



Subject :
**Law of
Contract - II**

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SPECIAL CONTRACT

SPECIAL CONTRACT Contract of Indemnity —

1. INTRODUCTION TO CONTRACT OF INDEMNITY ● Indemnity Meaning — ● To make good the loss incurred by another person ● To compensate the party who has suffered some loss ● To protect a party from incurring a loss 'Contract of indemnity Definition A contract is called as a 'contract of indemnity' if - One party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person. ● Modes of contract of indemnity Expressed: When a person expressly promises to compensate the other from loss. Implied : When the contract is to be inferred from the conduct of the parties or from the circumstances of the case. ● Essential elements of a contract of indemnity Contract : All the essentials of a valid contract must also be present in the contract of indemnity Example :— X asks Y to beat Z and promises to indemnify Y against the consequences. Y beats Z and is fined Rs.1,000. Y cannot claim this amount from X because the object of the agreement was unlawful. Loss to one party A person can indemnify another person only if such other person incurs some loss or it has become certain that he will incur some loss. Indemnity by the promisor. The purpose of contract of indemnity is to protect the indemnity holder from any loss that may be caused to the indemnity holder. Reason for loss. The contract of indemnity must specify that indemnity holder shall be protected from the loss caused due to - ● Action of the promisor himself; or ● Action of any other person; or ● Any act, event or accident which is not in the control of the parties.

2. RIGHTS OF INDEMNITY HOLDER (Sec. 125) Right to recover damages The indemnity holder has the right to recover all the damages which he is compelled to pay in any suit in respect of any matter covered by the contract of indemnity. Right to recover costs. The indemnity holder has the right to recover all the costs which he is compelled to pay in bringing or defending such suit. Condition : (a) The indemnifier authorised him to bring or defend the suit; or (b) The indemnity holder did not contravene the orders of the indemnifier; and The indemnity holder acted as it would have been prudent for him to act in the absence of any contract of indemnity. Right to recover sums paid The indemnity holder has the right to recover all the sums which he has paid under the terms of a compromise of such suit. (a) The indemnifier authorised him to compromise the suit; or (b) The indemnifier holder did not contravene the orders of the indemnifier; and the indemnity holder acted as it would have been prudent for him to act in the absence of any contract of indemnity. Contract of guarantee

3. MEANING OF CERAIN TERMS (Sec. 126) Meaning of 'contract of guarantee' A 'contract of guarantee' is a contract to - o Perform the promise; or ● Discharge the liability, of a third person in case of his default. Meaning of 'surety' The person who gives the guarantee is called as 'surety' Meaning of 'principal debtor' The person in respect of whose default the guarantee is given is called as 'principal debtor'. Meaning of 'creditor' The person to whom the guarantee is given is called as 'creditor'. GUARANTEE ON MONEY ON PERSON Nature of payment Effective time of payment Specific/Simple Guarantee Continuing Guarantee Retrospective Guarantee Prospective Guarantee Fidelity Guarantee Guarantee is for a single transaction. It ends when debt is discharged or promise is performed. Guarantee is for a series of transactions. Liability extends till the revocation of guarantee. Guarantee is for an existing debt or obligation. Guarantee is for a future debt or obligation. Guarantee is on the good conduct or honesty of a person employed in a particular organizations.

4. ESSENTIALS AND LEGAL RULES FOR A VALID GUARANTEE. Must have all the essentials of a valid contract ● All the essentials of a valid contract must be present in the contract of guarantee. ● Exceptions : (a) Consideration received by the principal debtor is a

sufficient consideration to the surety for giving the guarantee. (b) Even if principal debtor is incompetent to contract, the guarantee is valid. But, if surety is incompetent to contract, the guarantee is void. Primary liability of some person ● The principal debtor must be primarily liable. However, even if the principal debtor is incompetent to contract the guarantee is valid. ● The debt must be legally enforceable. ● The debt must not be a time barred debt. The contract must be conditional ● The liability of surety is secondary and conditional. ● The liability of surety arises only if the principal debtor makes a default. ● No misrepresentation ● The creditor should disclose all the facts which are likely to affect the surety's liability. ● There must not be any concealment of facts. ● Form of contract A contract of guarantee may be either oral or written. Joining of other co-sureties. The guarantee by a surety is not valid if — ● A condition is imposed by a surety that some other person must also join as a co-surety; but ● Such other person does not join as a co-surety.

5. NATURE AND EXTENT OF SURETY'S LIABILITY ● Surety's liability is coextensive with liability of principal debtor General rule - ● Surety is liable for all the debts payable by the principal debtor to the creditor. ● Accordingly, interest, damages, costs etc. may also be recovered from the surety. Exception:- The contract of guarantee may provide otherwise. Commencement of surety's liability ● The liability of surety arises immediately on default by the principal debtor. ● The creditor is not required to - (a) first sue the principal debtor; or (b) first give a notice to the principal debtor. Surety's liability may be limited .The surety may fix a limit on his liability up to which the guarantee shall remain effective. Surety's liability may be continuous ● The surety may agree to become liable for a series of transactions of continuous nature. ● However, the surety may fix - - a limit on his liability upto which the guarantee shall remain effective; - a time period during which the guarantee shall remain effective. ● Surety's liability may be conditional The surety may impose certain conditions in the contract of guarantee. Until those conditions are met, the surety shall not be liable.

6. CONTINUING GUARANTEE Meaning A guarantee which extends to a series of transactions is called as continuing guarantee. Revocation (Sec.130) Continuing guarantee may be revoked, at anytime, by the surety by giving a notice to the creditor. However, revocations shall be effective only in respect of future transactions (i.e. the liability of the surety with regard to previous transactions remains unaffected) Death of surety (sec. 131) Death of the surety operates as a revocation of a continuing guarantee as to future transaction.

7. RIGHTS OF SURETY (Sec.140, 141, 145, 146 and 147) I. Rights against principal debtor Right of indemnity ● There is an implied promise by the principal debtor to indemnify the surety. ● The surety is entitled to claim from the principal debtor all the sums which he has rightfully paid. ● The surety cannot recover such sums, which the he has paid wrongfully. ● Right of subrogation. On payment of a debt, the surety shall be entitled to all the rights which the creditor could claim against the principal debtor. II. Rights against the creditor. Right of subrogation ● The surety can claim all the securities which the creditor had at the time of giving of guarantee ● It is immaterial as to whether the surety had knowledge of such securities or not. ● If the securities are returned by the creditor to the principal debtor the surety is discharged to the extent of value of the securities so returned. Right of set off ● Any amount recoverable by the principal debtor may be claimed as deduction. ● Any amount recoverable by the surety may be claimed as deduction. Rights to share reduction If the principal debtor becomes insolvent, the surety may claim proportionate reduction in his liability. III. Rights against co-sureties Rights to contribution General Rule All the co-sureties shall contribute equally Exceptions o Under the contract of guarantee, the co-sureties may fix limits on their respective liabilities. Even in such a case, the co-sureties shall contribute equally, subject to maximum limit fixed by the co-sureties. ● The contract of guarantee may provide that the co-sureties shall contribute in some other proportion. Right to share benefit

of securities If one co-surety receives any security, all the other co-sureties are entitled to share the benefit of such security.

8. DISTINCTION BETWEEN INDEMNITY AND GUARANTEE Basis Contract of indemnity Contract of guarantee Meaning Parties Nature of liability Number of contract Nature of contract A contract by which one party promises to save the other from loss caused to him is called as a contract of indemnity. There are only two parties, viz, the indemnifier and the indemnity holder. The liability of the indemnifier is primary and independent. In a contract of indemnity there is only one contract. The contract of indemnity is for the reimbursement of the loss. A contract of guarantee is a contract to perform the promise, or discharge the liability of a third person in case of his default. There are three parties, viz., the principal debtor, creditor and the surety. The liability of the surety is secondary and conditional. In the contract of guarantee, there are three contracts; first between principal debtors and creditor, second between creditor and surety, and third between surety and principal debtor. The contract of guarantee is for the security of the creditor.

9. DISCHARGE OF SURETY FROM LIABILITY (Sec.130 to 144) DISCHARGE OF SURETY Revocation of contract of Invalidation of contract of Conduct of Creditor guarantee guarantee Notice of revocation by surety ● Specific guarantee A specific guarantee can be revoked only if liability of principal debtor has not arisen. ● Continuing guarantee MS EDUCONZ PVT. LTD. LAW& AUDIT SUJEET JHA 66 9213188188 A continuing guarantee can be revoked only in respect of future transactions. Death of surety In case of death of surety, a continuing guarantee is automatically revoked in respect of future transactions. Variance in terms If - ● Any variation is made subsequent to formation of contract of guarantee; and ● Such variation is made without the consent of surety; Then - ● The surety shall be released for such transactions as take place after such variation. Release or discharge of principal debtor If - ● The creditor makes a fresh contract with the principal debtor whereby the principal debtor is relieved from his liability; or - ● The creditor does any act or omission resulting in discharge of the principal debtor; Then - The surety is discharged. Composition with principal debtor The surety is discharged if the creditor makes a composition with the principal debtor without obtaining the consent of surety. Giving extension of time to principal debtor The surety is discharged if the creditor extends the time for repayment of the debt by the principal debtor without obtaining the consent of the surety. Loss of security by a creditor The surety is discharged to the extent of security lost by the creditor.

10. MEANING OF CONTRACT OF BAILMENT (Sec. 148) A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. BAILMENT Based on Benefit Based on Reward Exclusive benefit of Bailor Exclusive benefit of Bailee Mutual Benefit of both Gratuitous Bailment Non gratuitous Bailment J, neighbour of K, agrees to look after K's per while he is out of station. K is benefited. Z lends a book to Y for reading. Y is benefited. A hires furniture from B, by payment of hire charges, Both A and B are benefited. Neither Bailor nor Bailee gets any remuneration, e.g. A lends his book to his are friend. Bailor or Bailee gets remuneration e.g. G gives his television set for repair to H, a technician. H gets paid for the job.

11. ESSENTIALS OF A VALID CONTRACT OF BAILEMENT (Sec.148) ● Contract o There must be a contract. o The contract may be expressed or implied. ● Goods Bailment can be made of goods only. ● Delivery There must be delivery of goods by one person to another person. ● Purpose of delivery ● The goods must be delivered for some purpose. ● The purpose may be expressed or implied. ● Return or disposal of goods ● The delivery of goods must be conditional ● The condition shall be that the goods shall be - - returned (either in original form or in any altered form); or - disposed of according to the directions of the bailor, when the purpose is

accomplished.

12. MODES OF DELIVERY (Sec.149) Actual delivery Transfer of physical possession of goods from one person to another. Symbolic delivery o Physical possession of goods is not actually transferred. ● A person does some act resulting in transfer of possession to any other person. Examples : (a) Delivery of keys of a car to a friend (b) Delivery of a railway receipt. ● Constructive delivery If - ● A person is already in possession of goods of owner. ● Such person contracts to hold the goods as a bailee for a third person. Then - Such person becomes the bailee, and the third person becomes the bailor.

13. CLASSIFICATION OF BAILMENT Gratuitous bailment Bailment without any charges or reward, i.e. ● No hire charges are paid by bailee; and ● No custody charges are paid by bailor. Non-gratuitous bailment Bailment for some charges or reward, i.e. ● Hire charges are paid by bailee; or ● Custody charges are paid by bailor.

