

**GOVERNMENT ART'S AND SCIENCE COLLEGE**

**KONAM**

**B.B.A.-III YEAR**

**BUSINESS LAW**



# **DJC3D - BUSINESS LAW**

## **SYLLABUS**

### **Unit – I**

Law of contracts – valid contract – acceptance – consideration – capacity of parties – free consent – coercion – undue influence – fraud – misrepresentation – mistake – void agreements – performance of contract – quasi contracts – discharge of contract - breach of contract - remedies for breach of contract.

### **Unit –II**

Law of sale of goods – contract of sale – conditions and warranties – transfer of property and title of goods – rights and duties of seller and buyer – rights of unpaid vendor – bailment and pledge – duties of bailer and bailee.

### **Units – III**

Contract of agency – mercantile agents – rights and duties of agent and principal – liability of agent and principal to third parties – contract of indemnity and guarantee – rights and liabilities of surety – discharge of surety.

### **Unit – IV**

Factories Act – definition – health, safety, welfare and working of adult workers – employment of women and young person – leave with wages.

### **Unit –V**

Industrial dispute Act – Authorities under the Act – powers and Duties of Authorities – Strike, Lockout, Lay-off and Retrenchment – Employees states Insurance Act – Benefits to Employees under the Act – Minimum Wage Act – Minimum Rate of Wages and Payment of Minimum Wages.

#### **References:**

1. N.D. Kapoor – Elements of Commercial Law
2. N.C. Shukla – A Manual of Mercantile Law
3. Dr .Avtarsingh – Law of contracts.



# **BUSINESS LAW**

## **UNIT – I**

**This unit contains law of contracts.**

### **INTRODUCTON:**

Law the word spelled in a civilized society, because it makes person to care for others.

**Salmon says that “Law is the body of principles recognized and applied by the state in the administration of justice”.**

From the above statement of salmon, we must understand that

- Law is to maintain justice
- Without justice there can be no civilized society.

(Also we must know that law has many branches)

The above statement and the successful appliace of law, reflects a mind free livingin society. Seeing the success of law in society, the business people who are part of society thinks about a separate law for their business transactions.

Such needful thinking’s results the formation of business law (such as commercial, Industrial, & company laws in western countries).

In India, the Indian contract act was enacted in the year 1872, Industrial laws from 1923, sale of goods act 1930.

### **LAW OF CONTRACT:**

#### **By Salmon definition**

**-A contract is an agreement creating and defining the obligations between parties.**

#### **By Sir Fredrick Pollack**

**-Every agreement and promise enforceable at law is a contract.**

From the above definitions, Indian contract act **sec 2(h)** says that

**-The agreements which can be enforceable by law are contracts.**



Speaking the above definitions and sec 2(h) of Indian contract act, we can understand that two (important) words plays important role

One is **Agreement** and the other one is **contract**.

The law of contract focuses on describing the relationship and differences between Agreement and contract. If we see the statement “all contracts are agreements but all agreements are not contracts,” it is clear that there is difference between contract and agreement.

In daily life we use to cross many agreements, such as promising our parents to back home in a particular time etc. We must know which of such agreements having the capacity of a contract. Now a question may arise, why the agreements should have the capacity of a contract? If we wish to get a legal remedy in case of breach of an agreement, the agreement must have legal enforceability. Contract is creating obligations between parties with the expectation that it should be performed by both the parties. Under the supervision of law it could be possible. The parties entering into a contract must have the intention that, breaking the contract is breaking the law. It is to safe guard the affected party by a contract.

Let's see, the general headings which make an agreement into a contract.

## **Essentials for a valid contract:**

### **Number of persons:**

The minimum number of persons to make a contract is two; there is no maximum limit to take part in contract.

So it is clear that **no one can make a contract with himself**.

### **Capacity:**

The persons taking part in a contract must have the capacity framed by law. The persons who are major persons with sound mind and having social status are capable persons to enter into a contract.

### **Case law:**

Moharibibi – vs – Dharmadasghose

In this case, a promissory note was signed by a minor person and the court held that, the contract is invalid. Because one of the party in this contract is being a minor person, at the time of entering into the contract.

**Legality:**

The parties involving in a contract must involve with the intention to be bind up legally. The promises between husband and wife, the promises between friends are social agreements; such type of agreements will not create a valid contract.

**Case law:**

Balfour – vs – Balfour

In this case, the husband promised his wife to send 30 pounds every month. But failed to send. When the wife sued, the court held that the agreement is a social agreement and not a valid one.

**Consent:**

The parties involving in a contract must agree with a free consent to the contract, if the given consent to the contract by the parties is not a free consent the contract will be voidable.

**Case law:**

Renganayagi – vs – Alwarchetti

In this case a widow woman was forced to enter into a contract at the time of death of her husband. There was a violation of section 297 of Indian penal code. Hence the court held that the contract is invalid.

**Object:**

The object of a contract should not be against Indian penal code, if so the contract will be void. So the object of a contract should be legal to be a valid contract.

**Case law:**

Pearce – vs – brooks:

In this case a motor car was hired by a prostitute for prostitution; the court held that the contract is void. Because the car owner knows the purpose for which the car hired is illegal.

**Consideration:**

Every party in a contract must be supported by consideration; otherwise the contract will be void.



### Case law:

Abdul azeez – vs – masumali:

‘A’ promised to give some money to ‘B’, for the renewal works going to be held in a mosque. But failed to pay the said amount. B sued against A, the court held that there was no consideration to a party in this contract and hence the contract is invalid.

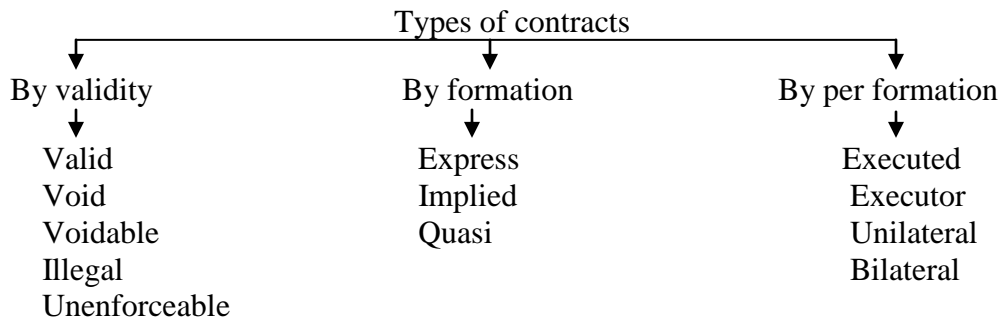
### Consensus ad-idem:

The parties entering into a contract must enter in a same thing in a same sense about subject matter. Otherwise the contract will be void.

- The agreements which fulfill the above conditions will shine as a contract.

### Classification of contracts:

The contract is classified as below according to the status of it:



Contracts are classified into three types:

- (I) **By validity**
- (II) **By formation**
- (III) **By performance.**

Regarding the fulfillment and non-fulfillment of essentials, **validity** is divided into five types:

- (i) **Valid:** The agreements which can be enforceable by law are declared as valid contract.
- (ii) **Void:** The agreements which cannot be enforceable by law called as void contracts. Such are void abintio and never create any obligations between parties. If we take example of the case Moharibibi-vs-dharmadassghose, one of the party in the contract is a minor at the time of signing the agreement and so the agreement is invalid from the beginning itself, and it cannot be converted into a valid contract.



- (iii) **Voidable:** where any one of the party in a contract having the capacity to convert a valid contract into invalid one through court, such type of contracts called as voidable contracts. If we take example of the case Renganayagi-vs-Alwarchetty, the agreement seems to be a valid one, until Renganayagi get a court order declaring the agreement as invalid because of no free consent given by Renganayagi.
- (iv) **Illegal:** if the object of an agreement is illegal that is against Indian penal code, such agreements called as illegal agreements and are void. If the illegal part of object can be separable by court, the court may apply the

### **Doctrine of severance and blue pencil rule:**

The court can adopt this rule to help the affected party by removing the illegal part of agreement, if it is able to separate from the remaining agreement. This is called as doctrine of severance and marking the illegal words, terms called as blue pencil rule.

- (v) **Unenforceable:** Where the object of a contract is impossible to perform, such agreements called as unenforceable agreements and are void. If we take example of Couturier-vs-Haistie case the subject matter of contract raw cotton was destroyed in sea, so without subject matter the execution of contract is impossible, and it declared as unenforceable contract by court.

Regarding **formation** the contract is divided into three types:

- (i) **Express contract:** The terms of a contract if expressly agreed by words or by written format, such type of contracts called as express contracts.
- (ii) **Implied contract:** An implied promise results implied contract, such contract can be inferred by the act or conduct of the parties. For example, when we get into a bus a contract will be activated and by the contract we have the duty to pay and the bus owner has the duty to drop us in destination.
- (iii) **Quasi contract:** Usually the contracts are created by parties, sometimes law itself create obligations between parties, so the contracts which are created by law and not by the parties called as quasi contracts. By mistake if you recharged a mobile phone which belongs to another, then the other person is liable under quasi contract to pay or support to return it. (See below in detail.)

Regarding **Performance** the contract is divided into four types:

- (i) **Executed contract:** where both the parties in a contract have performed their duties in a contract called as Executed contracts.
- (ii) **Executory contract:** where both the parties in a contract have to perform their duties in future called as Executory contracts.
- (iii) **Unilateral contract:** where one party in a contract performed his duties, and the other party has to perform his duty in future called as unilateral contract.



- (iv) **Bilateral contract:** when the obligations of both the parties in a contract are outstanding at the time of formation of the contract called as bilateral contract.

### **Quasi contracts:**

**Section 68 of Indian contract act** explains quasi contract it is derived from the maxim, “**oblicatio quasi ex contractu**”. Generally the contract is created from the agreements between the parties. Whereas in quasi contract without agreement a contract has been created between parties by law Quasi contract is created by law.

- It creates a right in personam not a right in rem.
- The person who incurs expenses has the right to receive it back.
- If any necessities supplied to the incapable person like minor, lunatic will come under quasi contract and such incapable persons or their representatives, will be bound to repay it.
- If any person lawfully do something for another person, not with the intention to act gratuitously and the other person enjoyed the benefits of it should repay it.

It rests upon equity, justice and good conscience. Law alone imposes obligations between the parties regarding their prior lawful activities.

### **Case law:**

**Nash – vs – Inman:** in this case some dresses were stretched by a tailor to a minor. When the tailor claimed money under quasi contract, the court held that this will not come under quasi contract because the minor already have sufficient dress, and hence the act of tailor will not come under necessary supply.

## **AGREEMENT**

According to **sec 2(e)** “**every promise and every set of promises forming the consideration for each other called as agreement**”.

So, Agreement starts from promises, and promises starts at offer and ends in acceptance. Agreements start at the end of acceptance.

**Offer + acceptance = agreement,**

(Students please note that in contract law, **2a+2b=2e**)

To understand about a contract we must start our self from offer (or) proposal.





## **OFFER (OR) PROPOSAL:**

**Section 2(a) of contract act says that” when a person signifies his willingness to do or not to do something is called an offer”.**

An offer should be clear and boldly, confused words should not be used in an offer.

An offer may be by express or implied mode.

An offer must make with the intention to be bind up legally.

An offer may be general or specific, general offer is one which was made to the whole world. Specific offer is one which was made to a particular person.

Anyone can accept general offer and contract begins with the person who accepted firstly. In case of specific offer that particular person to whom the offer made only can accept or reject.

An offer should not be given by the offeror when he is in an emotional condition or in a confused mental status.

An offer should not be like an invitation to offer.

What is an invitation to offer?

On roadside we can see “tiffin ready” board at hotels and “price list at departmental stores” such are not an offer but they are placed to induce the other persons to make an offer.

An offer should not be like a quotation of price. Quotation means a mere statement of price and it does not amount to an offer.

An offer should not be as a tender. Tender creates a path to receive offers.

Cross offers and counter offers never constitute a valid contract. Cross offer means without knowing the opponent’s offer, both the parties passing offer is cross offer. Here both are offers. And counter offer means an offer when counterly offered by the offeree.

If there are any special terms in offer it should be noticed to the offeree.

When an offer loaded with the above said conditions it will be treated as a valid offer and such kind of offers when accepted becomes contract.



## **Kinds of offer:**

Offer is divided into five types.

- (i) General offer
- (ii) Specific offer
- (iii) Cross offer
- (iv) Counter offer
- (v) Standing (or) continuing offer

### **General offer:**

The offer which was made to the whole world called as general offer. Anyone can accept it. The person who accepts it first will enter into the contract.

### **Case law:**

Carlil – vs – carbolic smoke ball co

A medical company made an advertisement in newspapers that it has introduced in market a new medicine for influenza. If the medicine used under the instructions given by them it will surely cure the said disease, if anyone not cured, there was a promise by the company to compensate with 100 pounds.

- Carlil used the medicine but not recovered. She filed a case against the company.

- The company countered that it does not know the acceptor and so there is no agreement.

The court held that it is general offer, purchased in shop alone created contract and the company is bound to pay her.

### **Specific offer:**

The offer which was made to a particular person called as specific offer. No others can accept it. Only the person, to whom it was made, can accept or reject it.

