise, if loss incurred to be borne by agent and if profit incurred to be given to principal.

→ ***Requirement as to skill and diligence***: He is required to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his lack of skill. Agent is always bound to act with reasonable diligence and such skill as he possesses and to make compensation to his principal in respect of direct consequences of his own neglect, want of skill or misconduct **(Section 212)**

→ ***Agent's duty to account***: To render proper accounts to his principal whenever demanded by the latter **(Section 213)**

→ *Payment of money:* To pay to principal all sums received on his account **(Section 218)**. Even in case of money received in illegal or void contract.

→ ***Duty to communicate****:* In case of difficulty, an agent must use reasonable diligence to establish contact with his principal, to obtain his instructions **(Section 214)**.

Right of the agent:

→ Right of lien on principal's property **(Section 221)**: If the amount due to himself for commission, disbursement and services has not been paid or accounted for him.

→ It may be avoided by the express agreement this right is there only when possession of the goods is lawfully acquired by the agent.

→ Right to be indemnified against consequences of lawful acts in exercise of the authority conferred upon him. **(Section 222)**

→ Right to be indemnified against consequences of acts in good faith **(Section 223)**

→ Notwithstanding any express or implied promise in this regard, an agent cannot claim to be indemnified against the consequences of an act which he does but which is prohibited under the penal law of the country **(Section 224)**

→ Compensation for injury caused by principal **(Section 225)**

→ *Right of retainer* **(Section 217)** : An agent has to account for to his principal the balance of money received by him as agent after the deduction (retaining)of moneys due to himself from the principal on account of his remuneration and expenses etc.

→ vii) *Right to remuneration:* For the agreed upon or the normal remuneration in that business. He can detain the money received on account of sale etc. **(Section 219)**. But an agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business of the agency which he has is counted. **(Section 220)**

When agent is personally liable?

(1) When there is an express agreement for so.

(2) When he does not have authority for what he has done or he represents himself as having that authority which he does not have.

(3) When contract is entered into by a person apparently in the character of agent, but in reality on his own account, he is not entitled to require performance of it. **(Section 236)**

(4) In circumstances given by **Section 230**.

→ Where the contract expressly provides for the personal liability of the agent

→ When the agent signs a negotiable instrument in his own name without making it; clear that he is signing as agent.
→ Where the agent worked for a foreign principal
→ Where the agent acts for a principal who cannot be sued on account of his being a foreign Sovereign, Ambassador, etc.

(5) Where according to use of trade in certain kinds of businesses, agents are personally liable.
(6) Where the agent has himself an interest in the subject-matter of the agency. Interest not only of remuneration but some special type of interest should be there. In the case of an agency coupled with such interest it cannot be revoked even by the insanity or death of the principal.

Undisclosed principal:
Where an agent, having authority to contract, makes the contract in his own name, concealing not only the name of his principal but also the fact that there is a principal, his principal is called 'undisclosed principal.' In this case mutual rights and liabilities of the parties are:

1. Agent is personally liable to third party.
2. If the third party comes to know the existence of the principal before obtained judgment against the agent, he may sue either the principal or the gent or both.
3. Third party is entitled to be placed in the same situation as if the agent had been the contracting party. thus the third party is not put to any disadvantage by principal's intervention;
4. If the principal discloses himself before the contract is completed the third party may refuse to fulfil the contract, if the can show that had he known the true position, he would not entered into the contract.

Principal's liabilities for agent's act
1. When agent act within the scope of his authority.
2. When the agent exceeds his authority: Principal is not liable but where that excess is separable from the total act then upto the extent of the authority principal is liable.
3. Principal is bound by notice given to agent. Provided notice is given in the course of the business and in the course of employment. This rule will not apply if agent is out to commit a fraud on the principal.
4. Liability of principal by estoppel. A principal is liable where he has by words or conduct induced a belief in the contracting party that the act of the agent was within the scope of his authority. here the liability of the principal is not based on any real authority, but is by estoppel.
5. Liability for misrepresentation or fraud by an agent.: If acting within the scope of his actual or apparent authority during the curse of the agency business irrespective of the fraud is committed for the benefit of the principal or that of the agent.
6. Where the Principal is unnamed.: When an agent discloses the existence of the principal but does not disclose the name of the principal. If however the agent refuses to disclose the identity of his principal he will become personally liable on the contract.