14. DUTIES OF A BAILOR (Sec. 150, 158, 159 and 164) Disclose faults in goods [Sec. 150]: Bailor is bound to disclose to Bailee, faults in the goods bailed, of which he has knowledge. He should also disclose such information which - (a) materially interferes with the use of goods, or (b) expose the Bailee to extraordinary risk. Liability for Defects in Goods In case of Gratuitous bailment In case of Non - Gratuitous Bailment Bailor is liable only for those losses which arise due to non - disclosed risks. Bailor is liable for damages whether or not he was aware of the existence of faults. Example: A owning a motorcycle, allows B, his friend, to take it for a joy ride. A knows that its brakes were not proper but does not disclose it to B. B meets with an accident. A is liable to compensate B for damages. But when A had lent the motorcycle on hire, he is liable to B even if he did not know of the failure of his brakes. ● Bear expenses [Sec.158] Expenses of Bailment In case of Gratuitous bailment In case of Non - Gratuitous Bailment Bailor shall repay to Bailee, all necessary expenses incurred by him for Bailor is liable to repay only extra - ordinary expenses, and not the ordinary the purpose of Bailment. expenses. Example: M lends his car to N and it runs out of petrol. N can recover the amount paid for refueling (ordinary expenses). If in case, the car suffers a breakdown, N can recover such charges as are paid by him in bringing it back to condition (extra - ordinary expenses). He M hired the car to N, he shall be liable only for the repair charges, being extra ordinary expenses. Indemnify the bailee for defective title The bailor shall indemnify the bailee for any loss caused to bailee due to defective title of bailor. Indemnify the bailee for premature termination If - - the bailment is gratuitous ; and - for a specific period. Then - (a) the bailor may compel the bailee to return the goods before expiry of the peiod of bailment; but (b) the bailor shall indemnify the bailee for any loss incurred by the bailee. Receive back the goods ● It is the duty of the bailor to receive back the goods, when returned by bailee. ● If the bailor wrongfully refuses to receive back the goods, he shall be liable to pay ordinary expenses of custody of goods incurred by the bailee.

15. DUTIES OF A BAILEE (Sec.151 to 157) Take reasonable care ● The bailee must take such case of goods as a man of ordinary prudence would take care of his own goods. ● The bailee shall not be liable for any loss or destruction of goods, if - (a) he is not negligent; or (b) the loss was caused due to an act of God or other unavoidable reasons. Not to make unauthorized use of goods ● The bailee must not make any unauthorized use of the goods. ● If the bailee makes any unauthorized use of goods, then - (a) the bailment becomes voidable at the option of the bailor; and (b) the bailee shall be liable for any loss or damage even if such loss is caused due to an act of God or other unavoidable reasons. Not to mix goods Goods are mixed with bailor's consent The parties shall have a proportionate interest in such mixture. Goods are mixed without bailor's consent, but the goods are separable o The bailee shall pay the expenses of separation. ● The bailee shall pay damage incurred by the bailor. Goods are mixed without bailor's consent, and goods are not separable The bailee shall compensate the bailor for any loss caused to him. Return

the goods ● The bailee must return the goods, without waiting for demand from bailor, if - (a) the time specified in the contract has expired ; or (b) the purpose specified in the contract is accomplished. o If the goods are not so returned, then - (a) the goods shall be at the risk of the bailee; (b) the bailee shall be liable for any loss or damage, even if such loss is caused without any fault or negligence of the bailee or due to an act of God or other unavoidable reasons. Return accretion to goods The bailee must return to the bailor any accretion (i.e., addition) to the goods bailed. Not to set up an adverse title The bailee has no right to allege that the bailor had no authority to bail the goods.

16. RIGHTS OF A BAILOR (Sec. 153, 159, 163, 180, 181) Terminate the bailment If - The bailee does any act inconsistent with the terms and conditions of the contract of bailment. Then - The bailment becomes voidable at the option of the bailor. Demand back the goods If - The bailment is gratuitous; and For a specific period. Then - (a) the bailor may compel the bailee to return the goods before expiry of the period of bailment; and (b) the bailor shall indemnify the bailee for any loss incurred by the bailee. File suit against wrongdoer The bailor has the right to sue - ● A third party who does any damages to the goods; or ● A third party who deprives the bailee from using the goods ● Sue the bailee The bailor may sue the bailee to enforce his duties.

17. RIGHTS OF A BAILEE (Sec. 165, 166, 167, 170, 180) Right to compensation The bailee has the right to be indemnified by the bailor, if - ● The bailor has no title to the goods; and ● As a consequence, the bailee suffers some loss. Return the goods ● It is the duty as well as the right of the bailee to return the goods to the bailor. ● In case of joint bailor, the goods may be returned to any of joint bailors. Recover charges incurred Extra ordinary expenses ● The bailor is liable to pay the extraordinary expenses. ● The bailee may recover the extraordinary expenses paid by him. Ordinary expenses If the bailment is gratuitous, the bailor is liable to pay the ordinary necessary expenses, i.e., the bailee has the right to recover the ordinary necessary expenses incurred by him. Suit for deciding the title The bailee may apply to the Court for deciding the title to goods, if a person other than the bailor claims that the goods belong to him. File suit against wrongdoer The bailee has the right to sue - ● A third party who does any damages to the goods; or ● A third party who deprives the bailee from using the goods. Right of lien The bailee has the right to retain the goods delivered to him until the charges due to him are paid by the bailor.

18. DISTINCTION BETWEEN BAILEE'S PARTICULAR AND GENERAL LIEN
Basis of distinction Bailee's particular lien Bailee's general lien 1. Natural of right 2. Condition for exercising lien 3. Right to whom? Particular lien gives right to retain only such goods in respect of which charges due remain unpaid. Particular lien can be exercised only when some labour or skill has been expended on the goods, resulting in an increase in value of goods. Every bailee is entitled to particular lien. General lien gives right to retain any goods belonging to another person for any amount due from him. General lien may be exercised even though no labour or skill has been expended on the goods. General lien can be exercised by only such persons as are specified u/s 171. e.g., bankers, factors, wharfingers, Attomeys of High Court, policy brokers. Any other bailee may exercise general lien if there is an agreement to this effect.

19. TERMINATION OF BAILMENT (Sec.153, 159 and 162) Situation Explanation Example 1. Expiry of specified When bailment is for specific Z lends a moped to Y for a period, it terminates on the expiry of the specified period. period of 3 months April - June. The Bailment terminates by the end of June. 2. Accomplishment of specified purpose Where bailment is for a specified purpose, it terminates when such purpose is accomplished. G hires tables and chairs, utensils, etc. from H for organizing his son's engagement. G shall return them once the engagement functions are over. 3. Bailee's act inconsistent with conditions When bailee does some act which is inconsistent with the terms and conditions of bailment, the Bailor may terminate the bailment. J gives his car to K keeping it in K's garage. K gives it to his son for racing. J can

terminate the bailment. 4. Destruction of subject matter When goods bailed are destroyed, Bailment comes to an end. K hires a cycle from L. When the cycle is damaged beyond repair in an accident, bailment ends. 5. Gratuitous Bailment ● Gratuitous Bailment can be terminated at any time. ● Also, a Gratuitous Bailment ends by the death of either Bailor or Bailee. (Sec162) Note: Where premature termination of bailment by the Bailor, causes loss to the Bailee exceeding the benefits derived by him, the Bailor shall indemnify the Bailee.

20. FINDER OF GOODS (Sec. 71, 168 and 169) ● Finder of lost goods [Sec 71] A person, who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a Bailee. Implied Agreement There is an agreement, implied by law between finder and owner of goods. ● Duties of Finder A finder of lost goods is treated as Bailee of goods found. His duties are - (a) To take initiative to find the real owner of the goods, (b) To take reasonable care of the goods found, (c) Not to put the goods found for his personal use, and (d) Not to mix the goods found with his own goods. ● Rights of Finder : Suit for specific reward [Sec.168] Right of Sale [Sec.169] Finder of goods is not entitled to sue that owner for compensation for trouble and expenses voluntarily incurred in - (a) preserving the goods, or (b) finding out the owner. However, he is entitled to - If a thing which is commonly the subject of sale is lost, and ● Owner cannot be found with reasonable diligence, [or] ● Owner, if found, does not pay the lawful charges of the Finder. (a) Lien: Retain the goods against the owner till he receives such compensation (b) Suit: Sue the owner for payment of any specific reward offered by the owner for the return of goods lost, and retains the goods till payment of such reward. Then, Finder of Goods is entitled to sell the same when - (a) the thing is in danger of perishing, or (b) the thing is in danger of losing the greater part of its value, or (c) The lawful charges of finder, amount to 2/3rd of the value of the thing lost and found.

21. MEANING OF 'PLEDGE', 'PAWNOR', 'PAWNEE' (Sec.172) 'Pledge' The bailment of goods as security for payment of a debt or performance of promise is called 'pledge'. 'Pawnor' The bailor in case of a pledge is called as 'pawnor'. 'Pawnee' The bailee in case of pledge is called as 'pawnee'.

22. ESSENTIALS A VALID CONTRACT OF PLEDGE (Sec.172) Contract o There must be a contract o The contract may be expressed or implied. Goods Pledge can be made of goods only. Delivery There must be delivery of goods by one person to another person. Purpose of delivery ● The goods must be delivered for some purpose. ● The purpose must be to deliver the goods as security for (a) payment of a debt; or (b) performance of a promise. Return of goods ● The delivery of goods must be conditional ● The condition shall be that the goods shall be - - returned (either in original form or in altered form); or - Disposed of according to the directions of the pawnor when the purpose is accomplished.

23. RIGHTS OF PAWNEE (Sec.173 and 176) Right of Retainer [Sec.173] Pawnee may retain the goods pledged for - (a) payment of the debt or the performance of promise, (b) any interest due on the debt; and (c) all necessary expenses incurred by him with respect to possession or for preservation of goods pledged. Retainer for subsequent advances [Sec.174] (a) Where the Pawnee lends money to the Pawnor subsequently, after the date of pledge, it shall be presumed that the he has a right of retainer over the goods already pledged in respect of the subsequent lending also. (b) This presumption can be made invalid only by an expenses provision to that effect. Reimbursement of Expenses [Sec.175] Where the Pawnee incurs extraordinary expenses to preserve the goods pledged with him, he is entitled to receive such amount from the Pawnor. Rights in case of default by Pawnor [Sec.176] (a) Suit: Pawnee may institute a suit against Pawnor when there is a default in payment of debt or performance of promise at the stipulated time. (b) Retention / Sale of goods: Pawnee may - (a) retain the goods pledged as collateral security, or (b) sell the goods pledged by giving a reasonable notice to the Pawnor. (c) Surplus / Deficit on Sale

: When there is a surplus on sale, Pawnee shall pay the excess to the Pawnor. In case of deficit, Pawnor shall be liable for the balance amount. (d) No Notice : Where the Pawnee does not give a reasonable notice to the Pawnor, the sale is valid, but Pawnee is liable to pay damages to Pawnor. Right against true owner of goods [Sec.178A] (a) Where the Pawnor has acquired possession of pledged goods, under a voidable contract u/s 19 or 19A but contract has not been rescinded at the time of pledge, the Pawnee acquires a good title to the goods, against the true owner. (b) The title of Pawnee is good only where - (a) he had no notice of the Pawnor's defect in title and (b) he acts in good faith. Reasonable notice u/s 176 means that a notice of intended sale of the security by the Creditor within a certain date, so as to afford an opportunity to the Debtor to pay the amount within the time mentioned in the notice. Notice of sale is essential and a clause in the agreement excluding the requirement of Notice is inconsistent with the Act & is void and unenforceable. Prabhat Bank Ltd. vs Babu Ram

24. DUTIES OF A PAWNOR (Sec.175) Pay the debt The pawnor is liable to pay the debt or perform his promise as the case may be. Pay deficit on sale If the pawnee sells the goods due to default by the pawnor, the pawnor must pay the deficit. Pay extra - ordinary expenses The pawnor is liable to pay to the pawnee any extraordinary expenses incurred by the pawnee for preservation of goods. Disclose faults in goods The pawnor is liable to disclose all the faults which - (a) are material for use of the goods; or (b) may put the pawnee to extraordinary risks. ● Indemnify the pawnee If loss is caused to the pawnee due to defect in pawnor's title to the goods, the pawnor must indemnify the pawnee.