### **Cross offer:**

When the offer made by two persons to each other, containing similar terms crosses each other by post or other way called as cross offer.

Ex: on Nov 12<sup>th</sup> 'A' offers to sell his horse to B for RS 10000/, by post. On the same day without knowing A's offer B also sends a letter regarding the same purpose for the same price. Here no contract will arise between the parties, because both the offers terminate each other.



### **Counter offer:**

When an offer counterly offered by the offeree, then it is called as counter offer. When a counter made it will terminate the prime offer.

### **Case law:**

Hyde – vs – wrench:

In this case, A offered to sell his house for 1000 pounds, B offered for 950 pounds, which was rejected by A. later B agreed to buy it for 1000 pounds, but A refused. B sued for performance of contract, the court held that the counter made by B terminated the prime offer made by A.

### **Standing or continuing offer:**

When a single offer stands for a serious of transactions, such offer is called as standing offer.

### **Can an offer be revoked?**

Yes, possible only before its acceptance. (Please note that, **the acceptance to an offer is like a lighted match to the train of gunpowder**). Once acceptance given, it cannot be revoked. So beforean offer accepted, it can be revoked in the following ways.

### **Notice:**

By giving a proper notice to the other party an offer can be revoked.

### **Lapse of time:**

If time prescribed to give acceptance, within the time the offer should be accepted. Otherwise the offer will be automatically terminated in the prescribed time.

If time not prescribed it should be accepted within a reasonable time, otherwise the given offer will be terminated within a reasonable time.

### **Death:**

The death or insanity of offeror will terminate the given offer by the offeror.

### **Mode:**

If the given mode in offer violated by the offeree, such will terminate the offer.

### **Cross/counter offers:**

If cross and counter offers made, such will terminate the original offer.



## ACCEPTANCE

**Section 2(b)** of Indian contract act deals about **acceptance**.

It says that “When a person signifies this willingness to be bound by the terms of an offer called as acceptance”.

An acceptance can be made by the way of express or implied, both will constitute a valid acceptance.

Every acceptance should be from the acceptor or from this Representative. (In case of specific offer)

Every offer should be accepted with the condition given in the offer, Rejection of condition in offer will not be considered as acceptance.

Every offer should be accepted in a proper way otherwise it will be invalid. Mere silence never constitutes an agreement.

The communication of acceptance will be treated as a complete one, when it comes to the knowledge of the person from whom the offer is made.

On that time when the acceptance reached the offeror immediately contract will be activated.so that we use to say “**An acceptance to an offer is like a lighted match to the train of gunpowder**”.

(An offer can be revoked by giving a notice, lapse of time, omission of conditions, death or insolvent. But an acceptance cannot be revoked. )

An acceptance should not be before offer, if so, it will be invalid.

Every offer should be accepted within a Reasonable time. The lapses of time will not constitute an agreement.

Every offer should be accepted before it withdrawn.

Acceptance can be made by post that will also make a valid contract.

### **English law:-**

According to English law the date of the acceptance will starts when it puts in post box. From that date the parties will be bind by the terms of contract.

### **Indian law:-**

According to Indian law when the other party received the acceptance letter will be treated as the agreement date. From that date the parties will be bind by the terms of contract.



The above said rules make an acceptance valid one.

After learning the rules regarding offer and acceptance, we know how to make an agreement. And after we got the knowledge of agreement, we are in a position to go to the next stage.

That is

**Agreement + legal enforceability = contract.** This is nothing but section 2(h). In this statement we are going to learn which legal enforceable things convert an agreement into a valid contract.

The topics under legal enforceability are:

- 1) **Consideration**
- 2) **Capacity**
- 3) **Consent**
- 4) **Object**

## **Topic 1.Consideration**

In general words consideration means something in return by a contract to parties taking part in contract.

In the words of Pollock, “Consideration is the price for which the promise of the other is bought, and the promise thus given for value is enforceable.”

Indian contract act **section 2(d)** defines consideration. It says that at the desire of promisor, the promise or any other person has act or omit from doing something, such act or omission called as consideration.

Also Indian contract act **section 10** says that consideration is **essential** for a valid contract.

Indian contract act **section 25** says that without consideration a contract is **void**.

Consideration may be from a third person. Stranger to consideration is accepted .But stranger to contract is not accepted.

Consideration must move at the desire of promisor.

Consideration may move from promisee or any other person.

Consideration must be real not illusory.



Consideration need not be adequate. It has been laid by the term” **a peppercorn may be a good consideration**”. Consideration must have some value (not to be equal value) in the eyes of law.

In India Consideration may be past or present or in future.

Consideration must be legal and should not be illegal or immoral or opposed to public policy.

From the above said rules it is clear that every agreement must be supported by consideration otherwise void (section 25).

### **Exceptions to section 25:**

There are some exceptions to the above said rule that is to section 25.

**Section 25(1)** where an agreement made under love and affection it need not to be supported by consideration where the parties

- (i) Blood related
- (ii) Made with love & affection
- (iii) Written and registered one

This section does not apply to gifts.

**Section 25 (2)** where a promise to compensate another who has voluntarily done something for the promisor, such agreements even though without consideration will be valid.

**Section 25 (3)** where a promise to pay time-barred debt, is enforceable by law under this section. The agreement must be in writing and signed by promisor.

So please note that every agreement must be supported consideration and the consideration must fulfill the above said conditions to create a valid contract.

### **Topic 2. Capacity of persons**

We must note that law curtails in various ways the contractual capacity of individuals.

**Section 11** of Indian contract act says that ‘**Every person is competent to contract who is age of majority, sound mind and not disqualified by any law**’. Seeing sec (11) it is easy to observe the incapacity of persons to know the capacity of persons.



Incapacity of persons divided into three headings. Those are by

- (i) **Physical status**
- (ii) **Mental status**
- (iii) **Social status**

**In physical status** there is only one incapable person, he is **minor**.

Under **sec 3** of Indian majority 1875 act a minor is a person who has not completed 18 years of age. Under guardian's and ward's act 1890, the minor who is under the supervision of guardian or his properties under supervision of court should attain 21 years of age.

So it is clear that a contract with a minor is **void abintio**. A minor's agreement cannot be ratified. The principle of estoppel does not apply to minors. Law of misrepresentation also not applies to minor. A minor cannot be adjudged as insolvent. A minor can be an agent and a partner to share only profits. A contract to supply necessaries to minor will bind him.

**In mental status** there are three persons stated as incapable. They are

- (I) **Idiot**
- (II) **Lunatic**
- (III) **Drunken**

Idiot is a person who is mad by birth. (Permanent mental disorder persons)

Lunatics are the mentally deranged persons due to some mental strain or other personal experience. (Such persons having sound mind in some intervals.)

A drunken person means who is so drunk (alcohol) or intoxicated, he suffers from temporary incapacity to contract.

**In social status** there are three persons stated as incapable.

- (I) Foreign ambassadors, leaders
- (II) Alien enemy
- (III) Insolvents and convicts.

Foreign ambassadors and foreign leaders cannot make a contract with people of India. If so it will be a void contract. They can make a contract with president or with ministers.

If any country declared as alien country by government of India, then the contracts with such country and between the people of such country will be void.



The persons who are declared as insolvents and convicts by court, then such persons are said as incapable persons to enter into a contract.

So the persons who come under the above said seven headings are incapacity of persons to enter into a contract.

Make note that rest of all persons who will not come under the seven headings are said to be the persons who are having capacity to enter into a contract.

### **Topic 3.Consent**

**Section 13 to section 20** deals about consent.

Under this heading the consent given by the parties to a contract should be a free consent.

**Section 13** says that where two or more persons said to be consent if they agree' the same thing in the same sense'.

**Section 14** says that consent is said to be a free consent, only if it is not affected by coercion, undue influence, fraud, misrepresentation and mistake.

So under the heading consent we have to learn five topics.

- (i) **Coercion**
- (ii) **Undue influence**
- (iii) **Fraud**
- (iv) **Misrepresentation**
- (v) **Mistake.**

### **COERCION**

**Section 15** deals about coercion. If any consent to a contract obtained by (an offence) violating Indian penal code called as coercion. (Coercion in India is called as duress in England.)

**Coercion is divided into four types.**

- (i) **Committed**
- (ii) **Attempt to commit**
- (iii) **Detain**
- (iv) **Attempt to detain.**

Any consent to a contract obtained by committing or a threat to commit any act forbidden by Indian penal code.





**Case law:**

Renganayagi – vs – Alwarchetti.

‘A’ was forced to enter into a contract at the time of death of her husband; there was a threat to prevent being removed for cremation.

Any consent to a contract obtained by unlawful detaining or a threat to detain any property.

**Case law:**

Chikhamamiraju – vs – Seshamma.

‘A’ entered into a contract, because of the threat of her husband to commit suicide. The court held that the threat of suicide amounted to coercion, therefore voidable.

The burden of proof is at plaintiff.

The contract becomes voidable, at the option of the party who is affected by coercion.

Any benefit received by the other party must return it to the affected party.

A third person can do an offence for the party in a contract.

## **UNDUE INFLUENCE**

**Section 16** deals about undue influence.

Sometimes a person is compelled to enter into an agreement against his willingness as a result of unfair persuasion by the other person. By giving a mental torture the consent may be obtained called as undue influence.

The relationship between the parties plays a major role to prove undue influence.

One party in a position to dominate the other person, such domination must use to obtain an unfair advantage.

Some example relationship,

- (i) **Teacher and student**
- (ii) **Doctor and patient**
- (iii) **Advocate and client**



There may be mental torture.

One party shall meet loss because of undue influence.

Third person's influence shall not be treated as undue influence.

In undue influence the burden of proof lies on the plaintiff.

At the option of the party who is unduly influenced the contract becomes voidable.

Any benefit received by either party must be restored as the court thinks just and equitable.

## **FRAUD**

**Section 17** deals about fraud.

Fraud means any one of the following acts committed by a party during the formation of a contract.

Before entering into a contract the parties to the contract use to give some statements about subject matter to induce the other party.

Such statements are called as representations. If such representations not true, will be called as false representation.

- (i) A false representation in relation to the subject matter of a contract, made with the knowledge of falsehood.
- (ii) The party knows such representation is not true.
- (iii) A promise made without any intention to perform.
- (iv) A promise made with the intention to deceive the other party.
- (v) Because of such fraudulent act the other party been induced to enter into the contract.
- (vi) Because of such fraudulent act the other party should meet loss.
- (vii) Fraud itself is a tort.

Mere keeping silence never amount to fraud, but keeping silence amount to fraud, when there is a duty to convey about related facts.

**Case law:**

**Peek –vs – gurney.**

The prospectus of a company did not disclose with the liabilities of the company to impress shareholders as a prosperous company. If the liabilities disclosed there would be a



negative thought among the shareholders. The court held that keeping silence in a view to deceive the other party also amount to fraud.

The affected party has the right to rescind the contract.

The affected party has the right to claim damages or to insist performance.

## **MISREPRESENTATION**

**Section 18** deals about misrepresentation.

Before entering into a contract the parties to the contract use to give some statements about subject matter to induce the other party.

Such statements are called as representations.

When such representations becomes false, called as misrepresentation.

While giving such statements, the parties gave with the belief that the fact is true.

Without their knowledge the given statement might be false.

It is an innocent statement given by the party.

There will not be any intention to deceive.

There will not be any dishonest intention.

The false representation may be because of suppressing knowledge of subject matter.

Misrepresentation itself is not a tort.

Affected party can avoid the contract but cannot claim damages.

Affected party can accept the contract, he can insist, he should place in the position in which he would have been if the representation made had been true.

### **Case law:**

#### **Derry – vs – Peek:**

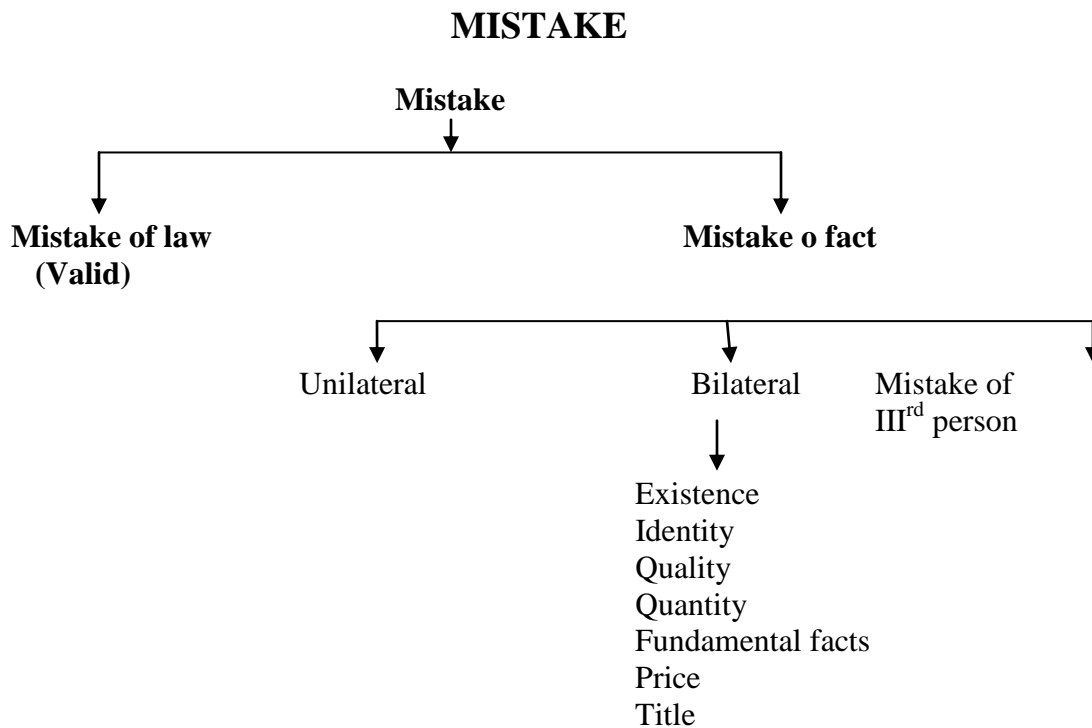
In the prospectus of a company it has been stated that they have been authorized to run tramways with stream power. But the government refuses to run tramways with stream power. In this case the court held that there was a mere misrepresentation but not fraud.



