

ICA, 1872

Special Contracts.

Chirag Vora

LAW OF CONTRACT-II
(5 U's)
CORE COURSE (CC): 2.3

UNIT: I

- Contract of Indemnity Documents/Agreements of Indemnity Definition, Nature and Scope - Rights of indemnity holder Commencement of the indemnifier's liability
- Contract of Guarantee - Definition, Nature and Scope - Difference between contract of indemnity and Guarantee Rights of surety - Discharge of Surety - Extent of Surety's liability - Co-surety.
- Contract of Bailment - Definition Kinds Duties of Bailer and Bailee Rights of Finder of goods as Bailee Liability towards true owner - Rights to dispose of the goods.
- Contract of pledge Definition Comparison with Bailment - Rights and duties of Pawnor and Pawnee

UNIT: II

- Agency:
- Definition & Creation of Agency
- Kinds of Agents & Distinction between Agent and Servant
- Rights and Duties of Agent
- Relation of Principal with third parties
- Extent of Agents authority
- Personal liability of Agent
- Termination of Agency

UNIT: III

- Indian Partnership Act, 1932:
- Definition, Nature, Mode of determining the existence of Partnership
- Registration of Firms
- Types of partners
- Types of Partnership
- Rights and Duties of partner
- Relation of partners with third parties
- Joint and Several liability
- Admission of partners Retirement - Expulsion - Death
- Dissolution of Firm
- Salient Features of Limited Liability Partnership Act, 2008.

UNIT: IV

Sale of Goods Act, 1930:

- The Contract of sale
- Conditions and Warranties
- Passing of property

- Transfer of title
- Performance of the Contract
- Rights of Unpaid Seller against goods
- Remedies for Breach of Contract

UNIT: V

- Government Contracts: Government as a Contracting Party, Constitutional provisions, Force majeure clause and Arbitration Clause
- Standard Form of Contract: Nature, advantages, principles of protection against exploitation.

LAW OF CONTRACT - II

Exam-Oriented Priority Study Plan

Based on the correct uploaded syllabus and uploaded previous-year question papers

Core instruction followed

The first page of the previous-year-question PDF was ignored because it contains the wrong syllabus. The separate syllabus PDF was treated as the correct syllabus. The question-paper pages were used only for frequency and trend analysis.

Observed exam pattern and strategy

Observed pattern	Strategic meaning
Q.1: compulsory short notes, any four, 20 marks	Prepare 1 to 1.5 page compact answers for repeated short-note topics.
Six out of remaining eight questions, 10 marks each	Prepare full 10-mark answers for repeated long-question clusters.
Questions frequently rotate within the same unit	Study clusters, not isolated headings. For example, surety rights, surety discharge, continuing guarantee and indemnity-guarantee distinction should be prepared together.
Last-minute exam strategy	First revise Category A, then Category B, then keep Category C as safety coverage. Category D is only for final polishing.

How the priority was prepared

Basis	Meaning
Frequency	Topics repeated in two or more uploaded question papers were moved upward.
Marks value	Topics capable of becoming a 10-mark answer plus a short note were treated as high value.
Syllabus centrality	Topics forming the backbone of a unit were prioritized even where they appeared once.
Exam conversion potential	Topics likely to be asked as distinctions, illustrations, case-based problems, or short notes were given higher priority.

Category A - Must Study First: highest probability and highest marks value

Rank	Topic cluster	Why it is important	Prepare these points	Priority
A1	Contract of Guarantee and Surety	Repeated in multiple forms: discharge of surety, rights of surety, continuing guarantee, essential characteristics of guarantee, distinction between indemnity and guarantee, and surety's rights against principal debtor and creditor.	Definition, essentials, parties, consideration, continuing guarantee, extent of surety's liability, discharge of surety, rights of surety, rights against principal debtor, creditor and co-sureties, distinction from indemnity.	Very high - can appear as full 10-mark answer or short note.
A2	Agency - creation, authority, rights, duties and termination	Repeated as full questions and short notes: rights and duties of agent, principal-agent relationship, termination, substituted agent, sub-agent and delegation.	Definition and creation of agency, kinds of agents, agent vs servant, extent of authority, duties and rights of agent, principal's liability to third parties, sub-agent vs substituted agent, delegatus non potest delegare, termination.	Very high - at least one question likely.

A3	Partnership - formation, test, registration, partners and dissolution	Repeated as registration of firm, dissolution, outgoing partner, partnership at will, joint and several liability, true test of partnership and Cox v. Hickman.	Definition, nature, mode of determining partnership, mutual agency as true test, registration and effect of non-registration, types of partners, rights and duties, outgoing partner, admission, retirement, expulsion, death, dissolution.	Very high - prepare one full answer and several short notes.
A4	Sale of Goods - conditions/warranties, unpaid seller, sale/agreement, passing property and title	Repeated as implied conditions and warranties, unpaid seller, sale and agreement to sell, transfer of title, nemo dat, passing risk/property problem.	Contract of sale, essentials, sale vs agreement to sell, conditions vs warranties with examples, transfer of title, nemo dat and exceptions, passing of property and risk, unpaid seller's rights against goods.	Very high - both theory and problem question possible.
A5	Bailment and Pledge	Repeated as bailment, difference between bailment and pledge, pledge by non-owner, pawnee/pawnor rights, bailee's duty not to mix goods, general and particular lien.	Definition, essentials, kinds, duties of bailor and bailee, finder of goods, lien, pledge as special bailment, pawnor and pawnee rights/duties, pledge by non-owner.	Very high - excellent for distinction-based questions.
A6	Standard Form Contracts	Repeated in all uploaded question-paper pages in some form. It is also in the correct Unit V syllabus.	Nature, advantages, unilateral character, principles of protection against exploitation, exemption clauses, reasonableness, notice, bargaining power and judicial approach.	Very high - prepare full answer and short note.