25. DUTIES OF PAWNEE ● Not to use the goods ● The pawnee has no right to use the goods ● However, he may use the goods, if he has been so authorised by the pawnor. Return the goods The pawnee must return the goods if the pawnor pays the debt or performs his promise. Take reasonable care The pawnee must take such care of goods pledged as a man of ordinary prudence would take care of his own goods. Not to mix goods The pawnee must not mix his own goods with the goods pledged. ● Return increase in goods The pawnee must return to the pawnor any accretion to the goods pledged with him.

26. RIGHTS OF A PAWNOR (Sec.177) Redeem the goods pledged Meaning of redemption Right to recover back the goods by making payment of the debt or performance of promise. Time for redemption Where time of redemption is fixed, the pawnor may exercise redemption - (a) within the time so fixed; or (b) even after expiry of time so fixed, provided - ● the pawnee has not sold the good; and ● the pawnee pays the pawnee all expenses arising on account of his default. Enforce pawnee's duties The pawnor has the right to enforce the duties of pawnee, if the pawnee fails to fulfill his duties. Receive increase in goods. The pawnor has the right to recover from pawnee any increase in goods pledged. Right to receive notice of sale In case of default by the pawnor to pay the debt or perform his promise, the pawnee has the right to sell the goods, after giving a reasonable notice to the pawnor. If the pawnee fails to give notice, the pawnor has the right to recover the loss incurred by him. Basis Pledge Bailment 1. Purpose Pledge is bailment of goods for a specific purpose, i.e. to provide a security for a loan or fulfillment of an obligation. Bailment may be for purpose other than by way of providing security for a loan or fulfillment of an obligation. It may be for purpose like repairs, safe custody, etc. 2. Sale of Goods Pawnee, i.e. Pledgee has a right of sale of goods pledged on default of Pawnor. He can do so by giving a notice to the pawnor. There is no right of sale to the Bailee. Bailee may either — (a) retain goods, or (b) sue the Bailor for non-payment of his dues. 3. Use of Goods Pledgee has no right of using goods pledged. Bailee can use the goods bailed as per terms of contract

27. INTRODUCTION TO CONTRACT OF AGENCY (Sec.182) Meaning of 'agent' An 'agent' is a person employed to - ● Do any act for another; or ● Represent another in dealings with third persons. Meaning of 'principal' 'Principal' is the person - ● For whom an act is done by

the agent; or o Who is represented by the agent in respect of dealing with third persons. Test of agency Where a person has the capacity to - ● Create contractual relations between the principal and a third party; ● Bind the principal by his own acts, there exists a relationship of agency. CREATION OF AGENCY By Operation By Express By Implied Agreement By Ratification of acts of Law Agreement (a) Estoppel, (b) Holding Out, (c) Necessity

28. SALIENT FEATURES OF AGENCY (Sec. 183, 184, 185 and 226) Principal is liable for the acts of agent ● The principal is liable for all the acts of an agent which are lawful and within the scope of agent's authority. ● The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself. Who may employ an agent? Any person may employ an agent if — ● He is of the age of majority; and ● He is of sound mind. ● Who can be an agent ? ● Any person may become an agent. ● Even a minor or a person of unsound mind can become an agent Liability of agent ● Generally an agent is liable to the principal ● An agent is not liable to the principal if he is a minor or is of unsound mind. Requirement of consideration. No consideration is necessary for creating an agency.

29. MODES OF CREATION OF AGENCY (Sec.187, 189, 196, 214 and 237) Express agreement ● A person may employ another person as his agent by entering into an express agreement with him. ● The agreement may be either oral or written. ● Implied agreement Agency by estoppel. If a person makes a representation (by his words or conduct) to a third person that a certain person is his agent; and the third party believing such representation to be true, enters into a contract with the pretended agent. Then the person making the representation is prevented from denying the truth of agency. He may be held liable as a principal by such third party. Agency of holding out Such an agency comes into existence when a person by his affirmative or positive conduct leads third persons to believe that person doing some act on his behalf is doing with authority. Agency by necessity Conditions— (i) There was an actual and definite necessity for acting on behalf of the principal. (ii) The agent was not in a position to communicate with the principal. (iii) The act was done for the purpose of protecting the interest of his principal. (iv) The agent has exercised such reasonable care as a man of ordinary prudence would have exercised in his own case. (v) The act was done bonafide. Agency by operation of law Agency by operation of law arises where the law treats one person as an agent of another. Agency by ratification meaning. If a person (viz., pretended agent) acts on behalf of another person (viz, the principal) the pretended agent acts without the knowledge or consent of the principal; and afterwards, the principal accepts such act. Then, agency by ratification comes into existence. Effects of ratification ● The principal is bound by the acts ratified by him as if such acts had been performed by his authority. ● Ratification relates back to the actual date of the act that is ratified and not from the date when the act ratified.

30. ESSENTIALS OF A VALID RATIFICATION (Sec. 197 to 200) Full knowledge. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. In other words, the principal must have full knowledge of all the material facts. Whole transaction It must be done for whole transaction in fact; ratification of the part of a transaction operates as a ratification of the whole transaction. Act on behalf of another person The acts done by a person (i.e. pretended agent) on behalf of another person (i.e. pretended principal) can only be ratified. By the principal Ratification can be made by only such person for whom the act was done. Existence of principal The principal must be in existence at the time when the act was done in his name Contractual capacity The principal must have contractual capacity both at the time of entering into the contract and at the time of ratification. Lawful acts. Only those acts which are lawful can be ratified. Void, illegal, or ultra vires acts cannot be ratified. Acts within principal's power Ratification can be made only for such acts which principal had the power to do. Commu-

nication Ratification must be communicated to the third party so as to bind him Within reasonable time Ratification must be made within reasonable time of the act purported to be ratified.

31. KINDS OF AGENTS A. Based on Authority 1. Special Agent 2. General Agent 3. Universal Agent (a) Appointed to perform a particular transaction, e.g. sale of a house property. (b) Agent has limited authority (c) Agent cannot bind Principal for acts other (a) Appointed to do all acts connected with a particular trade, business or employment. (b) Authority is wide and continues till agency is terminated. (a) Appointed to do all acts for the Principal. (b) Authority is unlimited (c) All acts of Agent bind his Principal provided that his acts are legal and agreeable as per law of land. than for which he is employed. (c) Principal may limit his authority. (d) Principal is bound by all acts unless it is beyond authority of Agent. B. Based on Nature of work 1. Commercial or Mercantile Agents 2. Non - Mercantile Agents. (a) One who is authorised to sell goods or consign goods for the purpose of sale or to buy goods or to raise money on the security of goods. (b) Includes Banker, Factor, Auctioneer, Broker, Commission Agent, & Del Credere Agent. (a) Not engaged in business of selling or buying goods, but act in their respective professional capacities. i.e. render professional services for their Principal (b) Includes Solicitors, Attorneys, C & F Agents, Insurance Agents, etc.

32. DUTIES OF AN AGENT (Sec. 209 to 218) 1. To conduct the business in accordance with the directions given by the principal 2. To work with reasonable diligence, care and skill. 3. To render proper accounts to the principal on demand. 4. To communicate with his principal in case of difficulty and seek his instructions. 5. Not to deal on his own account unless all the material facts have been disclosed to the principal and consent of the principal has been obtained. If the agent, without the knowledge of the principal, deals in the business of agency on his own account, the principal has the following rights: (a) He may repudiate the transaction, if the agent dishonestly conceals any material facts or the dealings of the agent prove to be disadvantageous to him. (b) He may claim from the agent the agency business other than the agreed remuneration. 6. Not to make any secret profit out of the agency business other than the agreed remuneration 7. To remit to the principal all the sums received in the principal's accounts in accordance with the terms and conditions of contract of agency. 8. Not to delegate authority or appoint sub - agent. 9. To protect and preserve the interest on behalf of the principal's representative in case of his death or insolvency of the principal. 10. Not to use information obtained in the course of the agency against the principal.

33. RIGHTS OF AN AGENT (Sec. 217 to 225) 1. To retain money out of the sums received in agency business for advances made or expenses incurred and remuneration due to him. 2. To receive the agreed remuneration. If the remuneration is not fixed, then he has the right to recover such remuneration as is usual and customary in such business. 3. Right of lien on principal's goods, papers and other property until the amount due to him in respect of the same is paid. 4. An agent has the right to be indemnified by the principal against the consequences of all lawful acts done in exercise of the authority conferred on him. 5. An agent has the right to be indemnified by the principal against consequences of acts done in good faith that caused an injury to third person. 6. To claim compensation for injury caused because of principal's neglect or want of skill.

34. WHEN AN AGENT IS PERSONALLY LIABLE (Sec. 230 and 231) General Rule - No personal liability [Sec.230] In the absence of contract to contrary, an Agent cannot - (a) personally enforce contracts entered into by him, on behalf of his Principal, (b) be held personally liable for them. This is because the Agent merely acts on behalf of his Principal. Thus, he enjoys immunity from being personally sued. Exceptions, i.e. Agent personally as well as Joint & Severally Liable The Agent is personally liable in the following cases - 1. Foreign Principal [Sec.230] : Where the contract is made by an Agent for the sale or purchase of goods for a merchant resident

abroad. 2. Undisclosed Principal [Sec.230]: Where the Agent does not disclose the name of his Principal. 3. Principal cannot be sued [Sec.230]: Where the Principal, though disclosed, cannot be sued, e.g. Principal becoming of unsound mind, subsequent to appointment of agent. 4. Acting for a Principal not in existence : Where the Agent acts for a Principal who is not in existence at the time of making contracts, he shall be personally held liable e.g. contracts entered into by Promoters before incorporation of a Company are made in their personal capacity and hence personally liable. 5. Agency coupled with interest [Sec.202] : Where the Agent has an interest in the subject matter of agency. 6. Agent guilty of Fraud [Sec.238] : Where an Agent is guilty of fraud or misrepresentation in matters that are outside the scope of his authority, he is personally liable, and do not affect his Principal. 7. Agent exceeds authority & act not ratified : Where an Agent acts either without any authority or exceeds his authority, he shall be held personally liable when the principal does not ratify his acts. 8. Agent receives or pays money : Where an Agent receives or pays money by mistake or fraud to a third party, he shall be personally liable to such third party. Also he can personally sue the third party if the fraud or mistake is accountable to such third party. 9. Express Agreement for personal liability : Where an Agent expressly agrees to be personally bound. 10. Execution of Contract in his own name : Where an Agent executes a contract in his own name, without disclosing that he is acting as Agent for a Principal, he shall be personally liable, e.g. An Agent signs a Negotiable Instrument without making it clear that he is signing it as an Agent only, he shall be held personally liable on the same. He would be personally liable as Maker of P/N, even though he may be described as Agent. 11. Trade custom or usage : Where trade usage or custom makes an Agent personally liable. 12. Agent with special interest : An Agent with special interest or with a beneficial interest, e.g. a Factor or Auctioneer, can sue and be sued personally. [*Subramanya vs Naraya*] 13. Action against Agent or Principal [Sec 233] : Where the Agent is personally liable, a person dealing with him may hold — (a) either him or (b) his Principal or (c) both of them liable. The liability of Principal and Agent is "joint and several". 14. Exclusive liability [Sec. 234] : Where a person has made a contract with an Agent and - ● Induces such Agent to act upon it in the belief that only his principal would be held liable, ● Induces the principal to act upon it in the belief that only his Agent would be held liable. Such Third person cannot later on, shift the liability on to - ● The Agent, or ● The principal, respectively.