In the following circumstances,

- (i) **Contractual duties**
- (ii) **Fiduciary relationship**
- (iii) **Warranty of authority**
- (iv) **Estoppel**
- (v) **Issue of prospectus to directors**

- Honesty is not a defence and will amount to fraud.



**Section 20** deals about mistakes. Mistake is defined as an “erroneous belief about something”. This section also pointed that mutual mistake is a good ground for avoiding a contract.

Mistake is divided into two types:-

- (i) **Mistake of law**

Mistake of law is based on the legal maxim “**ignorantia juris non excusat**”. It says that mistake of law is not an excuse. So a party cannot get any exemption from the act done in ignorance of law.

Mistake of law does not affect the validity of contract, unless it relates to foreign law.



## (ii) Mistake of fact

Mistake of fact is based on the legal maxim “**ignorantia facti excusat**”. It says that when a mistake is to a matter of fact essential to agreement then it is called as mistake of fact.

Mistake of fact is divided into three types.

- (i) Unilateral
- (ii) Bilateral
- (iii) Mistake of third person

### **Unilateral mistake:**

A party in a contract is mistaken as to the subject matter, called as unilateral mistake. Unilateral mistake will not affect the validity of contract.

If there is a unilateral mistake in identity of person and in nature of contract will affect the validity of contract.

### **Bilateral mistake:**

Both the parties to a contract are under mistake as to the subject matter, called as bilateral mistake.

A bilateral mistake under

- (i) The existence of subject matter
- (ii) Identity of subject matter
- (iii) Quantity of subject matter
- (iv) Quality of subject matter
- (v) Title of subject matter
- (vi) Fundamental fact of subject matter
- (vii) Price of subject matter,

-Will be void.

### **Mistake of third person:**

Mistake exists on a third person who is not a party in a contract. The negligence act a third person will make the contract void.

### **Case law: Henkel- vs – Pape,**

In a telegraph office mistakenly typed the sentence in a contract without the number of quantity. The court held that because of the mistake of a third person the contract said to be void.



An agreement which is not affected by the above said five headings (coercion, undue influence, fraud, misrepresentation and mistake) only constitute a valid contract.

**Section 19:** if any agreement affected by the above said five headings (coercion, undue influence, fraud, misrepresentation and mistake) will be a void one.

## **Topic 4.Object**

The next topic is object. There are three headings under this topic.

- (i) Agreements against public policy
- (ii) Restraint of trade agreements
- (iii) Uncertain agreements.

### **1. Agreements against public policy:**

**Section 23**, of this act deals about agreements against public policy. The word public policy has not been defined in this act.

In general an agreement which is harmful to public welfare called as agreements against public policy.

The agreement which is made to trade with enemy is an agreement against public policy.

The agreement which is made to interfere with administration of justice is an agreement against public policy.

The agreement which is made for stifling prosecution is an agreement against public policy.

The agreement which is made for champerty and maintenance is an agreement against public policy.

The agreement which is made to interfere in matrimonial duties is an agreement against public policy.

### **Case law: lowe –vs – pears**

In this case 'A' agreed with 'B' not to marry anyone else except 'B'. The court declared the agreement is against public policy, and void.

The agreement which is made to trafficking in public office is an agreement against public policy.

The agreement which is made to marriage brokerage is an agreement against public policy.



The agreement which is made to interfere in parental rights is an agreement against public policy.

The agreement which is made to interfering in personal liabilities is an agreement against public policy.

The agreement which is made a restraint to take bid in auction is an agreement against public policy.

The above said agreements are agreements against public policy, and are **void**.

## **2. Restraint of trade agreements:**

**Section 27** says that every agreement by which any one is restrained from exercising any lawful business, trade or profession, is to that extent void.

Freedom of trade and profession is a right protected by constitution of India.

**Constitution act art 19(1)g** is giving right to freedom of trade and profession to the people of India. Based on this, section 27 of contract act declared that the agreements which are against art 19(1)g of constitution act are void.

**Restraint of trade agreements is divided into two types.**

- (i) Absolute restraint
- (ii) Partial restraint.

### **Absolute restraint:**

If a person is totally deprived of engaging himself in any trade or profession, such agreements called as absolute restraint of trade agreements, and are void.

### **Case law:**

**Oakes –vs – Jackson:** a person agreed not to work anywhere within 800 miles of present work spot. The court declared that the agreement is absolute restraint of trade and is void.

Partial restraint: if any restraint of trade agreements are partially restraint and made for the welfare of public, such are called as partial restraint of trade agreements.

### **Case law:**

**Nordenfelt – vs – masiumnordenfelt gun company.**

Nordenfelt sold his gun manufacturing company with an agreement not to carry similar manufacturing business for 25 years. He sold it for a huge sum than actual worth for that purpose. The court held that the agreement is valid one.



The partial restraint of trade agreements if made to protect any trade secret will be valid.

The partial restraint of trade agreements if made to regulate the selling price among shopkeepers will be valid.

The partial restraint of trade agreements if made to restrict the output of products among manufacturers will be valid.

The partial restraint of trade agreements if made, because of sufficient compensation given will be valid.

The partial restraint of trade agreements if made with a leaving partner not to carry similar business within an area or certain period will be valid.

The partial restraint of trade agreements if made for selling goodwill and agreeing not to carry similar business will be valid.

The partial restraint of trade agreements if made for service agreements will be valid. (for example: the government servants are prevented from doing any business).

## UNCERTAIN AGREEMENTS

Section 29 deals about uncertain agreements. The agreements which are not certain, or capable of being made certain are void.

The uncertain agreements are divided into two headings.

- Wagering contract
- Contingent contract

### **Wagering contracts:**

Section (30) of Indian contract act deals about wagering contract.

Wager means to '**bet**' about an uncertain event.

Wagering contract depends on a future event.

The happening of such event does not be in the hands of the parties.

There is a promise to pay money in the happening or non-happening of an event.

In wagering contract always a party stands gain and the other party met loss.

In wagering contract there will not be consideration to a party.

Wagering contracts are speculative in nature.





Lottery is an example for wagering contract.

Collateral agreements are valid one generally wagering contracts are void.

### **Contingent contracts:**

Section (31) of Indian contract act deals about contingent contract.

A contract may be

- An absolute one or
- A contingent one

Absolute contracts means where the promisor binds himself to performance in any event without any condition

Contingent contract means that which is dependent on something else.

Contingent contract deals about something related events in the possible future.

Contingent contract is a contract to do or not do something if some collateral event happened or happened.

There are two parties involving in this contract.

The performance of this contract depends on the happening are non-happening of the contract.

Such event should be a future event and the parties should not have control on the event.

The obligation is one sided

Insurance is an example for contingent contract.

There are two kinds of contingent contract.

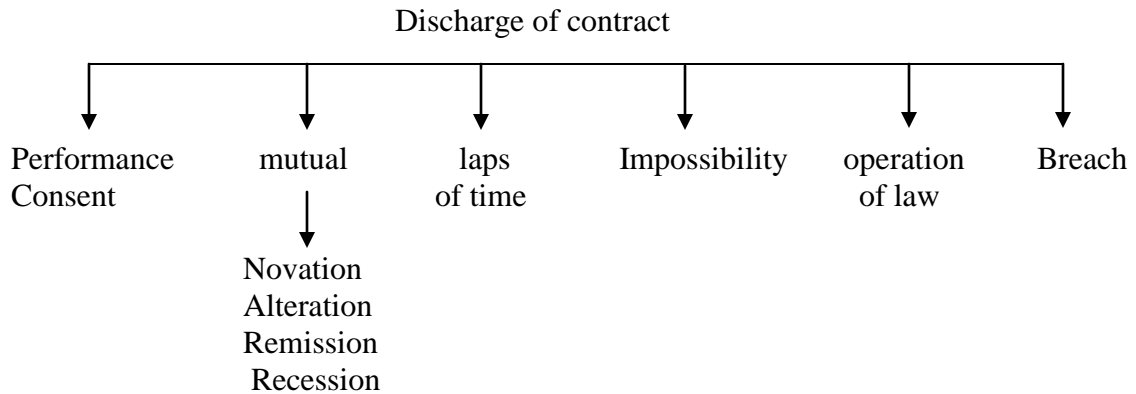
That is happening of the event.

- In a fixed time.
- Not happening of the event.
- Not in a fixed time.



## DISCHARGE OF CONTRACT

Contract is creating obligations between parties. The parties are tied up with contractual relationship. Such contractual relationship should be temporary. So that the parties have the duty to fulfill the contractual obligations of each other. Here, we are saying the end of contractual relationship as discharge of contract.



A contract can be discharged in six ways, they are:

- (i) **By performance**
- (ii) **By mutual consent**
- (iii) **By lapse of time**
- (iv) **By impossibility**
- (v) **By operation of law**
- (vi) **By breach.**

### **Performance:**

When both the parties performed their duties under a contract will be called as discharge of contract by performance.



### **Mutual consent:**

When both the parties in a contract mutually agreed to relive from the contract, called as discharge of contract by mutual consent.

- **Novation:** novation means placing a new contract in the place of original contract. This will discharge the original contract.
- **Rescission:** rescission means cancelling all are some of the terms of contract. This will discharge the original contract.
- **Remission:** remission means accepting a lesser consideration than agreed. This will discharge the original contract.
- **Alteration:** when some terms of contract has been changed with the consent of both parties. This will discharge the original contract.
- **Waiver:** waiver means both parties agreed that they shall no longer be bound by the terms of contract. This will discharge the original contract.

### **Lapse of time:**

The limitation act lays down that every contract should be performed within a reasonable time, or if time specified in certain contracts if such time limit is over, will discharge the contract.

### **Impossibility:**

If the object of the contract becomes impossible to perform, that will terminate the contract.

### **Case law:**

Couturier – vs – Haistie: There was an agreement to buy raw cotton which is coming by ship. Unfortunately, the cotton was missed in transit. The court held that the contract is discharged.

### **Operation of law:**

Sometimes law alone discharged the contractual relationship between the parties. Such circumstances are:

- **Death:** if any of the parties in a contract dead, then the contract will be discharged
- **Merger:** if both parties in a contract merged by their rights will discharge the prior contracts.
- **Insolvency:** when a party to a contract declared as insolvent by court, then the contract will be discharged.



**Breach:** The party in a contract has the duty to perform their obligations. Any one of the party refuses to perform his duty under a contract will be called as breach of contract. If a contract has been breached, that will discharge the contract.

## **Remedies for breach**

In discharging a contract first five ways that are performance, mutual consent, laps of time, operation of law, and impossibility, are made by the parties with consent. The last one breach where one party is willing to perform the other party only refuses to perform so that the law imposes remedies for breach of contract.

Remedies available are:

- (i) **Rescission**
- (ii) **Damages**
- (iii) **Quantum Meruit**
- (iv) **Specific performance**
- (v) **Injunction**

### **Rescission:**

When a contract is breached by one party, the other party may sue to treat the contract as rescinded and may refuse further performance. He is free from his entire obligation under the contract.

### **Damages:**

The object of awarding damages for the breach of contract is to put the injured party in the same position as before breach under Doctrine of restitution.

Case – Hadley –vs- Baxendale

The plaintiff's mill was closed down by the breakdown of a shaft. The defendant was the fleet owner. The plaintiff engaged the defendant to carry the broken shaft to the workshop. The defendant delayed to transporting. The plaintiff sued the defendant for breach of contract for the delay and requested the court to award damages.

The court held that the defendant was not liable for special damages because the plaintiff did not inform the importance of the shaft that is without the shaft the mill could not be run.

Section 73 – When a contract has been broken, the affected party can claim compensation for loss. Such compensation is not to be given any reasons remote or indirectly.



## **Kinds of Damages**

- 1. Ordinary damages:** The damage which is awarded by the court to the affected party for the loss what he actually met.
- 2. Special damages:** At the time of entering into the contract, if the parties disclosed the consequences in case of breach. If such representation made at the time of contract, the affected party can avail special damage in case of breach.