Category B - Very Likely: prepare after Category A

Priority	Topic	Why likely	What to prepare
B1	Government contracts	Asked as constitutional provisions regarding Government contracts. Correct syllabus specifically includes Government as a contracting party, constitutional provisions, force majeure and arbitration clause.	Prepare Article 299 style requirements, who can contract for Government, formal execution, consequences of non-compliance, force majeure clause and arbitration clause.
B2	Indemnity	Appeared as liability of indemnifier and is connected to guarantee.	Definition, nature, scope, rights of indemnity holder, commencement of indemnifier's liability, difference from guarantee.
B3	Limited Liability Partnership Act, 2008	Appeared as salient features in one paper and is part of Unit III correct syllabus.	Separate legal entity, limited liability, partners/designated partners, perpetual succession, agreement-based internal governance, difference from partnership firm.
B4	Sub-agent, substituted agent and delegation	Repeated as short notes and full doctrinal maxim.	Sub-agent vs substituted agent; delegatus non potest delegare; exceptions to non-delegation; liability chain.
B5	Outgoing partner and retirement	Appears more than once, often as short note.	Liability before retirement, notice of retirement, public notice, continuing liability, rights after outgoing.
B6	Registration of partnership firm	Repeated as short note.	Procedure, statement to Registrar, effect of registration, consequences of non-registration under Section 69.

Category C - Moderate Priority: cover for safety

Priority	Topic	Why cover	Minimum preparation
C1	Kinds and types of partners / partnership	In syllabus; may support questions on rights, duties, admission, retirement and dissolution.	Prepare definitions and examples: active, sleeping, nominal, partner by estoppel/holding out, minor admitted to benefits; partnership at will and particular partnership.
C2	Rights and duties of partners	In syllabus and often linked with relation of partners inter se and third parties.	Prepare mutual rights, duty of good faith, indemnity, access to books, profits, restraint from competing business.
C3	Performance of contract of sale	In Unit IV; not heavily repeated but may arise with sale/agreement and delivery questions.	Delivery, payment, instalment delivery, buyer's duty to accept and pay, rules of performance.
C4	Remedies for breach under Sale of Goods Act	In Unit IV; not directly repeated in the uploaded papers but logically connected to seller/buyer rights.	Suit for price, damages for non-acceptance/non-delivery, specific performance, breach of warranty.
C5	Finder of goods as bailee	In Unit I; can be a short note.	Duties of finder, rights to lien, reward, sale in limited cases, liability to true owner.
C6	Agent and servant distinction / kinds of agents	In Unit II; useful for agency basics.	Basis of control, authority to create legal relations, liability, examples; kinds such as factor, broker, auctioneer, del credere agent.

Category D - Least Priority but do not skip completely

Priority	Topic	Reason for lower priority	Last-minute handling
D1	Documents / agreements of indemnity	Part of syllabus but less likely as independent question.	Know meaning and practical examples; revise with indemnity.
D2	Detailed modes of creation of agency beyond basics	May appear only as part of agency definition question.	Express, implied, estoppel, necessity, ratification; prepare examples.
D3	Detailed internal LLP compliance	Only salient features are asked; deep LLP compliance less likely.	Do not spend excessive time beyond main features.
D4	Deep theory of Government as a contracting party	Useful but less repeated than Article 299 constitutional provision.	Read after constitutional provisions, force majeure and arbitration.
D5	Highly detailed case law in every topic	For one-day preparation, focus on provisions, ingredients, distinctions and 2-3 leading cases only.	Use case names where high scoring: Cox v. Hickman for partnership test; standard cases from class notes for standard form contracts.

Previous-year question mapping by topic cluster

Topic cluster	Asked previously as	Study priority
Guarantee and surety	Discharge of surety; rights of surety; continuing guarantee; essential characteristics of guarantee; indemnity vs guarantee; surety rights against principal debtor and creditor; liability of indemnifier.	A - Must prepare full answer plus short notes
Agency	Rights and duties of agent; termination of agency; substituted agent; sub-agent; delegatus non potest delegare; principal-agent-third party relation.	A - Must prepare
Partnership	Dissolution; registration; outgoing partner; partnership at will; joint and several liability; true test of partnership with Cox v. Hickman.	A - Must prepare
Sale of Goods	Conditions and warranties; unpaid seller; sale/agreement to sell; transfer of title; nemo dat; passing of risk/property problem; essentials of contract of sale.	A - Must prepare

Bailment and pledge	Pledge by non-owner; bailment; bailment vs pledge; bailee's duty not to mix goods; general and particular lien; pawnee/pawnor problem question.	A - Must prepare
Standard form contract	Asked as short note and full question on nature/difference from other contracts.	A - Must prepare
Government contracts	Constitutional provisions regarding Government contracts.	B - Very likely
LLP	Salient features of Limited Liability Partnership Act, 2008.	B - Prepare concise answer

Unit-wise checklist from the correct syllabus

Unit	Exam-oriented focus	First topics to revise
Unit I: Indemnity, guarantee, bailment, pledge	Highest scoring unit. Prepare guarantee/surety first, then bailment/pledge, then indemnity.	Guarantee/surety; bailment vs pledge; pawnee/pawnor; pledge by non-owner; indemnifier liability.
Unit II: Agency	Prepare as a master topic because many short notes come from this unit.	Creation, authority, rights/duties, sub-agent/substituted agent, delegation, termination, principal-third party.
Unit III: Partnership and LLP	Repeated in almost every paper.	Definition, true test, registration, partner rights/duties, joint/several liability, outgoing partner, dissolution, LLP features.
Unit IV: Sale of Goods Act	Repeated as long questions, short notes and problem questions.	Sale/agreement, conditions/warranties, passing property/risk, transfer of title, nemo dat, unpaid seller.
Unit V: Government contracts and Standard Form Contracts	Small unit but high return because both topics are repeatedly asked.	Article 299 constitutional requirements, force majeure, arbitration clause, standard form contract protections.