35. AGENCY COUPLED WITH INTEREST (Sec 202) ● When agency is created for securing some benefit to the agent over and above his remuneration as an agent, it is called as agency coupled with interest. ● The interest should exist at the time of creation of agency. If the interest arises after the creation of agency then it would not be called as agency coupled with interest. ● Agency coupled with interest cannot be terminated to the prejudice of such interest. ● Agency coupled with interest does not terminate even on the death or insanity of the principal. ● Thus, such agency is irrevocable to the extent of such interest. 36. IRREVOCABLE AGENCY (Sec. 202 and 204) ● Agency coupled with interest Such agency cannot be terminated to the extent of such interest Part exercise of authority by the agent where the agent has partly exercised the authority, the principle cannot revoke the authority so far as regard such acts and obligation as arise from already done in the agency Personal liability incurred by agent Where the agent has incurred personal liability, the agency is irrevocable.

37. DELEGATION OF AUTHORITY (Sec.190) ● General rule The general rule is that an agent cannot lawfully employ another act, which he has expressly or impliedly undertaken to perform personally. Exceptions (a) There is a custom or usage of trade to that effect. (b) Where power of the agent to delegate can be inferred from the conduct of the both the principle and the agent. (c) When the principal is aware of the intention of the agent to appoint sub agent by the does not object to it. (d) When principle permits appointment of a sub-agent. (e) If the nature of the agency is such that the sub-agent is necessary. (f) Where the acts to be done is purely minis-

terial not involving confidence or use of discretion. (g) Where unforeseen emergencies arise rendering appointment of a sub-agent necessary.

38. LEGAL RELATIONSHIP BETWEEN THE PRINCIPLE AND SUB-AGENT AND AGENT (Sec.190, 192 and 193) If sub-agent is properly appointment (a) Principal is bound to the third parties for the acts of sub-agent. (b) The agent is responsible to the principal for the acts of sub-agent. (c) The sub-agent is responsible to the agent for the acts done by him. (d) The sub - agent is not responsible to the principle, except in case of fraud or willful wrong. If sub - agent is not properly appointed. (a) Principal is not bound to the third parties for the acts of sub - agent. (b) The agent is responsible to the principle and third parties for the acts of sub - agent. (c) The sub - agent is responsible to the agent for the acts done by him. (d) The sub - agent is not responsible to the principle.

39. LIABILITY OF PRINCIPAL TO THIRD PARTIES FOR THE ACTS OF AGENT (Sec. 226 to 228) Principal is liable for the acts of agent ● The principal is liable for all the acts of an agent which are lawful and within the scope of agent's authority. ● The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself. ● When agent exceeds his authority Whether the acts done within the authority are separable from the acts done beyond authority. If yes - The principal is not bound for excess acts done by the agent. If no - The principal is not bound by the transaction and the principal can repudiate the whole transaction. 40. TERMINATION OF AGENCY (Sec.201 to 210) **A.** By the acts of parties ● By agreement The principal and the agent may mutually agree to terminate the agency, at anytime. ● By revocation o When the agency is coupled with interest, the principal cannot revoke the agency to the prejudice of such interest. ● The principal can revoke the authority at anytime before, the authority has been exercised so as to bind the principal. ● The principal cannot revoke the authority given to his agent after the authority has been partly exercised. ● When agency if for fixed period, the principal must make compensation to the agent for premature revocation of agency without sufficient cause. ● Revocation may be expressed or implied from the conduct of the principal ● By the agent renouncing the business of agency o Renunciation may be expressed or implied from the conduct of the agent. ● When agency is for fixed period, the agent must make compensation to the principal for premature renunciation of agency without sufficient cause. **B.** By operation of law 1. Completion of business of agency 2. Death or insanity of the principal or agent 3. Where the principal or the agent, being a company is dissolved 4. Destruction of subject matter of agency 5. Principal becoming insolvent 6. Expiration of period where agency was for a fixed period. SECTION 1 :: THE SALE OF GOODS ACT, 1930 COMMENCEMENT AND APPLICABLE APPLICABILITY OF THE ACT ■ This act extends to whole of India, except the State of Jammu and Kashmir. ■ This act came into force w.e.f. 1 July 1930. ■ The 'contract of sale' includes both a sale as sell as an agreement to sell. ■ The word Indian was omitted the title of the Act in 1963 ■ This Act does not deal with the sale of immovable property. ■ The transaction relating to immovable properties, e.g., the sale, lease, gifts, etc., are governed by a separate Act known as 'Transfer of Property Act, 1882'. This Act is beyond the scope of this book.

DEFINITIONS (Sec. 2) Buyer - Sec 2 (1) ■ A person, who buys or agrees to buy the goods. Delivery Sec (2) ■ It means voluntary transfer of possession from one person to another. Delivery State Sec 2(3) ◆ Goods are said to be in delivered state, when they are in such state that the Buyer would be bound to take the delivery of them in accordance with the contract. Documents of title to Goods 2(4) ◆ A document of the title to goods may be described as any document used as proof of the possession or control of goods, authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented. Section 2(4) of the Sale of Goods Act, 1930 recognizes the following as documents of

title to goods : (i) Bill of lading, (ii) Dock warrant, (iii) Warehousekeeper's certificate, (iv) Wharfinger's certificate, (v) Railway receipt, (vi) Multi - modal transport document, (vii) Warrant or order for the delivery of goods, and (viii) Any other document used in the ordinary course of business as document of title (as described in the preceding paragraph). Document of Title v. Document showing the title : A document of title enables a person named therein to transfer the property by mere endorsement and delivery, whereas a document showing title does not confer any right to transfer by way of endorsement and delivery. For example, a share certificate shows that the person named therein is entitled to the shares represented by it, but does not allow transfer of the shares by mere endorsement and delivery of the certificate. Goods - Sec 2 (7) ♦ Goods mean every kind of movable property. ♦ Other than actionable claims and money, and it includes. ♦ stock and shares, growing crops, grass and things attached to or forming part of land which are agreed to be severed before sale or under the contract of sale. ♦ You may notice that 'money' and 'actionable claims' have been expressly excluded from the term 'goods'. 'Money' means the legal tender. 'Money' does not include old coins and foreign currency. They can, therefore, be sold or bought as goods. Sale and purchase of foreign currency is, however, also regulated by the foreign Exchange Management Act, ♦ 'Actionable claims', like debts, are things which a person cannot make use of, but which can be claimed by him by means of a legal action. Actionable claims cannot be sold or purchased like goods, they can only be assigned, as per the provisions of Transfer of property Act. ♦ Grass, growing crops, trees to be cut and their log wood to be delivered, malba of a building to be demolished, etc. are goods. Similarly, things like goodwill, copyright, trade mark, patents, water, gas electricity are all goods and may be the subject matter of a contract of sale. Seller - Sec 2 (13) ♦ A person, who sells or agrees to sell the goods,. Agreement to sell ♦ Where transfer of property in goods takes place at future date. Sale ♦ Where transfer of property in goods takes place at the time of contract.

ESSENTIAL ELEMENTS OF VALID CONTRACT OF SALES The following are the essentials of valid contract of sale : ■ There must be two parties, one seller and other buyer. ● Seller and buyer must be different. ● Part owner can sell goods to another part owner. o Partners are not regarded as separate persons for the purpose of sale of the partnership property. They are the joint owners of the goods and as such they cannot be both sellers and buyers [*State of Gujarat v. Ramanlal S & W.* (1965)]. But, a partner may buy goods from the firm or sell goods to the firm. ■ There must be movable goods as subject matter of contract. ■ There must be a transfer of property in goods. It means general property. (i.e. ownership) ■ There must be price involved. Price means money consideration for sale of goods. ● Exchange of goods for goods is barter. ● If Exchange is for partly goods and partly for money it is sale. ■ All essential elements of valid contract must be observed. ■ The contract of sale can be entered into, expressly or impliedly. Formation. The contract of sale may provide for any of the following methods. ● Immediate delivery of goods. ● Immediate payment of price but delivery at some future date. ● Immediate payment of price and immediate delivery of goods. ● Delivery or payment or both made in installments. ● Delivery or payment or both will be made at future date. TRANSFER OF "PROPERTY IN GOODS" ■ Property means general property in goods and not merely special property in goods. It means ownership of goods. Special property in goods means possession of goods. ■ Cases where property in goods is not transferred : ● Bailment ● Creating charge or pledge

Immediate transfer of ownership to buyer. It is executed contract It creates right in rem for buyer. Seller can use for price - if not buyer. Risk passes to buyer. Buyer can get goods even if seller has becomes insolvent. Delivery to receiver if buyer becomes insolvent before the payment of price. Ownership remains with the seller. It is an executory contract. It provides right in personal for buyer and seller. Seller can sue for damages. Risk doesn't passes to buyer. Buyer can get proportionate share in money but can't get goods. Delivery can be refused by seller if buyer be-

comes insolvent. Matter Sale Hire Purchase Meaning Applicable Act Parties How it made? Transfer of ownership Risk of loss Return of goods Legal effect of Installment Sale tax Property in goods is transferred from seller to buyer immediately Sale of goods Act, 1930 Buyer and seller Orally or in writing Immediately buyer becomes owner of goods Risk of loss passes to buyer Buyer can't return goods. Buyer remain liable to pay unpaid installment only Payable immediately. Agreement where hirer uses goods by paying regular installment and having option to purchase goods on payment of last installment. Hire Purchase Act, 1972 Hirer and Hire vendor Only in writing - Valid When hirer paid last installment Ownership not transferred hire vendor is liable Anytime terminate agreement and return Each installment paid is treated as hire charges When all installment is paid Difference between Sale and Bailment Difference between Sale and Hire Purchase Sale Bailment Transfer of property in goods for price Property is transferred Consideration is in form of price, i.e., money Delivery of goods for specific purpose that it will be returned to bailor or disposed of as per his direction It remains with bailor. Gratuitous bailment is possible Goods not returned to seller Goods returned to bailor purpose of bailment is over.