### **Special damages are,**

- (i) Nominal damages:** Such kind of damages awarded by court for the sake of negligence, and not determines the actual loss.
- (ii) Vindictive damages:** Such kind of heavy damages awarded by court in a view to threat the party who breached the contract.
- (iii) Discomfort damages:** Such kind of damages awarded by court for the physical inconvenience what the affected party suffered.
- (iv) Mitigation damages:** Such kind of damages awarded by court for the loss of reputation.

### **3. Quantum Meruit**

**Section 65** deals about quantum Meruit which means “As much as earned” where one party performed his duty partly, the other party breached the contract the party who has performed, can sue for the reasonable remuneration for the work done.

### **4. Specific performance**

The court can pass an order to carry out the actual performance where damages are not an adequate remedy to the affected party.

### **5. Injunction**

The court can pass an order directing the defendant to do some positive act or restrain some act.

## **PERFORMANCE OF CONTRACT**

Performance of a contract takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed.

### **Offer to perform:**

Sometimes it so happens that the promisor offers to perform his obligation under the contract at the proper time and place but the promisee does not accept the performance. This is known as “attempted performance” tender”. Thus, a tender of performance is equivalent to actual performance.



### **Essentials of A valid tender:**

1. It must be unconditional. It becomes conditional when it is not in accordance with the terms of the contract.
2. It must be of the whole quantity contracted for or of the whole obligation tender of an installment when the contract stipulates payment in full is not a valid tender.
3. It must be by a person who is in a position, and is willing, to perform the promise.
4. It must be made at the proper time and place. A tender of goods after the business hours or of goods or money before the due date is not a valid tender.
5. It must be made to proper person, i.e. the promisee or his duly authorized agent. It must also be in proper form.
6. It may be made to one of the several joint promises. In such a case it has the same effect as a tender to all of them.
7. In case of tender of goods, it must give a reasonable opportunity to the promisee for inspection of goods.
8. In case of tender of money, the debtor must make a valid tender in the legal tender money.

### **Contracts which need not be performed:**

A contract need not be performed

- When its performance becomes impossible.
- When the parties to it agree to substitute a new contract for it or to rescind or alter it.
- When the promisee dispenses with or remits, wholly or in part, the performance of the promise made to him or extends the time for such performance or accepts any satisfaction for it.
- When the person at whose option it is voidable, rescinds it.
- When the promisee neglects or refuses to afford the promisor reasonable the facilities for the performance of his promisee.
- When it is illegal.

### **Reciprocal promises:**

Promises which form the consideration for each other called reciprocal promises.

(i) **Mutual and independent**

Where each party must perform his promise independently and irrespective of the fact whether the other party has performed or is willing to perform his promise or not.

Ex: 'A' promises to pay the price of goods on 10<sup>th</sup> August. 'B' promises supply on 20<sup>th</sup> August Reciprocal promises.

(ii) **Conditional and dependent**

Where the performance of promise depends on a prior performance by other party called conditional and dependent.



**(iii) Mutual & concurrent**

Where the promises of both the parties to be performed simultaneously, called as mutual and concurrent.

Time is the essence of contract when one party promises to perform within the specified time.

## **APPROPRIATION OF PAYMENT**

### **Appropriation of payment (Section 59-61)**

Where a debtor owes several debt to a creditor, when makes a payment insufficient to the whole then the payment may be appropriate to the debts by parties, called appropriation of payment.

(i) Intimation by debtor – expressly intimation

**Ex:** A has several debts by promissory note which expires on June 1 for the amount 1000 – A pay Rs.1000 on June 1 the payment only to discharge the promissory note.

(ii) No Intimation –

If no intimation give to the creditor may apply it as in his discretion to any lawful debt due.

The payment should first apply to interest and after the interest fully paid off, to the principal.

(iii) Creditor fails – if failure to make any appropriation; the payment shall be applied in discharge of debts in chronological order by time.

The debtor has the right to appropriate.

In case of default the option goes to creditor.

In default of either the law will allow appropriation in order of time.

## **ASSIGNMENT OF CONTRACTS**

To assignment means “to **transfer**”

Transfer of contractual rights and liabilities under the contract to a third party with or will out consent of the other parts.

### **By act of parties**

(i) Personal skill – If any contract depends on contractual obligation of personal skill of a person cannot be assigned ( Section 40)

(ii) Contractual rights which is not involving in personal skill may be assigned.

(iii) An auction able claim can be assigned always.



## **Operation of law:**

Death of a party's rights & Liabilities can be assign to legal heirs or responsibility.

In case of insolvency the right & Liability previous to adjudication shall pass to the official receiver.

## **JOINT PROMISES**

**Section 42 to 45** deals about joint promises.

When two or more persons jointly have made a promise all of them are jointly and severally liable to perform. The persons are called Joint promises.

When two or more persons make a joint promise, the promisee may compel any of such joint promisor to perform the whole promises.

If any one of them died his legal heirs must join to perform.

The promises can compel to enforce the promise against one or more leaving the other.

Where one promissory performed the promise, has the right to claim proportionate contribution.

If anyone of the promisor makes default, then his part to be performed by the other promisor.

If the promisee releases any one of the promisor never discharge the other.

In England the liabilities are jointly not several.





## UNIT – II

**This unit contains sale of goods act, law of bailment and pledge:**

### **LAW OF SALE OF GOODS**

Sale of goods act enacted in India in the year 1930.

Essentials of sale

Section 4 (1), of sale of goods act deals about sale. Where one person transfers his goods to another person for a **price** called as sale. Transfer includes both possession and title.

One person cannot buy his own goods.

Contract of sale is a bilateral contract.

**Two parties taking part in this contract:**

- (I) **Seller**
- (II) **Buyer**

The person who transfers goods for a price called as seller.

The person to whom the goods transfer for a price called as buyer.

**Nemo dat quad non habet:**

This maxim says that only real owner can pass a valid title to the buyer under contract of sale.

Transferring ownership is the main part of sale. So the seller should have a clear title of goods. The person who is the owner of goods can be a seller of such goods. With the proper consent of owner of goods the agent, co-owner and auctioneer can sell the goods.

Subject matter of sale shall be goods.

Delivery of goods means transferring both possession and title. Delivery of goods may be immediate or in future. If delivery of goods and payment of consideration, happens immediately called as sale.

Delivery of goods should be upon a contract.



The delivery may be

- (i) Actual delivery, that is if the seller hands over the goods to the buyer or his representative,
- (ii) Symbolic delivery, that is if goods not delivered to the hands of buyer but handing over the key of the sold goods godown or like receipt of delivery note,
- (iii) Constructive delivery that is if goods are delivered by a third party.

In delivery of goods, the place of delivery, mode of delivery, time of delivery, mode of delivery shall be fixed as per the convenience of parties.

Transferring goods should be for a price. Price must be expressed in way of money. Payment of price is the essential part of contract of sale.

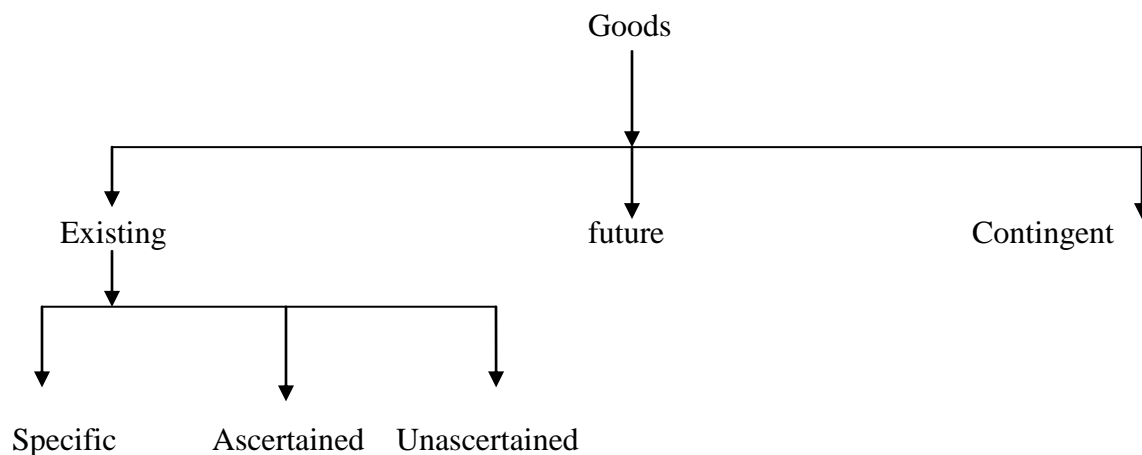
If any price not fixed at the time of sale a reasonable price should be payable to the seller.

Goods Means according to sec 2 (7) of sale of goods act every kind of moveable property, other than money and auction able claim.

All essentials for a valid contract must be present.

### Types of Goods:

**Section 2(7)** of sale of goods act defines goods, every kind of moveable property other than money will comes under the definition of goods.





## **Existing Goods**

As per section 6 of the Act, existing goods are those goods which are owned or possessed by the seller at the time of contract of sale.

## **Specific Goods:**

These are the goods which are identified and agreed upon by the parties at the time a contract of sale is made (section 2 (14)). For example, a specified watch, particular cow etc.

## **Ascertained goods:**

Ascertained goods are intended to include goods which have become ascertained subsequently to the formation of the contract.

## **Unascertained goods:**

These are the goods which are not identified and agreed upon at the time when the contract is made. They are identified only by description.

## **Future Goods**

Future goods mean goods to be manufactured or produced or acquired by the seller after making the contract of sale.

## **Contingent Goods**

Contingent goods are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.



## Differences between sale and agreement to sell:

We already saw that, transfer of possession and title immediately called as sale.

If, transfer of possession and title, will be in future called as agreement to sell.

The major differences are stated as below:

<p style="text-align: center;"><b>CONTRACT OF SALE (SALE)</b></p>	<p style="text-align: center;"><b>AGREEMENT TO SELL (CONTRACT FOR SALE)</b></p>
<ul style="list-style-type: none"> <li>-Sec. 4 (1) defines contract of sale</li> <li>-Executed contract</li> <li>-The ownership is transferred immediately from the seller to buyer.</li> <li>-Possession will be at buyer</li> <li>-A sale creates a <b>right in rem</b> (whole world).</li> <li>-In sale risk passes with the property to buyer</li> <li>-Buyer has to pay tax</li> <li>-Buyer can resale</li> <li>-In sale, the property in goods is transferred to the buyer and in cases of breach by the seller he has 2 remedies-(I) he has got personal remedy against the seller and can sue him for the price and (II) he can allow the goods in the hands of third parties.</li> <li>-In sale of contract, there are two things- contract and conveyance. Therefore goods cannot be attached and in execution of any decree passed against the seller.</li> <li>-A contract of sale may be absolute or conditional.</li> <li>-Existing and specific goods may take part.</li> </ul>	<ul style="list-style-type: none"> <li>Sec.4(3) defines Agreement to sell.</li> <li>Executory contract</li> <li>The ownership will be transferred at a future date, after fulfilling certain conditions.</li> <li>Possession remains at seller</li> <li>An agreement to sell creates only a <b>right in personam</b>.</li> <li>In an agreement to sell, the risk falls upon the seller.</li> <li>Seller has to pay the tax</li> <li>Seller cannot resale</li> <li>But in case of an agreement to sell, the buyer has got only personal remedy against the seller and can claim only damages.</li> <li>An agreement to sell is a contract pure and simple and no property passes. Therefore the goods remain liable to attachment and sale in execution of any decree passed against the seller.</li> <li>An agreement to sell is always a conditional.</li> <li>Future and contingent goods may take part</li> </ul>



## CONDITION AND WARRANTY

The persons entering into the contract use to make some representations about the goods. Such representations may differ in character and importance.

They are two types

- (I) **Condition**
- (II) **warranty**

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives right to repudiate the contract and to claim damages.

A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated

CONDITION	WARRANTY
Condition is defined in sec 12 (2).	Warranty is defined in sec 12 (3)
A condition is a stipulation essential to the main purpose of the contract	A warranty is a stipulation collateral to the main purpose of the contract
The breach of which gives rise to a right to treat the contract as repudiated.	The breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
Condition is essential to the main purpose.	Warranty is collateral to main purpose.
<b>REMEDY:</b> Breach of condition gives rise to repudiate the contract.	<b>REMEDY:</b> Breach of warranty gives rise to a claim for dam ages. Due to the breach of warranty a contract cannot be repudiated.
Breach of a condition may be treated as a breach of warranty.	Breach of a warranty cannot be treated as breach of condition.
5. Condition is one something agreed upon as a requisite to the doing or taking effect of something. a thing on whose fulfillment another thing or act is made to depend, a stipulation or provision, mode or state of being, state in which a thing exists.	5. Warranty is a guarantee or security that goods are of the quality stated, it is a promise by the bargainer, for himself and to secure the bargainer against all men for the enjoying of the thing granted.



## **Rights and duties of buyer:**

### **Rights:**

- The buyer has the right to take delivery of goods under the contract.
- The buyer has the right to reject in case of lesser in quantity.
- The buyer has the right to reject in case of poor quality.
- The buyer has the right to send back if it is less than agreed.
- The buyer has the right to refuse delivery by an insolvent.
- The buyer has the right to compel to insure the goods.
- The buyer has the right to claim damages in case of breach.
- The buyer has the right to recover amount in case of default.
- The buyer has the right to sue against wrong doer in contract.
- The buyer has the right to avail specific performance from court.