Exact model questions to prepare in exam style

Answer type	Prepare these
Full 10-mark answers to prepare first	<ol style="list-style-type: none"> 1. Define contract of guarantee and explain discharge of surety. 2. Explain rights of surety against principal debtor and creditor. 3. Distinguish between indemnity and guarantee. 4. What is agency? Explain rights and duties of agent. 5. Explain termination of agency. 6. Discuss dissolution of partnership firm. 7. What is true test of partnership? Explain Cox v. Hickman. 8. Explain rights of unpaid seller. 9. Distinguish between conditions and warranties. 10. Explain sale and agreement to sell. 11. Explain standard form contract and protection against exploitation. 12. Discuss constitutional provisions regarding Government contracts.
Short notes to prepare repeatedly	Continuing guarantee; rights of surety; bailment; pledge by non-owner; bailee's duty not to mix goods; general and particular lien; sub-agent; substituted agent; registration of partnership firm; outgoing partner; partnership at will; termination of agency; transfer of title; nemo dat quod non habet; standard form contract; constitutional provisions on Government contract; essentials of contract of sale.
Problem-style areas	Pledge of jewellery for a loan and remedies on default; sale of cow where delivery is to be taken after one week but cow dies meanwhile; transfer of title by non-owner; risk and passing of property; agency by delegation/substitution.

Two-day emergency revision plan

Time	Topic	Output expected
Day 1 - Morning	Guarantee and surety	Prepare full answer on discharge of surety; rights of surety; continuing guarantee;

		indemnity vs guarantee. Make a 1-page section map.
Day 1 - Afternoon	Agency	Prepare one master answer covering definition, creation, authority, rights and duties. Add termination, sub-agent, substituted agent and delegation exceptions.
Day 1 - Evening	Partnership	Prepare true test of partnership, registration, joint and several liability, outgoing partner and dissolution. Revise Cox v. Hickman.
Day 2 - Morning	Sale of Goods	Prepare sale/agreement, conditions/warranties, passing property/risk, transfer of title, nemo dat, unpaid seller.
Day 2 - Afternoon	Bailment and pledge	Prepare bailment basics, bailment vs pledge, pledge by non-owner, lien, pawnor/pawnee rights and duties.
Day 2 - Evening	Unit V and safety topics	Standard form contract, Government contracts, LLP, indemnity holder rights, finder of goods, remedies for breach of sale contract.
Final 2 hours	Memory output practice	Write only headings from memory for each Category A answer. Then solve Q.1 short notes from all previous papers in exam speed.

One-page final priority checklist

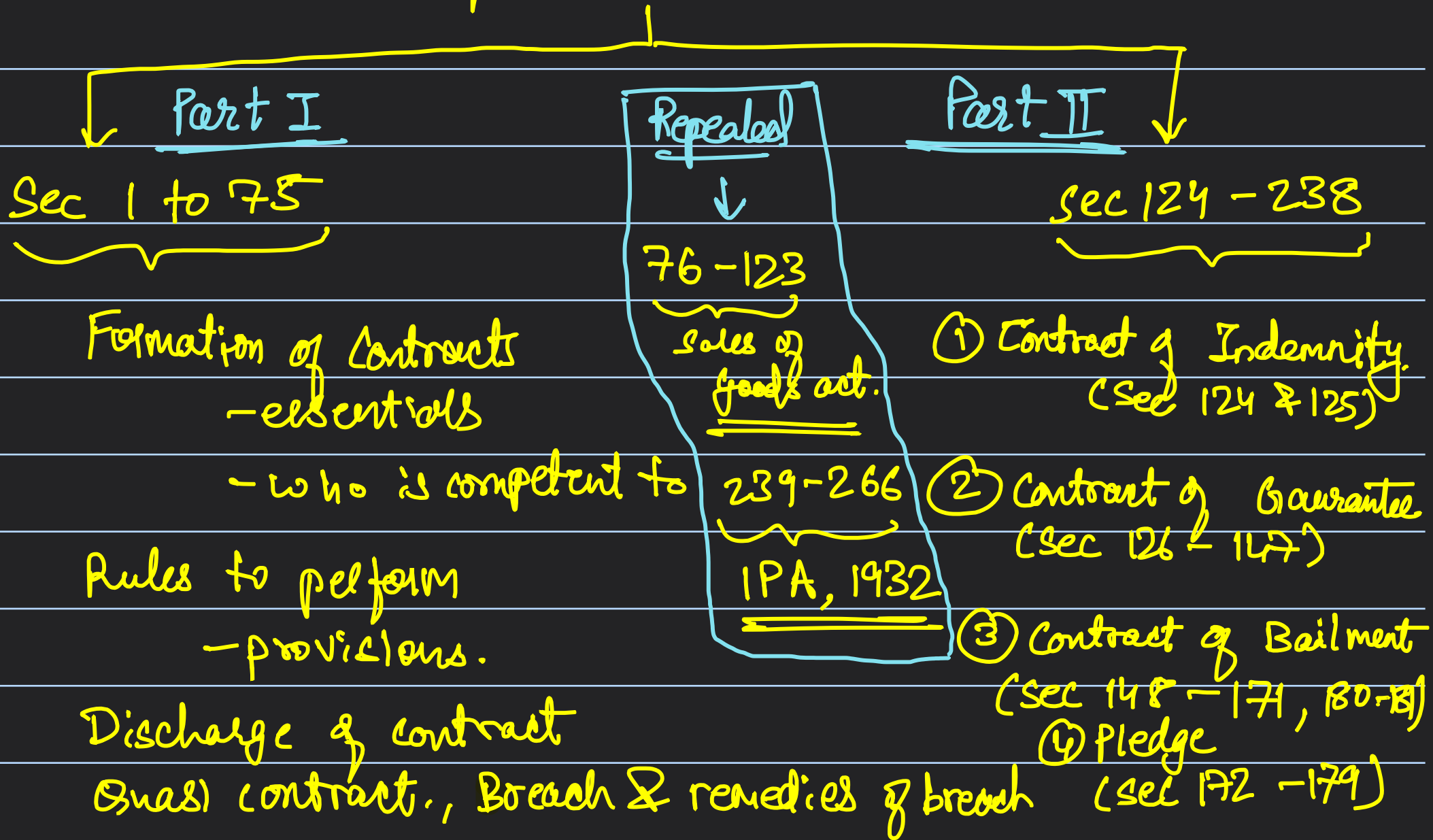
Tick	Topic	Priority
<input type="checkbox"/>	Contract of guarantee, surety liability, discharge of surety, rights of surety	Must
<input type="checkbox"/>	Indemnity vs guarantee; liability of indemnifier; indemnity holder rights	Must
<input type="checkbox"/>	Agency: creation, authority, rights/duties, termination	Must
<input type="checkbox"/>	Sub-agent, substituted agent, delegatus non potest delegare	Must
<input type="checkbox"/>	Partnership: definition, true test, Cox v. Hickman, registration	Must
<input type="checkbox"/>	Outgoing partner, joint and several liability, dissolution of firm	Must
<input type="checkbox"/>	Sale of goods: sale/agreement, conditions/warranties, passing property/risk	Must
<input type="checkbox"/>	Transfer of title, nemo dat and exceptions, unpaid seller	Must
<input type="checkbox"/>	Bailment vs pledge, pledge by non-owner, lien, pawnor/pawnee rights	Must
<input type="checkbox"/>	Standard form contracts and protection against exploitation	Must
<input type="checkbox"/>	Government contracts: constitutional provisions, force majeure, arbitration	Very likely
<input type="checkbox"/>	LLP salient features	Likely
<input type="checkbox"/>	Finder of goods, remedies for breach, performance of sale contract	Safety