CONTRACT FOR WORK AND SKILL ■ Some contract involves use of both service and goods. This type of contract is considered as contract for work and skill. ■ This kind of contract involves exercise of skill and labour by one party on some goods or materials supplied by other party or supplied by party who exercise skill and labour for price. It is immaterial who supply material. Alternatively, it can be said that in this kind of contract, main purpose is to exercise work and skill. Supply of own goods is only subsidiary. Intension of parties is to transfer goods only after exercise of some skill and labour. ? As it is not falling within categories of contract for Sale no sales tax is payable. Example : (1) A dentist agreed to supply a set of artificial teeth to a patient. The material was wholly found by the dentist. Held, it was a contract for the sale of goods. (2) An artist was asked to paint a portrait. The material was supplied by the party and not by the painter. It was held to be a contract for work and labour and not of sale.

CLASSIFICATION OF GOODS Existing Future Contingent Specific Ascertained Unascertained Types of Goods. The goods may be classified into following categories : Existing goods ● Existing goods are the goods, which are owned and possessed by the seller at the time of sale. Existing goods may be of three types; (a) Specific Goods : ● The goods, which are identified and agreed upon by the parties at the time of contract of sale. ● It should be noted that the goods must be both identified and agreed upon. (b) Unascertained Goods : ● These are the goods, are not identified and agreed upon at the time of the contract of sale. ● These goods are merely described by the parties at the time of contract of sale. (c) Ascertained Goods : ● These are the goods, which are identified after the formation of contract of sale. When the un-ascertained goods are identified and agreed upon by the parties, the goods are known as ascertained goods. Future Goods ■ Future goods are those goods, which do not exist at the time of the contract of sale. ■ These goods are to be manufactured or acquired by the seller after the making of the contract of sale. ■ Future goods cannot be sold, but there can only be an agreement to sell. Example : A, a manufacturer agrees to sell 5 tables and 50 chairs to B at Rs. 10,000. B agrees to purchase it. However, tables and chairs are yet to manufactured by A. Contingent goods ■ It is a kind of future goods. ■ It is goods, the acquisition of which is contingent upon the happening or non -happening of an uncertain event. Example: A agrees to sell the goods loaded on the ship "Titanic", which is coming from London to Bombay. The ship may or may not arrive. So, these goods will be called as contingent goods. Basis Futures Goods Contingent Goods 1. Meaning Goods that are yet to be manufactured produced or acquired by the Seller after making contract of sale. Goods, the acquisition of which by the Seller depends upon a contingency, which may or may not happen. 2. Element of uncertainty Acquisition of Future Goods does not depend upon and uncertainty. The procurement of Contingent Goods is dependent upon an uncertain event. 3. Scope Future Goods

do not include contingent Goods because of the element of certainty. They are wider in scope, it includes future Goods. 4. Effect of Contract Where by a contract of Sale, the Seller purports to effect a present sale of future Goods, the contract operates as an "agreement to sell" the Goods[Sec.6(3)] There may be a "Contract for Sale" of Goods, the acquisition of which by the Seller depends upon a contingency which may or may not happen [Sec.6 (2)] 5. Example B agrees to buy the entire crop of wheat that would yield in S's farm, at the rate of Rs. 1000 per quintal. A agrees to sell to B a certain painting only if C, its present owner, sells it to him. The sale is contingent upon the sale by

Price of Goods - Sec 9 - 10 Price means the money consideration for a sale of a Goods 2(10) The following are the modes of determining price: [Sec. 9] ■ Price is specified under the contract. It is the most common method of determining the price. Here, parties decide the price in advance. ■ Price may be determined as per the method specified in contract. Example : Delivery of rice on 1st December 2008 at the rate prevailing on that day. ■ Price may be determined in accordance to custom and usage of trade. This method is applicable if parties regularly trade. ■ Where the price is not fixed as above, the buyer shall pay the seller a reasonable price. 'What is a reasonable price is a question of fact and circumstances. Fixation of price by third party. (Sec. 10) If it is so, contract shall specify name of third party. If third party fails to specify, contract is void but if goods are delivered to buyer and used by him, he is required to pay reasonable price. If the third party is prevented from fixing price, defaulting party is liable for the damages. Consequences of Destruction of Specific Goods - Sec 7 - 8 The consequences of destruction of specific goods can be discussed under the following three heads : ■ If goods perish before making the contract ● Contract is void - ab - initio, due to mistake as to existence of subject matter. ● It is to be noted that if the seller has knowledge about the destruction of goods, even then the enters into the contract of sale with buyer, then seller is bound to compensate to the buyer. ? Where a part of the goods is perished before making contract o If the goods was divisible, then the contract can be enforced party and if the goods was indivisible, then the contract becomes void - ab - inito. Example : A contracted to sell one wagon containing 700 bags of groundnut to B. Unknown to A, 109 bags had been stolen at the time of sale, Therefore, A made a delivery of 591 bags. Held, the sale was void. If goods perish after the "Agreement to sell; but before' Sale [Sec. 8] The contract is void if subsequently the goods have perished, and there is no fault on the part of the buyer or seller in perishing the goods. Example : A horse was delivered upon trial for 8 days. However, the horse died within 8 days, without the fault of buyer or seller. Held, the seller must bear the loss, as the contract was void. However, parties to the contract may provide otherwise also. Section 7 and 8 are applicable only in case of specific goods. Therefore, if unascertained goods are destroyed either before or after making the agreement, the contract shall not become void. Thus, in an agreement to sell unascertained goods, even if the entire stock of goods is destroyed, the contract that not become void and the seller will have to perform his promise. Example 'A' agreed to sell to 'B' 100 bags of wheat from his stock of 1,000 bags in his go down. The entire stock was destroyed by fire. 'A' is bound to deliver 100 bags of wheat or else he will be liable for damages. If the contract does not otherwise provide, then - ■ Stipulation as to time of payment is not deemed to be essence of contract. ■ Stipulation as to time of delivery is deemed to be essence of contract.

CONDITIONS AND WARRANTIES ■ Generally, at the time of sale, the seller makes some representation, statements of stipulations for the praise of his goods. Some of representations are in nature of opinion others are in nature of facts. Representation as to fact which becomes a part of contract of sale is called as stipulation. ■ Stipulation may be condition or warranty depends upon its importance in relation to contract. ■ Stipulation which is essential to the main purpose of contract is known as condition. Breach of condition gives the aggrieved party right to terminate the contract. ■ Stipulation which is collateral to the main purpose of the con-

tract is warranty. Breach of warranty gives rise to the aggrieved party right to claim damages but contract cannot be terminated. ■ The conditions and warranties may be express or implied. ■ Express conditions and warranties are those, which the parties agree expressly, i.e. orally or in writing. ■ Implied conditions are those, which are implied by the law in the absence of any agreement to the contrary.

IMPLIED CONDITIONS The following are the implied conditions which are contained in the Sales of Goods Act : Conditions as to title - sec 14(a) ■ There is an implied condition on the part of the seller that o In the case of sale, the seller has a right to sell the goods, and ● In the agreement to sell, the seller will have a right to sell the goods at the time of passing of ownership in goods. ■ If the title of seller out to be defective, the buyer must return the goods to the true owner and recover the price from the seller. Conditions as to description - Sec 15 ■ Where the goods are sold by description, there is an implied condition that the goods shall correspond to the description. Example : A machine was sold. The buyer has not been the machine, but the seller described it as a new one. However, it was found to be a very old one. Held, the machine was not according to the description. Sale by sample - Sec 17 ? Where the goods are sold by sample, the following are implied conditions. ● The bulk shall correspond to sample in quality. ● The buyer shall be given a reasonable opportunity to compare the goods with the sample. ● The goods shall be free from any defect, rendering them un-merchantable. It is to be noted that this implied condition applies only in the case of latent defects, i.e. those defects which cannot be discovered by ordinary inspection. In fact, such defects are discovered when the goods are put to use or by examination in laboratories. The seller is not liable for apparent or visible defects which can be discovered by examination. Sale by description as well as sample - Sec 15 ? If the sale is by sample as well as description, both conditions shall be satisfied. Goods must correspond with sample as well as description. Example : A agreed to sell to C some oil described as "Foreign refined oil" and warranted only equal to sample. The goods supplied were equal to sample, but contained a mixture to hemp oil. Held, C could reject the goods. Conditions as to quality and fitness for buyer's purpose - Sec 16 ■ Where the buyer, expressly or impliedly, tells the seller the particular purpose for which he needs the goods and relies on the skill or judgment of the seller, there is an implied condition that the goods shall be reasonably fit for such purpose. ■ When the article can be used only for one particular purpose, the buyer need not inform the seller the purpose for which the goods are required. Example : A purchased a hot water bottle from a chemist. While the bottle was being used by A's wife, it burst and injured A's wife. Held, the seller was liable for damages as the bottle was not fit for the purpose for which it was meant - Priest vs Last. Exceptions to the implied condition as to quality or fitness ■ The condition as to quality or fitness' well not apply, if the buyer is suffering from an abnormality, which renders the goods unsuitable for a particular purpose and the buyer does not inform the seller about that abnormality. Example A purchased a coat. He had abnormally sensitive skin, By wearing the coat, he got skin complaint. Held, there was no breach of condition, as he had not disclosed the abnormality of his skin. ■ Where the goods can be used for a number of purposes, the buyer should inform the particular purpose for which such goods were required. If the does not disclose, there is no such conditions of quality or fitness. Conditions as to merchantability ■ Where goods are bought by description from a seller, who deals in goods of that description, there is an implied conditions that the goods shall be of merchantable quality. ■ 'Merchantability' means that there is no defect in the goods, which renders them unfit for sale. Thus, a watch that will not keep time and a pen that will not write cannot be regarded as merchantable. Example : A radio set was sold to a layman. The set was defective. It did not work in spite of repairs, Held, the buyer could return the set and claim refund. Condition as to wholesomeness ■ In the case of eatable and food-stuff, there is an implied condition that the goods shall be wholesomeness, i.e., free from any defect which renders them unfit for human consumption. Example : A Purchased milk from B, a milk dealer. The milk contained typhoid germs. A's wife on

taking the milk got infected and died. Held, A was entitled to get damages - Frost vs Aylesbury Dairy Co. Ltd.