### **Duties:**

- The buyer has the duty to accept the goods.
- The buyer has the duty to apply for delivery of goods.
- The buyer has the duty to demand delivery at a reasonable time.
- The buyer has the duty to pay for the goods
- The buyer has the duty to in case of delivery by instalment.
- The buyer has the duty to inform seller in case of refuse.
- The buyer has the duty to compensate in case of wrongful act of him.

### **Unpaid seller:**

**Section 45** of sale of goods act defines an unpaid seller.

A seller is called as unpaid seller when the whole of the price has not been paid or tendered.

### **Rights:**

The unpaid seller has two rights, one against goods and other against buyer.

When the goods passed, the unpaid seller

- Has the right of lien
- Has the right to stoppage in transit
- Has the right to resale. The buyer should be noticed properly and a reasonable time should be given.



When the goods not passed, the unpaid seller

- Has the right to withhold the delivery of goods
- Has the right to stoppage in transit

Against the buyer the unpaid seller

- Has the right to file a suit for price, when the goods passed to the buyer
- Has the right to file a suit for damages
- Has the right to repudiate the contract
- Has the right to file a suit for interest.

## **CAVEAT EMPTOR:**

**Section 16** of sale of goods act defines about caveat emptor.

In sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'.

When seller display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods

If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer.

The seller is not bound to disclose the defects in the goods which he is selling.

It is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.

**The doctrine of Caveat Emptor is, however, subject to the following exceptions:**

1. Where the buyer makes known to the seller the particular purpose for which the goods are required.
2. In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose.
3. Where the goods are sold by description there is an implied condition that the goods shall correspond with the description. This rule of Caveat Emptor does not apply.
4. Where the goods are bought by sample, this rule of Caveat Emptor does not apply.
5. Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not apply.
6. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed; this rule of Caveat Emptor is not applicable.



7. When the seller intentionally conceals some defect in the goods and the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply.

## **BAILMENT**

Bailment derived from the word Bailier a French word.

S.148 of Indian contract act defines bailment.

Bailment means delivery of goods from one person to another person for some purpose and after completion of such work it shall be returned.

### **Two persons taking part in bailment:**

- (i) bailor**
- (ii) bailee**

The person who is delivering goods under bailment called as bailor.

To whom the goods under bailment delivered called as bailee.

Delivery of goods is necessary and should be absolute. Mere custody of goods never create contract of bailment.

Kalipermmal –VS –Visalakshi

In this case, 'A' delivered jewels to 'B' for remodel it. The jewels kept in 'B's locker and the key of locker handed over to A. one day the locker has been stolen. 'A' sued under bailment. The court held that there is no contract of bailment between A and B because the delivery is not absolute.

Delivery of possession may be actual delivery or constructive delivery.

Delivery should be upon a contract.

Delivery should have a specific purpose.

Transferring possession is temporary

Movable property can take part in contract of bailment.

The bailee must have the intention to take back the bailed goods.

The contract of bailment must be supported by consideration.





## Duties of bailor:

It is the duty of bailor to disclose the known facts of the goods bailed.

Reed - vs - Dean.

A motor boat took on hire to go for a holiday by A. the boat caught fire and A unable to cease because fire extinguishing machine is out of order. The court held that the owner of boat is liable.

It is the duty of bailor to bare extraordinary expenses.

**Great northern railway – vs – Swafield:** A horse was sent in train, after it arrived the destination no one took its delivery. The absence of owner made the railway company to feed the horse. Here the court awarded compensation to Railway Company under contract of agency by necessity.

It is the duty of bailor to indemnify the loss due to defective title.

It is the duty of bailor to take back the goods bailed.

It is the duty of bailor to pay back for the goods bailed.

## Rights of bailor:

- The bailor has the right to take back the goods.
- The bailor has the right in proportionate share in mixed goods.
- The bailor has the right to sue against wrong doer.
- The bailor has the right to claim increase profits.
- The bailor has the right to recover expanses.
- The bailor has the right to be compensated.

## Rights of bailee:

- The bailee has the right to claim necessary expenses occurred in bailed goods.
- The bailee has the right to get compensation if he met any loss.
- The bailee has the right of immunity. If the bailee has returned the goods to the bailor or any other person under direction given by the bailor, then the bailee is not liable for any defective title or lack of title.
- The bailee has the right to sue the wrong doers.
- The bailee has the right of lien (a legal claim to hold a property as security for a demand) on bailed goods.



Lien is of two kinds,

- (i) **Particular lien, sec 170**
- (ii) **General lien, sec 171.**

Particular lien is one where the bailee has the right on the goods on which he rendered service.

General lien is one where the bailee has the right other than the goods on which he does not render service.

### **Duties of bailee:**

- It is the duty of bailee to take reasonable care on bailed goods.
- It is the duty of bailee not to use the bailed goods unauthorized.
- It is the duty of bailee to act by the terms of contract.
- It is the duty of bailee not to mix the bailed goods with other goods.
- It is the duty of bailee to return increase profits to the bailor.
- It is the duty of bailee not to set up jus tertii. Jus tertii means not to set an adverse title.
- It is the duty of bailee to return the goods.

### **Classification of bailment:**

#### **On the basis of reward:**

Gratuitous bailment means, where the bailor and bailee are not entitled to receive any remuneration under bailment.

**Ex:** as a friend 'A' lends his books to 'B'.

Non-gratuitous bailment means, the bailor and bailee has exchanged some consideration under bailment.

**Ex:** hiring cycle from a person.

#### **On the basis of benefit:**

For the benefit of bailor - the bailment's which are only for the benefits of bailor.

**Ex:** delivery of things to another person for safe custody.

For the benefit of bailee - the bailment's which are only for the benefits of bailee.

**Ex:** lending a cycle for the use of a friend.



For the benefit of both bailor and bailee - the bailment's which are for the benefits for both parties.

**Ex:** hiring a cycle.

### **Finder of lost goods:**

The position of finder of lost goods is similar to that of a bailee.

**Section 71** says that when a person finds goods belonging to another called as finder of lost goods.

The person who finds goods belonging to another person and takes the goods into his custody is subject to the same responsibility as bailee.

If the lost good found in a public place the finder can keep them against the whole world. (Right in rem)

Goods found in a private property belong to the owner of the property.

The finder of lost goods should take reasonable steps to find the real owner.

The finder of lost goods should mix the found goods with his own.

Section 169, The finder of lost goods has the right to sell the found good, when the real owner refused to repay the necessary expenses spent on the lost good.(if the expenses exceeds 2/3 part of value of good).

The finder of lost goods has the right to sell, if the goods are perishable and the real owner could not be identified in time.

The all essentials of bailment will bind the finder of lost goods.

### **Case law:**

Nicolson – vs. – chapman,

A quantity of timber which are placed in a dock, were loosened by tide. The defendant voluntarily picks it and kept them a safe place. The court held that the defendant is not entitled to lien on timber for the trouble or expense which he met.



## Pledge-

- **Section 172** of Indian contract act deals about pledge.
- Pledge is a special kind of bailment.
- Bailment of goods as a security for payment a debt called as pledge.
- Two persons are taking part in pledge.
- They are pledger-pledgee (pawner, Pawnee).
- The person who is delivering goods as a security for a debt called as pledger.
- The person at whom some goods delivered as a security for debt called as pledgee.
- Pledge is a transfer of personal property possession.
- The transfer of personal property possession is temporary.
- The transfer of personal property possession is under a contract.
- Ownership will not be transfer in pledge.
- Goods and chattels can take part in pledge. Only after debt is completely repaid the pledge will be released.
- The pledge may keep the goods till the debt discharged.
- Delivery of goods may be actual, symbolic or constructive.



## UNIT – III

**This unit contains law of agency, law of indemnity and guarantee:**

### CONTRACT OF AGENCY

#### Essentials of contract of agency:

The person who is having contractual capacity to enter into a contract can enter into the contract in two ways that are –

- (I) Directly by him
- (II) Through a third person

If a person enters into the contract through a third person, such contracts called as contract of agency.

In contract of agency there are two parties taking part.

- (I) Principal
- (II) Agent

An agent is a person who employed to do an act for another person.

A principal is a person who employed a person to do his work under contract.

The contract of agency is to regulate the relationship between principal and agent.

The contract of agency based on agreement.

Here the principal must have the contractual capacity, the agent need not be with contractual capacity.

The above statement laid under the Latin maxim “**acti personalismoritur cum persona**” the maxim says that the act of an agent is considered as the done by the principal.

The contract of agency may be either orally or in writing.

The contract of agency may be either expressly or by implied way.



## **Different ways of creating an agency:**

An agency can be created by express or implied way. In implied way there are six types.

### **Agency by necessity:**

In some circumstances a person has to act as an agent for another person without the consent of principal. In such circumstances law bind the persons into contract of agency.

**Great northern railway – vs – Swafield:** A horse was sent by train, after it arrived destination no one took its delivery. The absence of owner made the railway company to feed the horse. Here the court awarded compensation to Railway Company under contract of agency by necessity.

### **Agency by holding out:**

Where a principal usually sends his servant to pledge his credit for certain purposes, he is bound by the acts of agent for similar purposes though done without consent of principal.

### **Agency by estoppel:**

Where a person by conduct or words spoken or written, willfully makes another person to believe that person is his agent, then he is prevented from denying the fact of agency.

### **Agency by ratification:**

**Section 196** deals about ratification.

When a person acts for another without the knowledge of that person, later another person may accept or reject the act. If he accepts the earlier act, that will create agency by ratification.

Ratify means to make valid. It is based on the legal maxim “**ratihabitio priori mandataequiparatur**” which means a subsequent ratification of an act is equivalent to a prior authority to do such act.

Ratification may be expressed or implied.

Ratification should be within a reasonable time.

Partly ratification is not a valid one.

The principal should know all the facts of prior act.

The principal and agent must be competent persons to enter into a contract.

Such prior act should not be illegal.



### **Agency by co-habitation:**

Where a man and women live as husband and wife, the necessities bought on credit by the wife will bind husband. This type of agency called as agency by co-habitation.

### **Agency by law:**

Sometimes law creates the relationship of agency in certain circumstances. The promoters are deemed to be an agent for the company. Every partner is an agent in the firm.

### **Kinds of agents:**

#### **Public agent:**

The agent who is appointed to perform the duties of government called as public agent.

#### **Private agent:**

The agent who is appointed to perform the duties of individuals called as private agent.

#### **General agent:**

The agent who is appointed to perform all the duties of another person called as general agent.

#### **Special agent:**

The agent who is appointed to perform some particular duties of another person called as special agent.

#### **Foreign agent:**

The agent who is appointed to perform the duties of another person in a foreign country called as foreign agent.

#### **Commercial agent:**

The agent who is appointed to perform all the commercial duties of another person called as commercial agent.

#### **Non-commercial agent:**

The agent who is appointed to perform all the noncommercial duties of another person called as noncommercial agent. (Like brokerage, etc.)



### **Co-agent:**

The agent who is appointed to perform all the duties with another agent called as co-agent.

### **Sub-agent:**

The agent who is appointed to perform all the duties under an agent called as sub-agent. Sub-agent is appointed by an agent with the consent of principal. Sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud and tort.

### **Substituted agent:**

The agent who is appointed to perform all the duties of another agent called as Substituted agent.

### **Delcredre agent:**

An agent who is acting as a surety called as Delcredre agent. (Agent + surety = Delcredre agent.)

## **Rights and duties of an agent:**

### **Duties of an agent:**

It is the duty of an agent to **execute mandate**.

It is the duty of an agent to **follow the instructions** given by the principal.

### **Case law:**

**Lilly – vs – double day:** In this case the principal gave instructions to his agent to put some goods in room number 1. but the agent put them in another room, where the goods lost in fire. The court held that the agent is liable.

It is the duty of an agent to **take reasonable care** during his employment.

It is the duty of an agent to **avoid conflict** of interest during his employment.

It is the duty of an agent **not to make secret profits** during his employment.

It is the duty of an agent **to remit sums** to the principal, during his employment.

It is the duty of an agent **to maintain accounts properly**, during his employment.

It is the duty of an agent **to avoid conflict** of interest during his employment.





It is the duty of an agent **to communicate and consult** with the principal, in case of difficulty during his employment.

It is the duty of an agent **not to delegate** further his authority, during his employment.

- It is based on the legal maxim “**delegatus non potest delegare**”. Which means a delegated authority cannot be delegated further. This maxim comes out from the maxim “**qui per alium facit per seipsum facere videtur**”. He, who does an act through an agent, is deemed in to do it himself. This maxim explains the liabilities of principal in a broad view.
- If there is a trade custom, or during emergency, or according to the nature of work, or during ministerial works, with the consent of principal an agent can delegate his authority.

### **Rights of an agent:**

The agent has the **right to get remuneration** for the work done by him to the principal.

The agent has the **right to retain** the goods of principal, till his claims been settled.

The agent has the **right of lien**, till his claims been settled. An agent has the right to retain the goods of principal, whether movable or immovable, till his claims been settled.