Final exam advice

Do not try to read the whole subject equally in the last 1-2 days. The highest return lies in repeated clusters: guarantee/surety, agency, partnership, sale of goods, bailment/pledge, standard form contracts and Government contracts. Prepare these in complete answer format first; then revise remaining topics as short notes.

Introduction to Special Contracts

Special Contracts



Summary of Part II

I CA, 1872 ⇒ section 124 to 238

Chapter	Topic	Section
<u>VIII</u>	Contract of Indemnity Contract of Guarantee	124 & 125
		126-147.
<u>IX</u>	Bailment Pledge	148-171, 180 & 181
		172-179
<u>X</u>	Agency.	182-238.

Sales of Goods Act, 1930

Indian Partnership Act, 1932

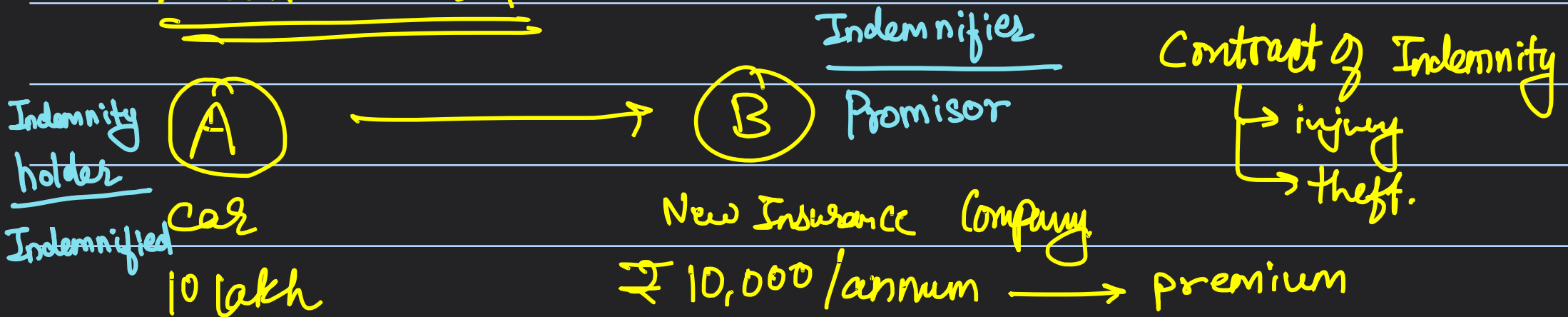
Contract of Indemnity (sec 124 & 125)

Indemnity →

Indemnify = make good the loss

Indemnification = नुकसान कि भरपाई करना

Section 124



Contingent contract = genus.

Contract of Indemnity = species.