IMPLIED WARRANTIES The following are the implied warranties which are contained in the Sales of Goods Act : ■ In the absence to any contract showing contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is disturbed in the enjoyment of the goods, he can claim damages from the seller. Warranty as to quiet possession - Sec 14 Warranty against encumbrances - Sec 14 ■ Unless the circumstances of the case are such as to show a contrary intension, there is an implied warranty that the goods shall be free from any charge or encumbrance in favour of any party not declared to the buyer before or at the time contract is made. However, there will not be any such warranty if charge is declared to buyer at the time of sale. ■ An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade. ■ In case of sale of dangerous goods, the seller is under an obligations to warn the buyer about the probable danger. Failure to do so will make the seller liable to pay damages. Example : A sold a tin of disinfectant to B, knowing that it was likely to be dangerous to the tin, whereupon disinfectant powder went into her eyes, causing her injury. Held, A was liable in damages to B, as he failed to warn B of the probable danger. Matter Condition Warranty Stipulation If breach ■ Treatment Essential to main purpose of contract Buyer has right to cancel contract Breach of condition may be treated as breach of warranty Collateral (subsidiary) to main purpose of contract. Buyer has no right to cancel the contract . Can claim damages Breach of warranty can't be treated as breach of condition Difference between Condition and Warranty Warranty as to quality and fitness by usage of Trade - Sec 16 Warranty to disclose the dangerous nature of goods

DOCTRINE OF CAVEAT EMPTOR ■ The doctrine of 'Caveat Emptor' means "let the buyer beware". ■ It means that the buyer while purchasing goods must act with a "third eye and ear", i.e., o He should be careful to see that the goods purchased will serve his purpose well. ● If the buyer is not careful and he finds later on that the goods do not serve his purpose, he cannot hold the seller liable for it. ● The seller is under no obligation to tell the defects of his articles. However, in the following exceptions Doctrine of caveat emptor is not applicable: purpose and relied on skill of seller, the doctrine of caveat emptor is not applicable. of merchantable quality. In such case, doctrine of caveat emptor is not applicable. re not fit for human consumption then buyer is not liable but seller will be liable. ● Usage or custom of trade. r is obtained by fraud, the provision of doctrine of caveat emptor is not applicable. ● Implied conditions as to quality or fitness. It means when buyer has specified his ● When goods are sold by description, it should be ● In case of edible items, implied condition of wholesomeness is applicable and goods should a ● When the consent of buye Transfer of property from seller to Buyer 20-22 need Ascertained Goods i.e. Specific Goods Sale on approval (24) tely at the time of making the contract if all the following conditions are satisfied : ● Goods are not required to be weighed or measured for determining price. estroyed in fire. Here, seller is liable for damage because ownership is not transferred. transferred after formation of contract of sale when following t the goods are put into deliverable state has come to knowledge to the buyer.

TRANSFER OF OWNERSHIP Unascertained Goods ■ Ownership is transferred immediate o Contract is for specific goods. o Goods are in deliverable state. Example : A sold to B, 100 bales of cotton lying in his godown. Before the bales could be identified and separated, all bales were d Section 21 ■ If the goods are not ready in deliverable state at the time of making contract of sale, ownership of goods is t conditions are satisfied; ● Contract is for specific goods. ● Goods are put in deliverable state by seller. ● Fact that Example : Certain quantity of oil was purchased by A. The oil was to be filled in tins. B filled up some of the tins and informed A to take the delivery. In the meantime, a fire destroyed (a) Goods are Ascertained (b) Appropriation Unconditionally of

Goods (a) On approval. (b) Adopting the transactions. (c) Retains without notice of rejection for a long time. Deliverable state Priced determined tract is made d Deliverable State Price no Non - t deliver determined t of price able tate of ● deliverable d S After completion process t make it At the time when con After determination the entire quantity of oil. Held, A will bear the loss of the oil which was filed in the tins and the seller must bear the loss of the balances. t or measured at the time of making contract of sale, ownership formation of contract of sale when the following goods . It is determined later by weighed by the seller. ● Fact that the goods have been weighed or measured in order to determine price has knowledge of buyer. be weighed. Before the wheat was weighed, it was carried away by the flood. Held, the ownership of the wheat left with the Section 22 ? If the goods are not weigh of goods is transferred after the f conditions are satisfied. o Contract is for o At the time of formation, price is not determined or measurement. o Goods are put in deliverable sta come to kn Example A sold 10 kg wheat. The wheat was to seller and it did not pass to the buyer. Transfer of ownership in the case of unascertained goods - Sec 18 and 23 ? In the case of unascertained goods, when both parties come to know which particular ? ownership. It means process of identification and setting aside goods from a huge mass of goods. ally, it is made by seller, (unilateral act). The must be in a deliverable state, i.e. the Goods are in such state that the Buyer would, (c) is where, in pursuance of the contract, Seller - for their transmission to Buyer and) The assent of the parties may be given expressly or impliedly and can be given either (e) bags are ready and requires him to take them away. B says he will goods shall be delivered, ownership is transferred. The following conditions must be satisfied to transfer the ownership: o Ascertainment is first step in transfer of o o General Appropriation : For property to pass u/s 23, the following conditions must be satisfied - (a) Goods of the description mentioned in the contract must be produced or obtained. (b) under the contract, be bound to take delivery of them. They must be unconditionally appropriated to the contract, Unconditional appropriation (i) Delivers the Goods to Buyer or a carrier or other b (ii) does not reserve the right of disposal. [Sec. 23(2)] (d before or after the appropriation. Example : A having a quantity of sugar in bulk, more than sufficient to fill 20 bags, contracts to sell to B 20 bags of it. After the contract A fills 20 bags with the sugar, given notice to B that the take them as soon as he can. By this appropriation by A, and assent by B, property in the ■ ell unascertained goods is not complete sell, it is agreement to sell. e delivery as soon as possible. However, before the buyer could take their delivery. Goods were lost. Held, the buyer was responsible as It means buyer has the option either to return goods. Here, property in goods doesn't pass from seller to buyer : Case When ownership transferred sugar passes to B. Contract to s Example : 20 bags of sugar out of a bulk were agreed to be sold. 4 bags of sugar were filled up and taken away by the buyer. Subsequently, the seller filled up 16 bags and informed the buyer. The buyer replied that he will take the ownership had passed to the buyer. Transfer of ownership in Case of Goods Sent on Approval or on sale or Return Basis - Sec. 24 ? When the buyer given his approval or acceptance. When the buyer does some act of adopting the return the goods. If time is fixed for return of goods. e is fixed communicated to seller. On expiry of the fixed time On expiry of the reasonable time. transaction When the buyer fails to Approval or acceptance is co se When act of adoption is done (a (b) If no time Example Certain jewellery was delivered to a buyer on sale or return basis. The buyer pledged the jewellery. Held, the buyer had adopted the transaction and as such property had passed and the seller could not recover the jewel t is to be delivered against the nt of the price, the property in the goods shall not pass. he seller may reserve the right of disposal under the following modes - Reservation of right of disposal By making the Goods deliverable to the order of the By Seller drawing a bill for the price Seller or his agent. and making it acceptable by the buyer. from the Pawnee. ? Where the railway receipt or the bill of landing is in the name of the buyer, but is through the bank with the instructions that the same acceptance of the bill or payment Deemed right of reservation Sec. 25 T Shipment or Railway delivery Drawing of B/E on buyer Right to disposal of Goods Sec. 25 B

passes with ownership. We can say that risk and ownership and ownership to together. However, express agreement between parties may provide Possession of goods is immaterial for risk. e is liable for risk. Where the delivery of goods has been delayed due to the fault of buyer/seller, goods are at the risk of the party in fault. le is expressed by maxim

'Namodat quod non habet' which means no one can give what he does not himself posses. If seller's title is defective, then buyer's title will Alternatively, we can say that the seller can't give a better title to the buyer than be himself ons to the above general rule : Passing of Risk Sec. 26 ? The general rule is that r otherwise. ? ■ When delivery is delayed because of fault of any party, h ■ Sometime, risk is based upon custom or usage of trade. ? ? The general ru Sale by Non - Owners or Transfer of Title by Non - Owners - Sec 27 - 30 be defective. ? has. The following are the exception Sale of Estoppel [Sec. 27]: Where the owner by his conduct or by his act leads the buyer to believe that the seller has the goods, he shall be estopped from enying the fact that seller had no right to sell the goods. s Hira Sweets) the authority to sell and induces the buyer to buy d Example : (Refer Classroom Note ■ Sale by mercantile agent Sec. 27 Agent of seller can transfer the title if following conditions are satisfied : goods or documents of title. ● Buyer has acted in good faith. r has no knowledge that seller had no authority to sell. e basis of these documents, the agent pretended to the uyer that he had authority to sell the car and thus, the car was sold. Held, the owner was estopped from denying buyers title. ● Agent must be in possession of ● Agent has sold goods in ordinary course of business. ● Buyer Example A entrusted his car to a mercantile agent to receive offers and not to sell. A also delivered signed documents to the agent. On A mercantile agent means an agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. ? Sale by one of the joint owners - Sec 28 One of the joint owners can sale goods if following condition are satisfied. ● Goods are in sole possession of one of the joint owner. ● Buyer has acted in good faith.● Buyer has no knowledge that seller had no authority to sell. Example A and B Jointly purchased a car. The car was in the possession of A with the consent of B. Later on A sold the car to an innocent purchaser. The purchaser will get a good title. ■ Sale by person in possession under voidable contract ● Seller must be in possession of goods under contract voidable. ● Goods must have been sold before contract is rescinded. ● Buyer has no knowledge that seller had no authority to sell. Example A purchased a watch from B under fraud. A sold the watch to C, who bought it in good faith. C gets goods title. ■ Sale by seller in possession after sale - Sec 30 ● Ownership of goods has been passed to buyer. ● Seller continuous to be in possession of goods even after sale. ● Seller resells goods to new buyer. ● New buyer buys without notice to prior sell. Example A sells certain goods to B and promises to deliver the goods the next day. Before the delivery, A sells and delivers the goods to C, who buys them in good faith and without notice of the prior sale to B, C gets a good title to the goods, not with standing that the property had, before he purchased, passed to B. ■ Sale by unpaid seller Sec. 54 After exercise of his right of lien or right of stoppage goods in transit. ■ If the owner of goods has declared insolvent and his goods, is sold by official receiver or assignee or liquidator. ■ Sale by finder of goods (Sec.169 of IC Act 1872). o The owner can't be found or found but refuse to pay lawful charges to finder. ● The Goods are perishable in nature or in danger. To save goods from loss, finder can sale it. ● Lawful charges of finder amount as 2/3 of its original value. ■ Sale by pawnee or pledge(Sec.176 of IC Act 1872). ● If there is default on part of payment of price or performance within time. Reasonable notice is given by pawnee or pledge. 1. Meaning Sec.2(2) : Delivery means voluntary transfer of possession from one person to PERFORMANCE OF A CONTACT OF SALE another. 2. Duty of Seller Sec. 31: It is the duty of the Seller to deliver the goods and of the buyer to accept and pay for them in accordance with the contract of Sale. 3. Mode of delivery : Sec. 33: Delivery of Goods sold may be made by — (a) doing anything which the parties agree shall be treated as delivery ; or (b) which has the effect of putting the Goods in the posses-

sion of the Buyer or of any person authorized to hold them on his behalf. TYPES OF DELIVERY

Actual Delivery Symbolic Delivery Constructive Delivery It is a delivery where goods are handed over to the buyer or his authorized agent. It means goods are physically put in possession of the buyer. When goods are not physically delivered to the buyer but some symbol of the real possession or control over goods is handed over to buyer. Example Delivery of key of the car. Where the third party who is in possession of goods, acknowledge to hold goods on behalf of the buyer is known as construction delivery. Example : A sells 100 bags of cement lying in B's godown. B agrees to hold the 100 bags of cement on behalf of A. Forward Delivery Where delivery is to be made in future, and not at the time contract is entered into.