- Lien is divided into two types one is general lien and the other one is particular lien.
- General lien means where a person has the right to hold any property of another person for any claim to be settled from that person.
- Particular lien means where a person has the right to hold a particular property from which he have to receive any claim.

Generally the agent has particular lien on the property of his principal.

The agent has the **right to indemnity**, the agent has the right to recover from all the losses and expenses incurred to him in the contract of business.

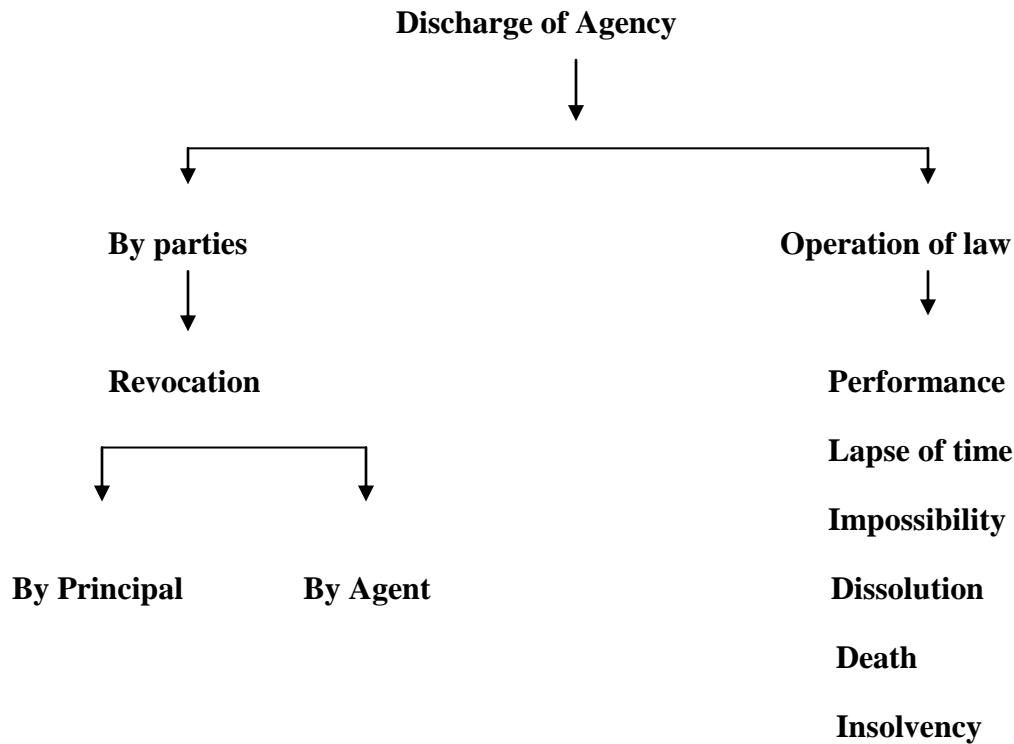
The agent has the **right to be compensated**; the agent has the right to get compensation from the principal in respect of injury caused to him.

Generally, if there is a right it will be the duty of another. Here we saw the rights and duties of an agent. Kindly note that,

- The rights of an agent will be the duty of the principal, and the duties of an agent will be the right of principal.



## Termination of agency:



**Section 201 to 210** explains the various ways to terminate a contract of guarantee.

An agency can be terminated in two ways:

- (i) By parties
- (ii) By operation of law.

### **By parties:**

An agency can be terminated by a mutual agreement between principal and agent. As the relationship between principal and agent is created by agreement, it can be terminated at any time or stage by mutual agreement between them.

The principal by giving a proper notice, can terminate the agency.

The agent also by giving a proper notice, can terminate the agency.

### **By operation of law:**

**Performance** : If the performance of a contract of agency has been completed, the agency will automatically comes to an end.

**Death** :The death of a party in a contract of agency will terminate the contract.



**Lapse of time:** If any contract of agency made for a particular period, it comes to an end as soon as the time limit is over.

**Destruction** : If the subject matter of any contract of agency has been destroyed, it puts an end to the contract of agency.

**Dissolution** : If any contract of agency related with a company, the dissolution of the company will put an end to the contract.

**Insolvent** : If the principal declared as insolvent by court, the contract of agency will be terminated.

**Alien enemy** : Any one of the party becomes a citizen of alien enemy country, the contract of agency will be terminated.

**Termination of sub agent:** If the relationship between principal and agent has been terminated, that will terminate the sub agent too.

In the above said ways an agency shall be terminated.

### **Contract of indemnity:**

**Section 124** deals about contract of indemnity.

A contract by which one party promises to save the other from loss called as contract of indemnity.

Two parties taking part in this contract,

- (i) Indemnifier
- (ii) Indemnity holder.

The person who is giving promise to save the other from loss called as indemnifier.

The person to whom, such promise given is called as indemnity holder.

The contract of indemnity may be express or implied. From the circumstances or from the relationship of parties contract of indemnity can be identified.

A person interested to the money and therefore pays it, is entitled to be reimbursed by the other party who is bound to pay.

Indemnity is a species of general contract, so it must possess all the essentials of a valid contract.



### **Case law:**

#### **Adams- vs – Jarvis,**

Some cattle sold in auction, later it was found stolen cattle and was recovered by police. The auctioneer sued under indemnity, the court held the wrong owner is liable.

### **Rights of indemnity holder:**

- The indemnity holder is entitled to recover all the losses from the promisor, all the damages which he was compelled to pay.
- The indemnity holder is entitled to receive all the expenses which he may be compelled to pay in suit.
- The indemnity holder is entitled to receive any amount which he may have paid for compromise.
- Insurance is an example for indemnity contract. (Not life insurance).

### **Contract of Guarantee:**

**Section 126** of contract act explains about contract of guarantee.

A contract of guarantee is a contract to perform the promise by a third person, in case of the default of the promisee.

**Three persons** taking part in contract of guarantee,

- (i) **Creditor**
- (ii) **Principal debtor**
- (iii) **Surety.**

The person who gives the guarantee is called the “**surety**”.

The person in respect of whose default, the guarantee is given is called the ‘**principal debtor**’.

The person to whom the guarantee is given is called the ‘**creditor**’.

The contract of guarantee may be oral or written, express or implied.



## **Relationship in a Contract of Guarantee:**

A contract of guarantee is a tripartite agreement between the principal debtor, the creditor and the surety.

### **There are three collateral contracts with a triangular relationship:**

1. A guaranteed debt arises by a contract between the creditor and the principal Debtor.
2. There is a contract by which the surety guarantees to pay the principal debtor in case of default.
3. There is a contract that the principal debtor shall indemnify the surety in case the surety pays in the event of a default of Principal debtor This contract, though not expressed is always inferred.

## **Essential for a Contract of Guarantee:**

The contract of guarantee must have all the essential elements of a valid contract.

All the three parties must be capable of entering into a valid contract. The principal debtor may be an incompetent person. In such a case, the Surety is regarded as the principal debtor and is liable to pay personally.

Consideration received by the principal debtor is sufficient to the surety too and the surety need not get any benefit for himself.

A person cannot become a surety without the consent of the principal debtor.

There must be a primary liability in some person other than the surety i.e., principal debtor.

The liability of surety is secondary

It arises only in case of default by the principal debtor. Except in case of guarantee given for f a minor

Contract of guarantee is based on good faith. .

a. The principal debtor or creditor need not disclose all material facts, before the contract is entered into.

b. The contract can be set aside for fraud committed by the principal debtor, only if the principal debtor or his agent knew of the fraud and was a party to the frau



## **Rights of surety:**

### **Rights against the creditor:**

- When the surety has paid the debt to the creditor, he gets all the rights of the creditor.
- The surety has the right to sue the principal debtor for the money.
- The surety has the right to compel the creditor to give all the securities of the principal debtor under subrogation
- Subrogation means transferring securities from creditor to the surety..
- The surety can use all the defence of the principal debtor against the creditor for the repayment of debt.
- The surety can compel the creditor to sue against the principal debtor.
- The surety can discharge himself from his guarantee, showing the principal debtor's dishonesty.
- In a fidelity guarantee, the surety can ask the employer to dismiss the employee if he is dishonest.

### **Rights against the principal debtor:**

When the debt is repaid by the surety he is entitled to sue the principal debtor and recover the money lawfully paid to the creditor. This is known as subrogation. The surety can compel the principal debtor to repay the creditor and discharge him. He has the right to be relieved from liability.

### **Rights against the Co-Sureties:**

Each co-surety has equal burden as the other sureties.

The liabilities of co-sureties are joint and several. So after the payment of the whole debt, the surety can compel the other co-sureties to contribute their share of the liability.

If the guarantee is for different sums, then each co-surety has to give proportionate contribution as per English law. In Indian law, they are equally liable, subject to the maximum amount guaranteed.

In case of co-sureties, a release of one co-surety does not release the others.



## UNIT – IV

### FACTORIES ACT:

#### Factories Act:

Factories act enacted in the year 1881. By the recommendations of Mr. Major Moore, factories act came into force in 1883. In the year 1948 on 1<sup>st</sup> April, a new act enacted and come into force in India.

#### Factory:

**Section 2 (m)** of factories act defines factory,

- Where there are 10 (or) more persons carrying manufacturing process with the aid of any external power called as factory.
- Where there are 20 (or) more persons carrying manufacturing process without any aid of external power also called factory.

The section focused on three matters:

- (i) **Number of persons**
- (ii) **Manufacturing process**
- (iii) **Power.**

The number of workers does not include the number of partners in factories.

The person who has ultimate control over the factory called as occupier.

The building land well go downs, which are inside (or) outside the factory premises taking part in manufacturing process will be called as factory.

Section 2(kkk) of factories act, defines manufacturing process:

The manufacturing process includes making, altering, packing, washing, plumbing, constructing, refilling etc.

#### Case law:

#### **Osmania University-vs-E.S.I,**

The students in the university by using the press produced some books under their practical work. Even though there is manufacturing process the court held that is not a factory.

Mine, railway shed, armed forces, data processing unit will not come under factory.

If there is no manufacturing process that will not come under factory.



## Case law:

### New Tajmahalcafé – vs – Inspector at factories:

In an ice-cream parlour more than 10 persons worked, using a refrigerator for serving ice creams, the court held that, there is no manufacturing process and the parlour is not a factory.

The factories act deals about:

- (I) **Health provisions (sections 11 to 20)**
- (II) **Safety provisions (sections 21 to 41)**
- (III) **Welfare provisions (sections 42 to 50)**
- (IV) **Working hours of adults (sections 51 to 66)**
- (V) **Employment of women and young persons (sections 67 to 77)**
- (VI) **Annual leave with wages (sections 78 to 84).**

### The rules regarding Health of workers:

Under the recommendations of royal commission, sections **11 to 20** of factories act reflect about the health of workers,

#### Section (11) deals about Cleanliness:-

By this section every factory must kept the premises clean and free from other sanitary nuisance.

- Every factory must be varnished for **every 14 months**. It also includes white washing in the factory.
- Every factory, if pasted with distemper, water paint it should be re painted for **every 3 years**.
- Every factory, if painted with wall paint it should be repainted for **every 5 years**.

#### Section (12) deals about Wastages:-

Every factory should provide effective arrangement to remove the wastages. Treatment plant should be used to remove the wastages.

#### Section (13) deals about Ventilation:-

Every factory must have pleasant ventilation of fresh air to work peacefully and exhaust fan can be used to protect workers. The state government shall prescribe a standard of adequate ventilation and reasonable temperature in any area.





#### **Section (14) deals about Dust and fume:-**

Every factory must have provision to remove dust and fume inside the factory, exhaust fan can be used for the purpose. Effective measures must be taken by every factory for prevention of inhalation or accumulation of dust and fumes in work rooms.

#### **Section (15) deals about Artificial humidification:-**

Every factory should maintain humidity normally. If humidity increased will causes asthma ismphelia and lung diseases. The factory shall increase humidity in air by using water.

#### **Section (16) deals about Overcrowding:-**

Every factory should maintain the distance between two workers in a factory, it should exceed 14.2 cubic meter .It is to protect the worker from lack of oxygen.

#### **Section (17) deals about Lighting:-**

Every factory should provide normal lighting to the worker. The worker should not compel to work in High power (or) dim light situations. If there is a necessity to work in such situations eye protection glasses should be given to the worker.

#### **Section (18) deals about Drinking water: -**

Every factory should provide pure drinking water to its workers.

- If the number of **workers exceeds 250**, cooling water must be provided.
- Every drinking water point should not be **within 6 meters** of toilets.
- The drinking water points should be **noticed** in English and the local language.

#### **Section (19) deals about Latrines& Urinals:-**

Every factory should provide separate latrines for male and female workers.

- In latrines urinals should be fitted with the tiles to the height of **5 meters**. The toilets should be cleaned **daily** using antiseptic liquids. If the number of workers exceeds 250 effective sanitary measures should be provided.
- Toilets should be situated in a convenient place and accessible to workers easily.
- Toilets must be with adequate light and ventilation.

#### **Section (20) dealsabout Spittoons:-**

Every factory should provide sufficient spittoons at convenient places, If any worker spits other than spittoons will be **fined Rs.5**.