Contingent
contract

Contract of
indemnity

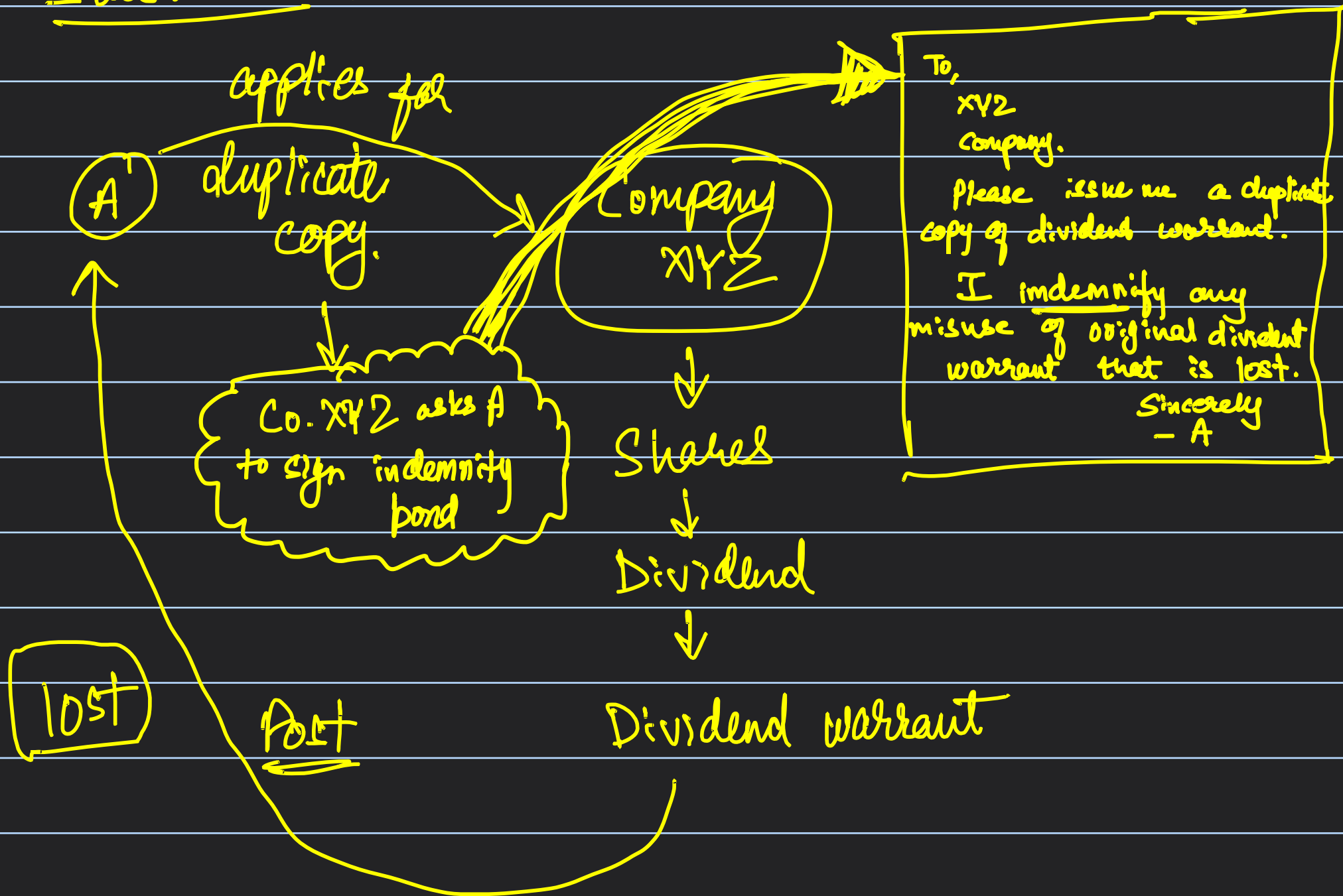
Contract

→ Contract of indemnity means types of contract where the promisor promises to make good the loss if any loss happens to the promisee.

→ All contracts of indemnity are contingent contracts but not vice versa.

Some insurance contracts are contracts of indemnity.

Illustration II -



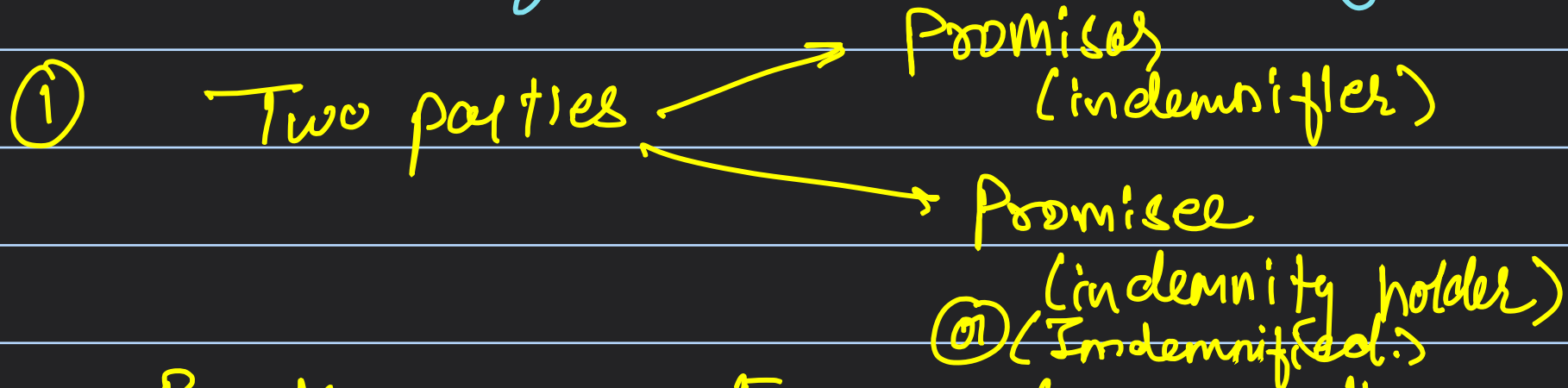
As per section 124 of ICA, 1872 an agreement by which one party promises to save the other from loss caused to him by human conduct is classified as contract of indemnity.

Indemnity means to make good the loss or to compensate for the loss.