RULES REGARDING DELIVERY

Payment and delivery are concurrent Sec 32. ■ General rule suggest that the delivery of goods and payment of price are concurrent conditions. However, parties may provide otherwise. Part Delivery Sec 34. ● A delivery of part of goods with an intention of giving the delivery of the whole amounts to the delivery of the whole for the purpose of transfer of ownership of goods but a delivery of part of goods with an intention of separating it from the whole lot does not amount to the delivery of the whole of the goods. Buyer's duty to Demand the Goods Sec. 35 ? It is seller's duty to be ready and willing to deliver the goods to the buyer. But he is not bound to deliver goods unless the buyer makes a demand for delivery of the goods. ■ If the buyer fails to demand the delivery of goods, the seller is not liable for breach; Buyer must demand delivery within a reasonable time. However, contract may provide otherwise. Rules as to Delivery [Sec. 36] Place of delivery: Situation Place where goods are to be delivered If contract specified the place of delivery Contract does not specify the place of delivery; In case of sale In case of agreement of sell (i) In respect of existing goods (ii) In respect of future goods At the place specified At the place at which goods are at the time of sale At the place at which goods are at the time of agreement of sell. At the place at which goods are manufacture, produce or acquire Time of Delivery ■ If the contract specified time of delivery, goods shall be delivered within such time. ■ If no time is specified in contract as to time of delivery of goods, it should be delivered within reasonable time. Delivery when the Goods in Possession of third party 36(3) : Unless and until such third person acknowledge to the buyer that the holds the goods on his behalf However this provision shall not affect the operation of the issue or transfer of any documents of the title of the goods. Time is tender of delivery Demand or tender of delivery may be treat is reasonable unless made at reasonable hour. That is reasonable hour is a question affects. Expenses of delivery ■ All expenses of making delivery of goods shall be paid by seller ■ Buyer shall be the expense for receipt of goods. ■ unless otherwise agreed. Delivery of Wrong quantity Sec 37 ■ If the seller has delivered excess quantity, the buyer has the following options : ● To accept the whole of the goods delivered to him. ● To reject the whole of the goods delivered of him. ● To accept contracted quantity and reject the excess. ■ Seller has delivered short quantity, buyer has following options. ● To accept the goods delivered to him. ● To reject whole quantity delivered to him. ■ Right to reject the goods in excess of the contract does not apply where the variation is negligible. ■ Further, the right to reject the goods is not similar to the right to cancel the contract. If the buyer rejects the goods (either because they are less than or in excess of the quantity contracted for), the seller has a right to tender again the contract quantity and the buyer is bound to accept the same. Delivery of Mixed Quality - Quantity ■ The seller is bound to deliver goods of exact quality - quantity otherwise buyer may : ● Reject the whole. ● Reject the goods not complying with quality or quantity and accept the rest. [Contract is not repudiated] - means subsisting Delivery by Installment Sec 38 ■ Delivery by installment is not valid except when the contract provides so or buyer accepts the delivery in installment Delivery to Carrier or Wharfinger - Sec 39 ■ Delivery to carrier or wharfinger amounts as delivery to buyer if the following conditions satisfy : ● Buyer has made reasonable contract with carrier. ● Seller is required to give notice to buyer to enable him to insure goods. If not to do then his risk. ■ If seller makes valid delivery of goods, buyer has following duties : ● To accept the

goods. ● To pay the unpaid price. ■ Where goods are sent by sea route, seller shall give notice to buyer to insure goods otherwise he will be liable for loss. Risk where goods are delivered at distant place Sec 40 Where the seller agrees to deliver the Goods at his own risk at a place other than at which they are sold, the Buyer shall bear the risk of deterioration necessarily incident to the course of transit, unless otherwise agreed. Buyer's right to examining goods Sec 41 Delivered to buyer - not previously examined reasonable opportunity. Seller is bound on request to afford the buyer a reasonable opportunity of examine the good. Acceptance of Delivery - Sec 42 ? Delivery doesn't mean acceptance of goods, Buyer has deemed to have accepted the goods under the following circumstances : ● When he intimates the seller about acceptance of goods. ● After receipt of goods, he does some act of affirmation. ● When he doesn't inform seller about rejection of goods within a reasonable time. Buyer's not bound to return the rejected good Sec 43. He is required to intimate the seller about rejection. (Buyer's not bound to return the rejected goods) Liability of the Buyer for refusal of delivery of goods Sec 44 ? If the buyer wrongfully refuses to take delivery of goods, he is liable for damages and expenses like storage cost and transportation cost to the seller. Section 45 A seller of goods is deemed to be unpaid in the following cases : ● The price must be due but not paid. (When the whole of the price has not been paid or tendered) ● A negotiable instrument, like cheque, bill of exchange etc., was received, but the same has been dishonored. ● Seller who has obtained a decree for the price of the goods will also be an unpaid seller, if the decree has not been satisfied. ● When the seller has been paid the large amount but small portion of payment remains to be paid. ● Seller must have an immediate right of action for the price.

UNPAID SELLER Right of an Unpaid Seller Unpaid seller has the right against goods as well as against the buyer : ■ Rights of unpaid seller against the goods : ● Where ownership is transferred 9 Right of lien - Sec 47 - 49 9 Right to stoppage in transit - Sec 50 - 52 9 Right to resale of the goods 9 Where ownership is not transferred to the buyer, seller has the right to withhold delivery of goods. Right of an unpaid seller against the goods Sec 46 The ownership has not been transferred. Conditions Unpaid Seller + ownership not transferred. Consequences Lawfully refuse to deliver the goods to the buyer until he is paid the price. Buyer cannot hold the seller liable for non delivery of goods. Seller's Lien Sec.47 Condition for exercising lien Condition - Unpaid seller - actual possession Buyer not paid the price of the good. The unpaid seller can exercise lien even though. The property is goods has passed to the buyer He is in the possession of the goods as an agent or bailee for the buyer. Right of Lien ■ It means the right to retain the possession of goods until full price is received. ■ Seller can exercise his right of lien on the following two condition ● He must be in possession of the goods. ● He is the unpaid seller. ■ If buyer becomes insolvent, lien can be exercised by unpaid seller. ● When the seller waives his right of lien. ● When the buyer disposes off the goods by sale with consent of seller. ● When the goods are delivered off the buyer or his agent. ● When price is paid by the buyer. ● The right of lien cannot be exercised, where the right of lien has been expressly excluded. ● By delivery of goods to carrier. Without reserving the right of disposal of goods. ● By Estoppels i.e. where the seller so conducts himself that he leads third parties to believe that the lien does not exist. Lien is not lost merely because the unpaid seller has obtained a decree for the price of the goods Part delivery of goods does not disentitle the unpaid seller from existing lien on the remainder goods. Part delivery Sec. 48 In the following circumstances, unpaid seller's lien is lost: Sec 49 Right of Stoppage in Transit - Sec 50 to 52 Right of stoppage goods in transit Sec 50 ■ The right of stoppage in transit is an extension of the right of lien. ■ The right of lien is a right to retain possession, whereas right of stoppage in transit is a right to regain possession. ■ The right of stoppage in transit can be exercised, if the goods are in transit, and the buyer has become insolvent in the meantime. Conditions : unpaid Seller + possession of goods with carrier (independent) + insolvent buyer Duration of transit - Sec 51 ■ Carrier may hold the goods in three capacities : ● As Seller's Agent : In this case, the seller has lien on the goods, so question of right of stoppage in transit does not arise. ● As Buyer's Agent : In this case,

the seller cannot exercise the right of stoppage in transit. ● In an Independent Capacity : In this case, sit from the time they are delivered to a carrier for the purpose of transmission to the buyer, until the buyer or his agent takes their delivery. ■ Goods are deemed to be in course of transit from the time they are delivered to a carrier for the purpose of transmission to the buyer, until the buyer or his agent takes their delivery. ■ The goods are in transit, even if the buyer asks the carrier to take them to some other destination until they are delivered to the buyer at some other destination. ■ If the goods are rejected by the buyer and the goods are in the possession of the carrier, the transit is not at an end, even if the seller has refused to take them back. ■ Right of Stoppage of Goods in Transit can be exercised either : ● By taking actual possession of the goods, or ● By giving notice of his claim to the carrier, who holds the goods How Stoppage in transit is effected Sec 52 Effect of sub - sale or pledge by the buyer Sec.53 Sub sale of pledge by the buyer Effect on unpaid seller's right The unpaid seller's right of lien or stoppage in transit is not affected by any further sale or other disposition of goods by the buyer. Exception ● When seller has given his assent to such mortgage or other disposition of goods made by the buyer. ● When a document of title has been transferred to the buyer and the buyer transfer the document to a person who has brought the goods in good faith for value. Lien Stoppage-in-Transit 1. 2. 3. 4. 5. The goods are in actual possession of the seller. This right can be exercised even when the buyer is solvent but fails or refuses to pay the price. This right comes to an end when the seller parts with the goods. This is a right to retain possession over the goods. This right can be exercised by the seller himself. 1. 2. 3. 4. The goods are in possession of an independent carrier or bailees. This right can be exercised only when the buyer becomes insolvent. This right commences only when the seller delivers the goods to a carrier. This is a right to regain possession of the goods. This right can be exercised by the seller through the carrier or the bailee in whose possession the goods are. Distinction Between Lien and Stoppage-in-Transit Right of Resale Sec 54 ■ In case of perishable goods, unpaid seller can resale the goods if following conditions satisfied. ● Buyer fails to pay the price within reasonable time. ● Seller is not required to give notice of re-sale. ■ In case of other goods (not perishable) unpaid, the seller can resale goods if the following conditions are satisfied : ● Seller has exercised his right of lien or stoppage of goods in transit. ● Seller has given notice to buyer to pay the price within reasonable time and buyer fails to pay the price. ■ Following will be effect of resale : Rights In case of resale after notice In case of resale without notice Unpaid seller's right to recover loss on sale Original buyers' right to recover profit on goods New buyer's right to acquire good title. Available ■ It means seller refuses to deliver goods to buyer. ■ The following conditions must be satisfied to exercise right to withhold delivery of goods: o Seller is unpaid seller ● Ownership of goods has not been passed. Suit for price [sec 55] 55 (1) - Property has passed to the buyer - Buyer wrongfully neglects or refuses to pay price of goods 55 (2) - property has not passed to the buyer - price is payable on a particular date irrespective of delivery. - Buyer wrongfully neglects or refuses to pay price of goods Suit for damages for non acceptance (56) When buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non acceptance. Suit for damages for Breach (60) Repudiation of contract before due date: Where the contract is repudiated by the buyer before the date of delivery the seller may treat the contract as rescind and sue for damage for the breach. Suit for interest [61(2) (d)] Specific agreement between seller and buyer as to interest on price of goods from the date on which payment becomes due the seller may recover the interest from the buyer. ■ This right is in addition to other remedies available to the seller. Rights of buyer/Buyers remedies against seller Suit for damage for non-delivery Suit for Specific performance Repudiation of contract Suit for Breach of warranty Right of unpaid seller against buyer: Right to Withhold Delivery of Goods Suit for Interest The buyer has following remedies against the seller : ■ Suit for damage for non-delivery Sec 57 Buyer is ready and willing the take delivery of goods but seller wrongfully neglects or refuses delivery of goods, buyer may sue seller. ■ Suit for specific performance Sec 58 Where seller wrongfully refuses to