## **The rules regarding safety of workers:**

Under the recommendations of royal commission, sections **21to 41** of factories act reflects about the safety of workers in factory.

### **Section (21) Fencing:-**

Every machine in the factory should be fenced property, to protect the workers. If it is not covered it is an offence. In case of any negligence in this regard the factory manager is liable for penalty.

### **Section (22) Moving machine:-**

Every moving machine should be safety protected any only trained adult worker only can be engaged in the machine.

### **Section (23) Dangerous machine:-**

Every dangers machine should be safely protected and only trained adult worker only can be engaged in such machines.

### **Section (24) Cutting off power:-**

Every worker should be trained to cut off the power and electricity through suitable striking gears and other devices and to stop machines during emergency.

### **Section (25) Self-acting machines:-**

There must be sufficient space given to self-acting machines. The moving space should not exceed 45cms during onward and inward traverse from any fixed structure which is not a part of machine.

### **Section (26) New machines:-**

The new machines should be fitted properly by the seller of machine and the worker must be trained by trained persons.

### **Section (27) Cotton openers:-**

Women and young persons should not allow to work near cotton openers.

### **Section (30) Revolving machine:-**

Every moving and revolving machine should be operated by trained adult worker and the speed should not exceed as indicated on notice.



### **Section (31) Pressure plant:-**

Any factory if operates any plant or machine above atmospheric pressure, effective measures should be taken for the safe working condition.

### **Section (32, 33) Floors and Stairs:-**

The floors and steps should be constructed and maintain properly, the pits and sumps should be closed property.

### **Section (34) Excessive weights:-**

The workers should not be compelled to lift excessive weight and women and young persons should not be engaged in such lifting process.

### **Section (35) Protection of eyes:-**

Every worker's eye should be protected during his employments. Effective screens and suitable goggles should be provided to the worker to avoid risk of injury to eyes.

### **Section (36, 37, 38,) Safety measures to cease fire;-**

No worker shall allow entering in any chamber, tank where gas or fume or likely to be present without wearing breathing apparatus.

Safety measures to prevent and escape from out-break of fire, should be trained to the workers.

The factory should ensure that all the workers are familiar with the means of escaping in case of emergency.

### **Section (39, 40, and 41) Powers:-**

The inspector of factories has the power to give notice or to enter into a factory for inspection, he has the power to enquire in factory, and he has the power to inspect and to take the required documents with him to his office.

Where there are more than 1,000 workers or ordinarily employed, a safety officer should be appointed by the state government.

The government has the power to alter or to make new rule regarding the above sections.

### **The rules regarding welfare of workers:**

Under the recommendations of royal commission, sections 42to 50 of factories act reflect about the welfare of workers,



### **Section 42 Washing facilities:-**

Every factory should provide washing facility to its workers. Separate washing facilities should be provided for male and female workers.

### **Section (43) Storing facilities:-**

Every factory should provide storing facilities and drying facilities to its workers. Separate storing and drying facilities should be provided for male and female workers.

### **Section (44) Sitting facilities:-**

This section included in factories act, Because of the continuous standing position during employment of a worker, this section provides sitting facility to the workers for few moments to be relaxed.

### **Section (45) First aid appliances:-**

Every factory should provide sufficient first aid boxes, which should be in charge of a person who is having a certificate in first aid treatment.

For every 150 workers the management should provide a first aid box.

The first aid boxes should be handled by the trained workers.

If the number of workers exceeds 500, an ambulance service should be provided with an attender and with a staff nurse.

### **Section (46) Canteen facility:-**

If the number workers exceed 250, the management should provide canteen facility to its workers.

The canteen should maintain price and quality under the guidance of the government.

### **Section (47) Rest and Lunch rooms:-**

If the number of workers exceeds 150, the factory should provide a lunch and rest rooms to its workers. Lunch room is compulsory where there are no canteens.

### **Section (48) Crèche:-**

If the number woman workers exceed 30, the factory should provide a crèche which is to maintain the children of the women workers during employment.

Up to the age of six years the children shall be admitted in crèche.



Well trained woman worker should be employed to maintain the crèche.

. Every women worker who are availing crèche should be permitted to take nursing break four times a day.

### **Section (49) Welfare officers:-**

If the number of worker exceeds 500, the factory should appoint a welfare officer for the welfare workers.

Such officers will not be treated as a workman.

### **Section (50) Powers:-**

The government has the power to alter or to make new rules regarding welfare provisions.

### **The rules regarding working hours of adults:-**

Under the recommendations of royal commission, sections **51 to 66** of factories act reflect about the working hours of adults in factory.

Under factories act

- (i) An adult means the persons who have completed eighteen years of age. (section **2a**)
- (ii) An adolescent means the persons who has completed fifteen years of age but has not completed his eighteen years of age. (section **2b**)
- (iii) Child means a person who has not completed his fifteenth year of age.(section **2c**).
- (iv) Young person means a person who is either a child or an adolescent.

### **Section (51) Weekly hours:-**

**Section 2 (f)** defines a week, that is a period of 7 days which begins from the midnight of Saturday and to the next Sunday midnight.

No adult worker shall be allowed to work more than 48 hours per week.

### **Section (52) Weekly holidays:-**

According to factories act every week starts on Sunday and ends on Saturday. The first day of the week is a holiday that is Sunday.



### **Section (53) Compensatory holidays:-**

If a worker, worked in any holiday then he shall be permitted to take a leave during any other working day within two months of following the month.

### **Section (54) Daily hours:-**

Every worker shall work in the factory at the maximum of 8 hours.

### **Section (55) Intervals:-**

Every adult worker shall not be permit to do continuous work for a period not exceeding five hours. At least the minimum of half an hour break should be given.

### **Section (56) Spread over:-**

The overall time of the worker inside of the factory including intervals and rest time, shall not exceed ten and half hour per day.

### **Section (57) Night shift:-**

Where the same kind of work carried out by two or more sets of workers in factory, in different periods of a day, each of such set of workers called as “**Group** or **Relay** “and each of such working periods called as “**shift**”.

If the worker who has been worked in night shift, must put in rest for 24 hours at the end of his last shift of night in a week.

### **Section (58) Over lapping:-**

This section prohibits multiple shifts to be worked by a worker in the same factory or in other factory.

### **Section (59) Over time:-**

If a worker worked more than eight hours in a day the extra time he worked will be calculated as over time.

Over time wages should be doubled the wages which he is receiving ordinarily.

### **Section (60) Double employment:-**

The worker in a factory should not work in any other factory If so it will be called as double employment, and is prohibited.



### **Section (61) (62) Notice:-**

Every factory should maintain a register of adult worker and periods of work of an adultworker and should be noticed in notice board. It is duty of the factory manager to maintain such records and displays properly.

### **Section (63) Hours of work:-**

Every factory's working time should be from 6 am to 7 pm. The factories inspectors have the power to permit a factory in shift system.

### **Section (64) to (66) Powers:-**

The Government has the power to alter (Or) to make new laws regarding working hours of adults.

### **The rules regarding employment of women workers:**

There are no special sections imposed in factories act regarding employment of women workers. But the sections 19,22,27,34,42,48,66 and 79 relates with the employment of women worker.

### **Section (19) deals aboutLatrines & Urinals:-**

Every factory should provide separate latrines for male and female workers.

### **Section (22) Moving machine:-**

Every moving machine should be safety protected any only trained adult worker only can be engaged in the machine.

### **Section (23) Dangerous machine:-**

Every dangers machine should be safely protected and only trained adult worker only can be engaged in such machines

### **Section (27) Cotton openers:-**

Women and young persons should not allow to work near cotton openers.

### **Section (34) Excessive weights:-**

The workers should not be compelled to lift excusive weight and women and young persons should not be engaged in such lifting process.



### **Section 42 Washing facilities:-**

Every factory should provide washing facility to its workers. Separate washing facilities should be provided for male and female workers.

### **Section (48) Crèche;-**

If the number woman workers exceed 30, the factory should provide a crèche which is to maintain the children of the women workers during employment. Every women worker who are availing crèche should be permitted to take nursing break four times a day.

### **Section 79:-**

The women worker who avails prescribed maternity leave shall be deemed as she worked in factory while calculating the annual leave with wages.

### **Rules regarding employment of young persons:**

Under the recommendations of royal commission, sections 67to 77 of factories act reflect about the employment of young persons in factory.

Young person means adolescent, who has completed fifteen years of age and has not completed eighteen years of age.

No person shall be allowed to work in a factory, who has not completed fourteen years of age.

### **Section (68) Tokens:-**

A token should be issued to every adolescent worker. The token should linked with fitness certificate.

### **Section (69) (70) Certificate of fitness and effect:-**

A certificate of fitness should be issued to every young person by a certified surgeon.

No young person shall be allowed to work without fitness certificate.

Every year fitness certificate should be renewed.

Certificate surgeon should be qualified medical professional.

### **Section (71) Working hours:-**

Every young person shall not be allowed to work more than four and half hours a day.

The young persons shall not be allowed to work in night.





### **Section (72) Notice of period:-**

It's the duty of an employer to display on the notice board the work period of adolescent worker.

### **Section (73) Register of child worker:-**

It's the duty of an employer to maintain a register of child worker properly.

### **Section (74) Hours of work:-**

It's the duty of an employer to maintain working hours of adolescent workers.

### **Section (75) Power to examine:-**

Inspector of factories can make a medical examination, if any complication there regarding adolescent.

### **Section (76), (77) Powers of government:-**

The government has the powers to make new laws (or) to alter the above said laws.

### **Section (22) Moving machine:-**

Every moving machine should be safety protected any only trained adult worker only can be engaged in the machine.

### **Section (23) Dangerous machine:-**

Every dangers machine should be safely protected and only trained adult worker only can be engaged in such machines

### **Section (27) Cotton openers:-**

Women and young persons should not allow to work near cotton openers.

### **Section (34) Excessive weights:-**

The workers should not be compelled to lift excusive weight and women and young persons should not be engaged in such lifting process.

### **The provisions relating annual leave with wages:**

By the recommendation of royal commission sec **78 to 84** deals about annual leave with wages. These sections will not apply to railway workshop and governed by central government leave rules.



A worker is entitled to avail annual leave with wages only if he has completed 240 working days during a calendar year.

The adult worker can avail a day for every 24 days of work as annual leave with wages.

An adolescent worker can avail a day for every 15 days of work as annual leave with wages.

The leave shall be exclusive of all holidays.

If a worker discharged (or) dismissed from service is entitled to avail the annual leave with wages.

Calculating the leave half day will be treated as a full day leave.

If a worker not avail his leave in a year, he can use it in the next year. It will be carry forward to the next year.

The total number of carry forwarding leave to next succeeding year shall not exceed 30 days in case of adult.

The total number of carry forwarding leave to next succeeding year shall not exceed 40 days in case of adolescent.

The worker may apply in writing to the manager not less than fifteen days before the date of leave he wishes to avail.

The workers are entitled to receive full payment of salary in the leave days (armed forces and rail way excluded).



## UNIT -V

### Industrial dispute Act, ESI Act, Minimum Wage Act:

#### INDUSTRIAL DISPUTE ACT:

Industrial dispute act was enacted in the year 1947

**Section 2(J)** defines industry under industrial dispute Act.

Industry means any business, trade manufacturing process which includes systematic activities.

Such systematic activities must be carried by employer and employee.

The object of such activity must be production and supply of goods.

Such activity must be carried with the intention to make gain.

In Bangalore water supply - vs - Rajappa case the Supreme Court defines and industry.

**Section 2(3)** defines the workman who is employed in any industry.

**Section 2(k)** defines industrial dispute.

If any dispute arises between,

- Employer and employee.
- Employer and employer.
- Employee and employee

- Called as industrial disputes.

The dispute may be under the getting of employment, non-employment terms of employment conditions.

The industrial disputes are divided into two types,

- (i) Individual dispute
- (ii) Collective dispute.

If any dispute related with a single workman will be called as individual dispute.

If any dispute related with wages bonus will be called as collective dispute.



**Section 2(s)** of industrial dispute act defines **workman**.

- Workman means any person employed in any industry to do any manual or other works, whether the terms of employment be expressed or implied.

- The persons working in armed forces, police service, any other managerial or administrative, supervisory capacities shall not comes within the definition of workman.

Every country wishes to be a sound economy country. The economy of a country depends upon two factors; they are (i) agriculture (ii) industry.

The industries in a country play a major role to strengthen the economy. So every government concentrates very much in the welfare of industry. Keeping peace in industry results good, in the development of other areas in country.

So every government is taking much effort by making separate laws and organizations to maintain peace in factory.

Here in this topic we are going to see the various machineries of conciliation in factories:

### **The machineries of conciliation are**

- (i) **Works committee**
- (ii) **Conciliation officer**
- (iii) **Board of conciliation**
- (iv) **Courts of enquiry.**

### **Works committees:**

**Section (3)** deals about works committee

Where there are more than 100 workers in a factory should constitute a works committee.

There should be a minimum 2 members and the maximum should not exceed 20.

If consist of both the representatives from the employer and employee side.

Each side should constitute members equally.

The committee should meet ones, at least in a month.