Objective —

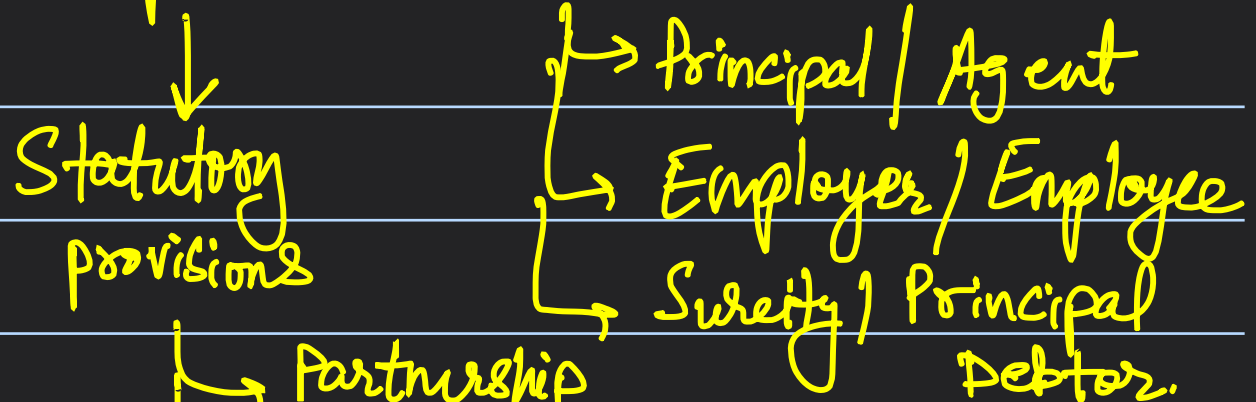
To protect the promisee from unanticipated losses.

Essentials of contract of indemnity →



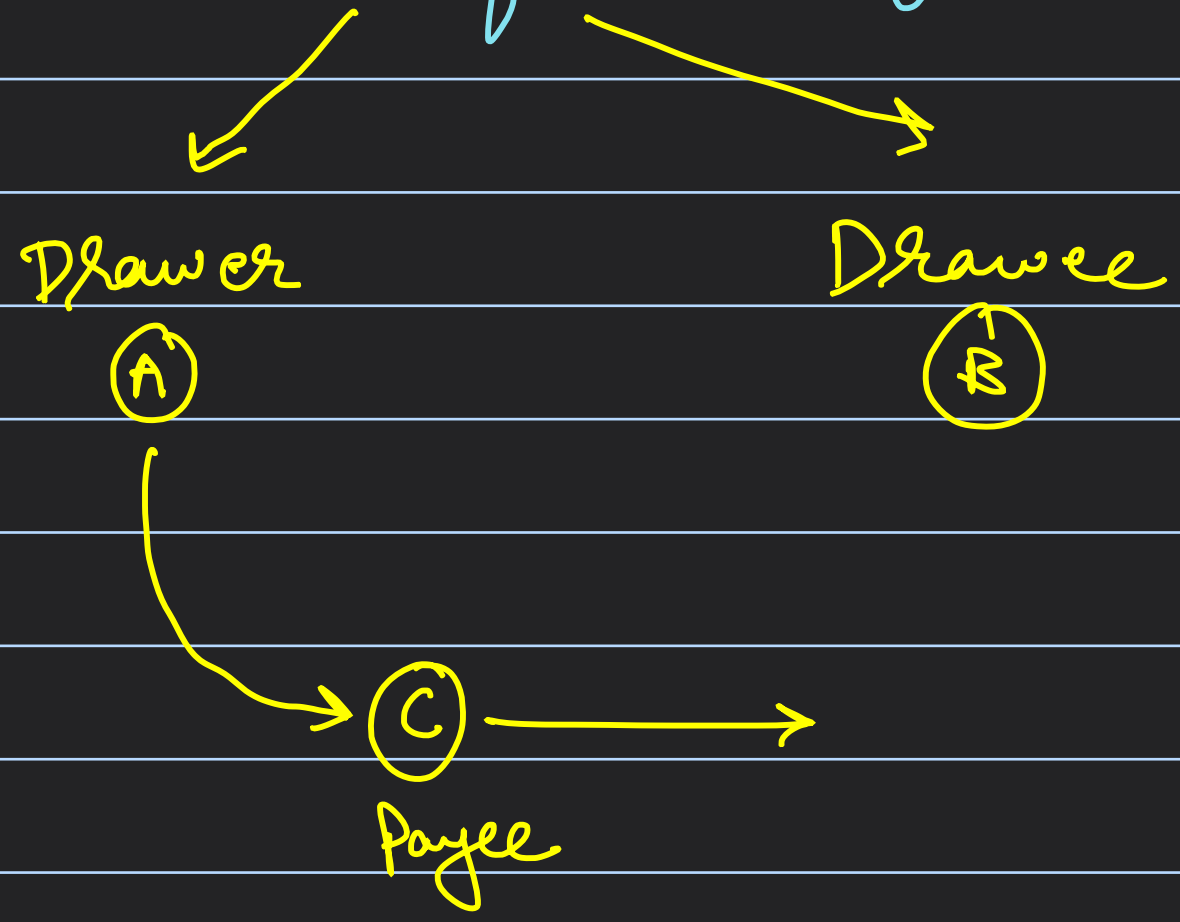
Promise → Expressed → written

Implied → due to relation



- Partnership S. 10, 13(f)
- Guarantee S. 145, ICA.
- Agency S. 222 & S. 223.
- NIA, sec 45A & sec 81

Bill of exchange



Adamson vs Jarvis 1827
King's Bench

→ Plaintiff was auctioneer.

Defendant brings cattle and asks to auction it.

→ Plaintiff auctions it to later find that true owner was not the defendant.

→ The Plaintiff was forced by original owner to pay for loss.

→ Now Plaintiff suffered loss and sued defendant who deluged him to auction cattle not owned by defendant.

Held - Plaintiff did auction in good faith on behalf of defendant.