deliver specific or ascertained goods, court may direct specific performance order. ■ Suit for breach of warranty Sec 59 If there is breach of warranty, buyer may claim damages from the seller. Buyer may deduct the amount of damage from price payable if price is not paid. Buyer may recover the damages if price paid. ■ Right to repudiate the contract If the seller declares his intention of non - delivery of goods, buyer may repudiate the contract and immediately sue for damages. ■ Suit for Interest o In the absence of any contract to the contrary no interest shall be payable by the buyer on the delay payment. If, there is no such agreement, the seller may give notice to the buyer of his intention to charge interest on delayed payment. ■ It means transporter or bailee to whom goods are delivered by the seller for transportation to buyer. ■ When goods are delivered to a carrier, it is deemed delivery of goods to the buyer if following conditions are satisfied: o Seller delivers exactly same goods as per contract. ● The Buyer has informed carrier name, address and goods required to be delivered. ● The seller delivers goods for the purpose of delivery. Buyer's right against the seller or remedies against seller Auction Sale - Sec 64 Delivery to Carrier ■ It means public sale. The seller invites the interested parties by advertisement to offer the price. (i.e. bid) ■ The seller may hire service of auctioneer. An auctioneer is an agent of seller. ■ Advertisement of auction sale is not offer but an invitation to make an offer and therefore if an auction sale is not held on appointed day, bidder can't sue auctioneer. ■ Every bid amounts as offer and acceptance is given by auctioneer by some usual mode of acceptance e.g., fall of hammer, going - going gone or one - two - three. ■ Auction sale starts with placing of bids. Auctioneer accepts the highest bids but he may accept lower bid without giving any reason. When bid accepted, valid contract is formed. ■ Bid once made can be withdrawn before fall of hammer even if expressly prohibit. ■ Seller can bid at auction sale if bidders are informed of fact. (pretended bidding) ■ If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer. The bid is said to be pretended when it is made by the seller or some one on his behalf. ? Only one person can be appointed for bidding.(called puffer) ■ Auctioneer may set reserve price or upset price. Bid lower that which is invalid. ■ 'In the case of Knockout agreement, the buyers joint their hands to eliminate competition among themselves at an raise the bid against each other and only one of them will bid at the auction. When the profit. Prima facie, a knockout agreement is not illegal. However, if the intention of the parties to the agreement is to defraud a third party, this will be illegal. ■ Damping is illegal, it includes; ● Pointing out defects in the goods, or ● Misleading the purchaser or doing any other act so that he may not participate in the auction. It empowers the auctioneer to with draw the property from the auction. f Sale in lots : When the goods are put up for sale in lots, each lot is deemed, prima facie, to be the subject - matter of a separate contract of sale. Delivery of Goods in Contract by Sea Route It includes following three categories of contracts: ■ CIF Contract o It means 'cost, insurance and freight; ● Here, the price of goods includes the cost of goods, insurance and freight expenses. ● In CIF contract, buyer pays insurance and freight expenses. ● The essential of CIF contract is that seller shall deliver shipping documents to the buyer usually through the bank. If the seller fails to deliver the documents within reasonable time, he is liable for breach of contract. ● Ownership of goods is transferred to the buyer, when he pays the price of goods while receiving shipping documents. If buyer refuses to pay the price, the seller can claim damages for breach of contract.

INDIAN PARTNERSHIP ACT, 1932

Indian Partnership Act, 1932 is applicable to the whole of India

MEANING OF PARTNERSHIP (SEC. 4)

- Partnership = relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.
- Persons, who have entered into partnership with one another are called individually 'partners
- Firm' is the collective of the partners.
- The 'firm name' is the name under which the business is carried on.

ESSENTIAL ELEMENTS TO CONSTITUTE PARTNERSHIP FIRM

- At least 2 parties. Persons must be competent to enter into a contract. Parties may be natural or Artificial.
- Agreement between the parties. Agreement may be oral or in writing. It may be express or implied.
- Agreement must be to share the profits of the business;
- Business must be carried on by all or any of them acting for all

MINOR AS A PARTNER OF THE FIRM (Sec. 30)

(a) Minor can become partner for the benefits of the partnership with the consent of all the partners

(b) For admitting minor as a partner, an agreement shall be executed through his guardian

Rights of minor in partnership firm Liabilities of minor in partnership firm

- Right to share profits of the firm
 - Right to share property of the firm
 - Right to inspect accounts of the firm
 - Right to take copy of the accounts
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- Minor is not personally liable
 - However, share of minor in the firm is liable

PARTNERSHIP DEED

- 1) Partnership Deed is not mandatory.
- 2) However, it is advisable to have partnership deed in writing.
- 3) If there is partnership deed then each partner should have 1 copy.

CONTENT OF PARTNERSHIP DEED

Partnership deed should contain the following details –

- Firm name;
 - Names and addresses of partners;
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- Details of business of partnership;
 - Address of business place;
 - Profit sharing ratio
 - Date of commencement of partnership firm;
 - Duration of partnership firm;
 - Amount of capital contribution;
 - Salaries, commission and remuneration to partners;
 - Rights of the partners;
 - Liabilities of the partners;
 - Details of retirement of partners;
 - Provision for expulsion of a partner;
 - Arbitration clause for the settlement of disputes.

TYPES OF PARTNERSHIP

(a) Partnership at will is a partnership formed for an indefinite period. Time period of partnership is not fixed nor specified.

1) Such type of partnership can continue for any period of time depending upon the will of the partners.

2) It can be dissolved by any partner by giving a notice to the other partners of his desire to quit the firm.

(b) Particular Partnership is a partnership formed for a specific time for a specific purpose.

(c) Partnership for a fixed period is a partnership formed for a fixed period between partners.

TYPES OF PARTNERS

(A) Working partner or Active partner –

- Active partner contributes capital and also takes active part in the management of the firm.
- He bears an unlimited liability for the firm's debts.
- He is known to outsiders.
- He shares profits of the firm.
- He is a full-fledged partner.

(B) Sleeping or dormant partner –

- Only contributes capital;
- Does not take active part in the business;
- He shares in the profits or losses of the firm;
- His liability is unlimited;
- He is not known to the outsiders.
- A sleeping partner can retire from the firm without giving any public notice

(C) Partner in profits only –

- Partners in profit only share in the profits of the firm but not in the losses;
- His liability is unlimited;

- He is not allowed take active part in the business;
- Such a partner is associated for his money and goodwill.

(D) Nominal Partner –

- Nominal partner only lends his name and reputation for the benefit of the firm.
- He represents himself or knowingly allows himself to be represented as a partner
- Such type of partner neither contributes capital nor takes part in the management of business.
- He does not share in the profits or losses of the firm.

(E) Sub partner –

- Partner agrees to share his profit with third party.
- The third party has no right against the firm nor liable to act for the firm.

(F) Partner by estoppel-

- Partner falsely represent himself as a partner to third party
- Such person held liable to the third party.

RIGHTS AND DUTIES OF PARTNERS:

(a) Duties of Partners

(i) to carry on the business of the firm to the greatest common advantage;

(ii) to be just and faithful to each other; and

(iii) to render true accounts and full information of all things affecting the firm, to any partner or his legal representative

(iv) Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of business of the firm.

(b) Rights of Partners

- Every partner has a right to take part in the conduct of the business;
- Every partner, has a right of free access to all records, books and accounts of the business.
- the partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm (however, this is subject to the contract)
- where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;
- a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.
- A partner has power to act in an emergency for protecting the firm from loss
- Every partner has a right to retire by giving notice where the partnership is at will
- Every partner has a right to continue in the partnership and not to be expelled from it

- Any difference, arising as to ordinary matters connected with the business, may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided.

DISSOLUTION OF PARTNERSHIP

A) Dissolution by agreement – Section 40

A firm may be dissolved with the consent of all partners or in accordance with a contract between the parties.

B) Compulsory dissolution – Section 41

a firm is dissolved –

- 1) If all the partners or of all the partners but one as insolvent; or
 - 2) By the happening of any event which makes the business unlawful.
- C) Dissolution on the happenings of certain contingencies – Section 42

A firm is dissolved –

- a) if constituted for a fixed term, by the expiry of that term;
- b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
- c) by the death of a partner; and
- d) by the adjudication of a partner as an insolvent.

D) Dissolution by notice of partnership at will – Section 43

Where the partnership is at will, the firm may be dissolved by any partner giving notice, in writing, to all the other partners, of his intention to dissolve the firm.

The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is mentioned, as from the date of the communication of the notice.

E) Dissolution by the court – Section 44

Court may direct dissolution of a firm on the following grounds –

- if a partner has become of unsound mind;
 - if a partner has become permanently incapable of performing his duties as partner;
 - if a partner is guilty of conduct which is likely to affect prejudicially the carrying on of business, regarding being had to the nature of business;
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- if a partner wilfully or persistently commits breach of agreements relating to-
 - a) the management of the affairs of the firm; or
 - b) the conduct of its business; or
 - c) otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;
 - If a partner has in any way –
 - a) transferred the whole of his interest in the firm to a third party; or
 - b) has allowed his share to be charged; or
 - c) has allowed it to be sold in the recovery of the arrears of land revenue; or
 - d) of any dues recoverable as arrears of land revenue due by the partner;
 - the business of the firm cannot be carried on save at a loss; or
 - on any other ground which renders it just and equitable that the firm should be dissolved.

EFFECT OF DISSOLUTION

A) Continuing authority of partners –

- 1) Authority of the partners continues even after dissolution so long as is necessary to wind up the business.
- 2) each partner has an equitable lien over the firm's assets which he can apply to pay the debts of the firm and to receive any amount due from partnership firm.

B) Continuing liability of partners –

- 1) Liability of partners continues till the public notice of dissolution is given.
- 2) Liability of partners continues for all things necessary for the winding up of the business. The partners may complete unfinished transactions

C) Right to Return of Premium –

- a) To buy entry into an existing firm, a new partner sometimes has to pay a premium to the existing partners in addition to any investment of capital.
- b) On dissolution, he is entitled to demand the return of a proportion of the premium if the partnership was for a fixed term and was dissolved before the expiry of that term
- c) However, in the following 3 cases, partner will not get the premium return –
 - 1) Where the partnership was dissolved by agreement; or
 - 2) misconduct of the party seeking return of the premium; or
 - 3) death of a partner.

D) Settlement of Accounts on Dissolution (order of payment) –

- a) Losses shall be paid first out of undistributed profits next out of capital, and lastly, if necessary, by the partners individually in the profit sharing ratio.

b) The assets of the firm including the losses contributed by the partner as above shall be applied in the following manner –

- 1) in paying outside creditors;
 - 2) in repaying advances made by partners
 - 3) in repaying capital to partners; and
 - 4) if any amount is left then it shall be divided in PSR(profit sharing ratio).
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When can an indemnifier be made liable? Can he claim to be indemnified before he is demnified?

The question is as to whether the indemnifier can be asked to indemnify before the indemnity holder has actually suffered the loss, or his liability arises only after the loss has been suffered by the indemnity-holder. According to English common law, no action could be brought against the indemnifier until the indemnity holder had suffered actual loss. This situation created a great hardship in those cases where the indemnity holder was not in a position to meet the claim out of his pocket. Relief was provided to the indemnity holder in such cases by the court of equity. According to the rules evolved by the court of Equity, it was no more necessary for the indemnity holder to be demnified before he could be indemnified. In other words ,the indemnity-holder can now compel the indemnifier to save him from the loss in respect of liability against which indemnity has been promised.

The Bombay high court in *Gajanan Moreswar v.Moreswar Madan* ,observed:

The Court of equity held that the indemnified has incurred a liability and that liability is absolute , he is entitled to call upon the indemnifier to save him from that liability and to pay it off.

The Law Commision of India has expressed the opinion that the observation of Bombay high court is correct that the right of the indemnity holder should be more fully drefined and remedies of an indemnity-holder should be indicated even in cases where he has not been sued.