The members can take part as a member for 2 years.

The object and purpose of constituting works committee in factories is based on the principle **prevention is better than cure**.



The works committee shall have its office bearers a chairman, a vice-chairman, a secretary. Chairman shall be nominated by the employer, and vice-chairman be elected by members.

It is the duty of employer to provide facilities for conducting works committee meeting.

### **Conciliation officers:**

**Section (4)** deals about conciliation officer.

The conciliation offices are appointed by the Government by notification in gazette.

The appointment may be permanent or for a particular dispute.

The object of the appointment is to settle the dispute.

The officer has the powers to investigate to verify the documents enquire any person regarding dispute.

The officer has the power to enter in to the premises of any factory regarding dispute.

He must send the report of dispute settlement to the Government with signature.

It is the duty of the officer to send the settlement report within **fourteen days**.

The decision given by a conciliation officer is known as settlement.

The workers have the right to accept or reject the memorandum of settlement.

The memorandum of settlement is not an order.

The memorandum of settlement is not a confidential document it is a public document.

### **Board of conciliation:**

**Section (5)** deals about board of conciliation the government by notification in gazette shall constitute board of conciliation.

The board consists of the one chairman and two members.

The board has the powers and duties of civil court.

A dispute settled or not, the board shall send a report to the appropriate government. Such reports shall be published within **thirty days** as the government thinks fit.



## **Courts of inquiry:**

**Section (6)** deals about court of inquire.

The object of the court is to investigate the disputes and not to mediate

It is temporary in nature.

A presiding officer shall lead the court with 2 or more members.

The court has power to investigate to enquire a person by summons and to follow the court procedures.

## **The machineries for adjudicate:**

- (i) Labour court**
- (ii) Industrial Tribunal**
- (iii) National Tribunal**

### **Labour court:**

**Section (7)** deals about Labour court.

The Labour court constituted under the guidance of the Government.

The court consists of only one person he is presiding officer.

The officer shall be judge high court.

The officer shall be a district judge with 3 years' experience. or

The officer shall be a magistrate with 7 year experience.

### **Powers of Labour court:**

- The Labour court has the powers to enter in to any factory regarding dispute.
- The Labour court has the power of a civil court.
- The Labour court has the power to examine any person or documents regarding dispute.
- The court has the power to average a commission to examine witness.

### **Duties of Labour court:**

- The court has the duty to solve the problems before it.
- The court has the duty to enquire and investigate the problem before it.
- The decision even by the Labour court is called as "award".It is an order of court.
- The award should be signed by the officer in chief.



## **Industrial Tribunal:**

**Section 7(a)** deals about industrial tribunal.

By notification in official gazette, the Industrial tribunal is constituted by the government.

It is temporary in nature, it is to compensate the workload of Labour courts.

The tribunal shall preside by one person namely presiding officer.

The presiding officer should be a high court judge or district judge with 3 years' experience or

The presiding officer should be a judicial magistrate, with 7 years' experience.

The person who has attained 65 years of age and who is not independent, shall not be appointed as a presiding officer.

The tribunal has the power to enquire the matters regarding industrial disputes like, wages allowances hours of work, leave bonus etc.

The award of a tribunal shall be in writing and signed by the presiding officer.

## **National Tribunal:**

**Section 7(b)** deals national tribunal.

By notification in official gazette, the Industrial tribunal is constituted by the central government.

The national tribunal enquires the disputes which related more than one state.

The national tribunal shall submit the award to the government within three months.

The national tribunal presides by one person namely presiding officer.

The presiding officer must be a judge of high court.

The presiding may appoint two persons to assist him.

The presiding officer shall not exceed 65 year of age must be a independent persons.



## **Strike:**

**Section 2(q)** of industrial disputes act defines strike.

Strike means to quit the work together by workers.

Strike means stopping of work.

The stopping of work should be by a group of persons.

There must be planned refusal, the purpose of refused in not to continue work.

Mere absent of work does not amount to strike.

Strike is the weapon of workers.

Strike is not fundamental right.

A notice should be given before six weeks to do a strike.

From the date of notice within 14 days no strike can be held.

Within seven days of conciliation proceeding ends, no strike shall be held.

If any dispute pending before any courts or conciliation proceedings, no strike shall be held.

If any strike violated the above rules will be illegal strike and shall be fined up to 1000 rupees or up to 6 months imprisonment will be the punishment.

## **Kinds of strike:**

- (i) **General strike**
- (ii) **Stay-in Strike**
- (iii) **Pen / tool down strike.**
- (iv) **Hunger strike**
- (v) **One slow strike**
- (vi) **Go speed strike**
- (vii) **Gherao strike.**

### **General strike:**

It is a strike done by the works to compel the employer to accept their demands.

### **Stay-in strike:**

The employees will be in their works spot but they do not do their work.





### **Pen/ tool down strike:**

The employees will occupy their usual position of work, but will not operate machines or do any other work.

### **Hunger strike:**

The employees used to sit in a place avoiding food for a certain period to focus their demands.

### **Go slow strike:**

The employees used to do their work very slowly, to give a mental torture to the employers.

### **Go speed strike:**

The worker used to do the work rapidly and increase the production doubly, to give stress on capital. This type of strike usually happens in Japan.

### **Gherao strike:**

The workers used to surround the employer for some little time with a sound of demands, is called Gherao.

### **Lock-out:**

**Section 2(1)** of industrial disputes act defines lock- out.

Lock- out means temporary closing of a place of employment by the employer.

Lock- out is the **weapon of employer**.

It is partly temporary in nature.

It is by the employer who suspends the works in Industry.

It is a refusal to give employment by employer.

The lock- out includes any number of person employed in industry.

It is to answer the strike.

No employer can begin a lock-out before strike.

No employer shall do lock-out before **six week notice**.

No employer shall do lock-out within **fourteen days** from the date of notice.



No employer shall do lock-out after the notice period.

No employer allowed to do lock-out while conciliation proceedings are pending.

No employer is allowed to do lock-out within seven days from the decision day of conciliation proceeding

If any employer exercises illegal lock-out by violating the above said rules shall be punished with an imprisonment of one month or a fine up to 1000 rupees.

**Difference between strike and lock out:**

S.NO	Strike	Lock out
1	Sec 2(q) defines the strike.	Sec 2(l) defines lock out
2	Strike is the weapon of workers	Lock out is the weapon of employer
3	Strike is to make the obligations of workers	Lock out is to answer strike.
4	Strike means stopping of work by workers	Lock out means closing of works spot temporary
5	A strike can be before lock out	A lock out cannot be before strike
6	Prior notice is necessary	Notice is necessary
7	The workers jointly have to do planted refusal	Employer can alone make the decision to lock out
8	There are two kinds of strike (legal, illegal)	There are two kinds of lock out (legal illegal)
9	The reason may be for wages and other economic factors.	The reason is for non-economic factors.



## Lay - off:

**Section 2(kkk)** of industrial disputes act, deals about lay-off.

Lay-off is the inability of employer to give work to the worker.

The inability includes,

- **Shortage of raw material**
- **Power cut of electricity**
- **Breakdown of machinery**
- **Natural calamities.**

If the worker not engaged any work within **three hours** of his entry in factory

The worker, who was put in layoff, shall be paid **fifty percent** of basic wages.

The total lay-off period should not exceed **forty five** days in a year. It can be alter by agreement.

If exceeds the employer should pay full wages to the employee.

If any worker engaged in alternative work inside the factory or within five miles from the factory should accept it.

Lay – off is apply to the permanent workers only. Those who have completed 240 days' work in the factory, only avail lay-off.

Lay-off shall apply to the factories where the number of workers **exceeds fifty**.

## Retrenchment:

**Section 2(oo)** of industrial disputes act defines retrenchment.

Retrenchment means termination of service of a workman by the employer.

It does not include,

- Voluntary retirement of service
- Superannuation
- Termination by ill-health
- Non-renewal of employment contract.

It also does not included punishment termination.

The termination of service should be by the employer.

The employer should give a proper notice **before one month** to retrench a worker.



It is the duty of the employer to inform it to the government.

The employer should be **bona fide** and should not misuse the right of retrenchment.

At the time of retrenchment the employer should follow the rule, “**Last come should first go**”

While taking back the retrenchment workman the rule “**Last gone should take back first**”.

At the time of retrenchment compensation should be given to the retrenched workman.

The mode of compensation shall be **fifteen days average pay for every completed year of service**.

### **Closure of Industry:**

**Section 2 (cc)** of industrial disputes act defines closure.

Closure means permanently closing the place of employment.

The closure is an act done by the employer.

The employer shall close a factory for some reasonable ground.

The employer should apply to the government before **ninety days** from the date of closure.

The employer should give a copy of such closure notice to the trade unions and to the workers.

The government should reply to the employer, either grant or refusal within **sixty days** from the receipt date of notice.

If the employer does not receive any orders from government within sixty days, it can be taken as closure order granted.

An appeal can be made within **thirty days**, in case of refusal to grant permission.

It is duty of the employer to give compensation to the workers at the time of closure.

Every worker should be compensated by a **fifteen days average pay for every year of service given by him**.



## JOINT MANAGEMENT COUNCIL

The state government by publishing in Gazette shall establish a joint management council.

It is to take part in the management to safe guard the workers.

The council was recommended by industrial policy resolution 1956 act.

The council based on democratic policy.

The council consist of equal member from both the workers side and from the management side.

The difference between works committee and joint management council is that the council taking part in management and not for disputes.

The establishment of joint management council is based on voluntarily.

Generally the employers are not interested in Joint management council.

Rajasthan states electricity board plays a very good role model in Joint management council for the past 35 years.

## EMPLOYEE STATE INSURANCE CORPORATION (ESI)

Employees' state insurance act was enacted in the year 1948.

It is based on the principles of indemnity.

This act based on the contract of insurance.

It's a promise to save the employee from loss.

It is in a view the help the employee in his helpless conditions.

The ESI provided both medical and financial benefits.( the workmen compensation act provides only financial benefits.)

The workers who are contributing ESI will be protected by the corporation, and they are called as insured workman.

It is the duty of employer to make proper steps to contribute ESI for his workmen.

ESI collect contribution from the employer and employee.

The contribution share is employer is **4.75 percent** and employee contribution is **1.75 percent** of worker's salary, and a total of **6.50 percent** to be contributed.



The Government aid, foreign aid, donations from public, will also be accepted in ESI fund.

The ESI is headed by a chairman, wise chairman, one person from each state, equal number of persons from both employee and employer side. Three members from parliament and two persons from medical department and five experts, are appointed by the central government to administrate ESI.

Every state ESI will be administrated by an administrative wing headed by a state chairman and members.

### **Benefits available Under ESI:**

The main object of ESI is to support the workers in their helpless conditions. The person who contributes for ESI will be called as insured employee and benefit can avail by him under ESI.

The employee should be insured person

- **Suffers from disablement**
- **Employment injury**
- **Occupational disease.**

#### **Suffers from disablement:**

A workman can avail sickness benefits by noticing it to the factory. Then he has to undergo medical examination. The medical officer who examine who such employee should furnish evidence and will that evidence the ESI will give him medical and financial benefit.

#### **Disablement benefit:**

A insure employee can avail disablement benefits for which he injuring during employment.

A disablement benefits shall be of daily rate.

#### **Dependent benefits:**

The ESI also gives benefits to the dependents in case of death of an insured employee.

#### **Medical benefits:**

Under this heading the ESI provides medical attendance to the insured employee and to his family.



### **Maternity benefits:**

The ESI supports to the pregnant women worker. She can avail the benefits for delivery of baby, pre-mature, abortion, and tubectomy.

### **Funeral expenses:**

The ESI provides up to Rs.2, 000 to the insured employee in case of his death, such amount will payable to this family as funeral expenses.

## **MINIMUM WAGES ACT**

The minimum wages act was enacted in the year 1948.

The minimum wages act was enacted as a part of social justice.

### **Classification of wages under minimum wages act:**

- **Living wages**
- **Fair wages**
- **Minimum wages.**

The living wage stands highest standard wages.

The living wage is a wage which gives a luxury life to the worker. It is the dream of all workers.

Lining wage includes education of children production against ill-health, requirement of Insurance in the old age, and better standard of food and clothing.

The fair wage is one which gives the worker a medium standard of life.

Fair wage stands below the living wage.

Fair wage stands above the minimum wage.

The minimum wage is the least wage in its category.

Minimum wage is the one which gives a worker minimum standard of life.

Minimum wages gives the workers the basic needs of life such as food accommodation.

The minimum wages should be by way of remuneration.

The minimum wages should be payable to a person employed in his employment.

The minimum wages should be payable to a workman.



The minimum wages should be if the working conditions imposed are fulfilled.

The minimum wages includes house allowance but excludes travelling allowances, contribution of provident fund, gratuity etc.

Where there are more than **thousand workers** in an area the government imposes the minimum wages rate.

For **every 5 years** the government used to revises the minimum wages according to the cost of living these.

The minimum wages are fixed by hour rate, day rate, and month rate.

The minimum wage defers from place to place.

Once the minimum wages fixed every industrial establishment has to give the minimum wage rate is to is workers.

The government by giving two months' notice shall revise minimum wage by consulting the advisory board.





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