Termination of agent's authority
a) Revocation of authority by the principal
b) Renunciation of agency by the agent.
c) Completion of the business of agency.
d) Death or insanity of either party, e.g., the principal or the agent.
e) Insolvency of the principal.

Certain other principles dealing with Termination
→ Where the agent has himself an interest in the property which form the subject-matter o the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. **(Section 202)**. In such circumstance such an agency is deemed to be "coupled with interest".

→ Authority can be revoked at any time before the authority has been exercised so as to bind the principal **(Section 203)**
→ No revocation after partial exercise of the authority, so far as regards such acts and obligations as arise from acs already done in the agency **(Sec204).**
→ In case of an express agreement for fix term agency, the principal must pay compensation to the agent for any earlier revocation of the agency without sufficient cause. **(Section 205)**. But if conversely, the agent renounces the agency before the expiry of the stipulated time, he is obliged to compensate the principal.
→ Reasonable notice must be given of such revocation, otherwise the damage thereby resulting to the agency must be made good by the principal **(Sec206).** This is equally applicable to the agent if he desires to renounce the agency.
→ Revocation and renunciation may be express or may be implied in the conduct of the principal or agent respectively **(Section 207)**
→ Termination of agency does not, as regards the agent, take effect before it becomes known to him. **(Section 208)**
→ As against third parties, termination of agent's authority does not take effect before it becomes known to them **(Section 208)**
→ When an agency is terminated by the principal dying or becoming of unsound mind, the gent is bound to take, on behalf of the representative of his late principal all reasonable steps for protection and preservation of the interest entrusted to him. **(Section 209)**

Irrevocable Agency:
→ Where the agency is coupled with interest: **(Section 202).** This rule is applicable only when the agency is created of the protection of the interest of the agent, it does not apply where the interest arises after creation of agency.
→ Where the agent has incurred personal liability: Principal cannot revoke the agency so as to leave the agent to bear the liability and the losses in the contract.
→ Where the agent has partly exercised the authority:

Sub–agent
A 'sub-agent' is a person employed by, and acting under the control of the original agent in the business of the agency (Section 19). This means he is the agent of the original agent. The relation of the sub-agent to the original agent is, as between themselves, that of the agent and principal.
Exception: Section 190 provides that an agent may appoint a sub-agent and delegate the work to him if-
→ There is a custom of trade to that effect, or
→ The nature of work is such that a sub-agent is necessary.
→ There are some more exceptions recognised by the English Law. These exceptions are also recognised in India and are as follows:
→ Where the principal is aware of the intention of the agent to appoint a sub-agent but does not object to it.
→ Where unforeseen emergencies arise rendering appointment of a sub-agent necessary.
→ Where the act to be done is purely ministerial not involving confidence or use of discretion.
→ Where power of the agent to delegate can be inferred from the conduct of both the principal and the agent.
→ Where the principal permits appointment of a sub-agent.

Relationship between principal and sub-agent:
As a general rule, an agent cannot delegate his authority to a sub-agent. But in certain exceptional cases, he is permitted to do so. In such cases, the delegation of authority to a sub-agent in proper. In all other cases, the appointment of a sub-agent is improper. The legal relation between the principal and the sub-agent depends upon the crucial question, as to whether the appointment of the sub-agent is proper or improper.

1. *Where a sub-agent properly appointed:*
   (a) The principal is bound by the acts of the sub-agent s if the sub-agent were an agent originally appointed by the principal (Section 192. Para 1)
   (b) The agent is responsible to the principal of the acts of the sub-agent (Section192, Para 2)
2. Where a sub-agent is not properly appointed. Where an agent, without having authority to do so, has appointed a sub-agent, the agent is responsible for the acts of the sub-agent to the principal and to the third parties. The principal, in such case, is not represented by of responsible for the acts of the sub-agent, nor is the sub-agent responsible to the principal. (Section 193)

Substituted agent (Section 194)
If an agent has an express or implied authority to name another person to act for the principal in the business of the agency, and he has named another person accordingly. In the circumstances, such a named person is not a sub-agent; he is an agent of the principal for such part of the business of the agency as has been entrusted to hi.
In selecting such agent for his principal, an agent is bound to exercise the same amount of diligence as a man of ordinary prudence would exercise in his own case; and if he does this, he is not responsible to the principal for the act or negligence of the agent so selected.