Therefore defendant had to indemnify the plaintiff.

Even if there was no express promise, plaintiff was entitled to recover loss which he had suffered because of defendant, from the defendant

Here defendant did conversion of goods.



In India Sec 223 of ICA, 1872 (Agency) covers this scenario

Can all losses be covered?

No.

↳ Sec 124 → only because of loss caused by promisor himself or human conduct.

ie.

Act of God
Vic Major
Force Majeure.

 not covered.

NOTE - In India Insurance is not a contract of indemnity.

Insurance in India is governed by The Insurance Act 1938 not ICA, 1872

English law also covers v/s major under indemnity.

Other requirements of contract of indemnity

- ① Free consent.
- ② Competency
- ③ Lawful purpose
- ④ Lawful consideration
- ⑤ intention to create legal relationship

Types of indemnity —

① Express. — written or verbal

② Implied — eg - quasi-contracts
⑤ principal - agent relations

based on conduct of parties.

Importance of indemnity —

① Financial protection to limit loss

② Protection against claims & lawsuits
eg- indemnity insurance.

③ Compensation to beneficiaries.

Essentials elements of contract of indemnity —

① All essentials of a valid contract. —
free consent, competent to contract
legal purpose/object, against lawful
consideration.

② Two parties. — promisor / indemnifier
— promisee / indemnified / indemnity
holder

③ Existence of a single contract of
indemnity.

④ Contract can be — expressed (written)
① — implied (based on conduct of parties)

Rights of indemnity holder -

Right to recover → (a) damage
(b) costs incurred
(c) sums paid during compromise.

Caselaw - Gajanan Moreshwar Paralkar

vs

Moreshwar Madam Mantri

(1942) Bombay HC.



GAJANAN MORESHWAR PARELKAR v. MORESHWAR MADAN MANTRI



Bombay High Court, 1942 | Chagla J. | Landmark Case on Indemnity

AIR 1942 Bom 302 | (1942) 44 Bom LR 703

1 WHO WAS WHO?



GAJANAN MORESHWAR PARELKAR

Plaintiff | Indemnity-holder / Indemnified

- Original holder of the 999-year lease.
- Title documents stood in his name.
- At the defendant's request, he mortgaged the property and created a further charge.
- He personally covenanted to pay.



Because he personally promised to pay, liability attached to him.



MORESHWAR MADAN MANTRI

Defendant | Indemnifier

- Took transfer of the benefit of the lease.
- Took possession and began construction.
- Bought building materials on credit.
- Promised to clear the mortgage liability and substitute his own security.
- Failed to do so.



He was the person bound to protect the plaintiff from this liability.



KESHAVDAS MOHANDAS

Supplier | Creditor | Mortgagee

- Supplied building materials for the construction.
- Money became due from the defendant to him.
- To secure this debt, mortgage and further charge were created in his favour.
- Could enforce the debt against the plaintiff because of the plaintiff's personal covenant.



He was the creditor/mortgagee who could sue on the security and covenant.

Transferred benefit of lease

Supplied materials / debt arose

Mortgage + further charge + personal covenant

2 STORY IN 5 STEPS

1



Plaintiff got rights in a 999-year lease from Bombay Municipality.

2



At defendant's request, plaintiff transferred the benefit to the defendant.

3



Defendant began construction and owed money to Keshavdas Mohandas.

4



Because title stood in plaintiff's name, plaintiff mortgaged the property and created a further charge in favour of Keshavdas; he also personally covenanted to pay.

5



Defendant promised to discharge the liability but failed.

3 CORE LEGAL ISSUE



Must the indemnity-holder first suffer actual loss and pay the amount before suing the indemnifier?

Or can he seek protection once his liability has already become absolute?

4 WHY THIS ISSUE MATTERED

1

If actual payment were required first, the indemnity-holder must wait until he is sued.

2

Then he must wait for judgment and pay first.

3

Only after paying could he sue the indemnifier.



That would make an indemnity of very little practical value.



He may not even be able to pay the judgment, so the indemnity would become useless.

5 WHEN DOES LIABILITY BECOME ABSOLUTE?

When did liability become absolute here?



Liability becomes absolute when it is already real, fixed, and enforceable — not merely a remote possibility.



Here, the plaintiff had personally covenanted to pay under the mortgage and further charge.



Therefore, Keshavdas Mohandas could sue the plaintiff directly.



So the plaintiff's liability was absolute, not contingent.



ABSOLUTE LIABILITY = present and enforceable obligation



CONTINGENT LIABILITY = depends on an uncertain future event

6 WHAT THE COURT HELD

“Once the indemnity-holder's liability has become absolute, he can call upon the indemnifier to save him from that liability even before actual payment.”



Sections 124 and 125 are not exhaustive of indemnity law.



Courts may apply equitable principles.



Indemnity is not only reimbursement after loss; it also protects against an existing absolute liability.

7 FINAL ORDER



Defendant was ordered to obtain from the mortgagee a release of the plaintiff from liability within 3 months.



If he failed, he had to pay into Court the amount necessary to discharge the mortgage and further charge.



Costs were awarded to the plaintiff.

MEMORY RULE: Parelkar teaches that indemnity protects not only against loss already paid, but also against an existing absolute liability.

NO NEED TO WAIT FOR ACTUAL PAYMENT ONCE LIABILITY HAS BECOME ABSOLUTE.

Duties of Indemnity holder -

- Duty to
- (a) act prudently.
 - (b) not cause any harm or loss
 - (c) comply with the instructions of promisor.

Guarantee (Section 126)

Contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default.

Guarantees are usually taken to provide a second pocket to pay, if the first should be empty.
— Philip Wood.

Essential Elements of Contract of Guarantee

① Existence of a recoverable debt

② Consideration. (Section 127)

- any thing done / promise made for the benefit of principal debtor, that may be sufficient consideration to the surety for giving the guarantee.

mnemonic - give 1 to 2 get 7. = consideration

eg - forbearance to sue = consideration.

Madanlal Sobti vs. RIIICO (2007) Delhi HC



MADAN LAL SOBTI v. RAJASTHAN STATE INDUSTRIAL DEVELOPMENT & INVESTMENT CORPORATION LTD.



Delhi High Court | 7 November 2006 | Sanjay Kishan Kaul J.

IL (2007) BC 364 | (2007) 145 PLR 43 | AIR 2007 (NOC) 638 (Del.)

THEME: FORBEARANCE TO SUE = SUFFICIENT CONSIDERATION FOR GUARANTEE (SECTION 127, INDIAN CONTRACT ACT)

1 WHO WAS WHO?

MADAN LAL SOBTI
 Petitioner | Surety / Collateral security provider | Owner of Flat BB/3-C, DDA Flats, Munirka

- Deposited title deeds of his flat on 10 March 1997.
- Gave collateral security / equitable mortgage.
- Later argued: loan had already been disbursed, so there was no fresh consideration.

His property was offered as security for another's debt.

security given

M/S EON POLYMERS LTD.
 Principal debtor | Borrower

- Received additional term loan of Rs. 64 lakhs.
- Loan was disbursed on 15 Nov 1996.
- Defaulted in repayment.

The borrower got time because the creditor held back immediate action.

loan advanced

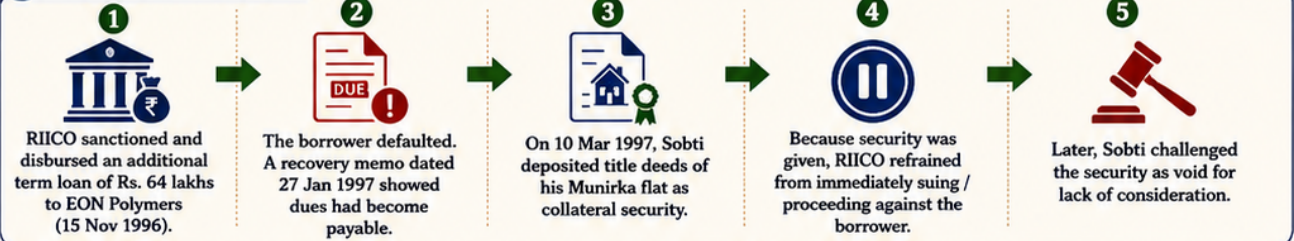
RIICO
 RAJASTHAN STATE INDUSTRIAL DEVELOPMENT & INVESTMENT CORPORATION LTD.
 Respondent | Creditor / Lender

- Advanced the additional term loan.
- Issued recovery memo on 27 Jan 1997 after default.
- Accepted Sobti's flat as collateral security.

Creditor with the right to sue, but it refrained for a time.

Guarantee / collateral security for borrower's debt

2 THE STORY IN 5 STEPS



3 CORE LEGAL ISSUE

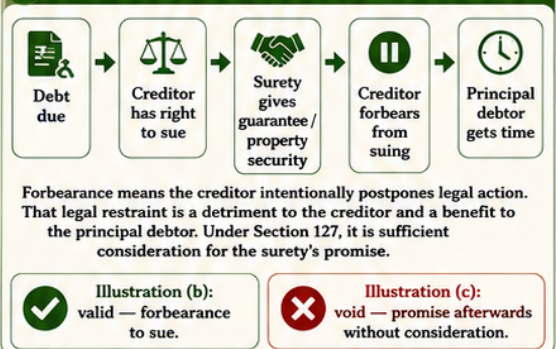
? Can a guarantee or collateral mortgage given after the loan has already been disbursed still be valid?

Yes — if the creditor, in return, forbears to sue the principal debtor.

4 WHY THIS ISSUE MATTERED

- The credit had already been given.
 - The debt had become due after default.
 - RIICO could have sued the borrower immediately.
 - But it held back after receiving Sobti's security.
- That delay or restraint was not empty — it was the consideration.
- Without this rule, many later guarantees would fail even though the creditor gave the debtor extra time.

5 HOW FORBEARANCE BECAME CONSIDERATION



6 WHAT THE COURT HELD

“ After the recovery memo and the borrower's failure to clear the dues, the mortgage created on 10 March 1997 was a case of forbearance to sue, and therefore it was not without consideration. ”

- Section 127 recognises forbearance as sufficient consideration.
- This case matched Illustration (b), not Illustration (c).
- The later security was enforceable even though no fresh loan was advanced at that moment.
- A mortgage by deposit of title deeds was also treated as valid collateral security.

7 FINAL RESULT

- Sobti's challenge failed.
- RIICO could proceed against the flat as collateral security.
- The petition was dismissed.

MEMORY RULE: FORBEARANCE TO SUE CAN BE SUFFICIENT CONSIDERATION FOR A GUARANTEE.

If the creditor could sue, but holds back because the surety gives security, the guarantee is not without consideration.



— Past consideration is also valid consideration

— Anything done

- ③ Three parties -
- (i) Principal debtor
 - (ii) Surety.
 - (iii) Creditor.

④ Three contracts - tripartite agreement



mnemonic - 1, 4, 3 1, 4, 3 अक्षरे 2
कहा जाता?

2 is missing - "concealment" of material fact.

Types of Guarantee

↓
Specific
guarantee
(Section 126)

↓
Continuing
guarantee
(Section 129)

mnemonic — "series" of numbers.

1, 2, 3, 4, 5, 6, 7, 8, 9.

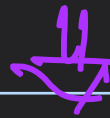
also written as...

1, 2 ... 9.



one two nine → 129 ⇒ continuing. guarantee.

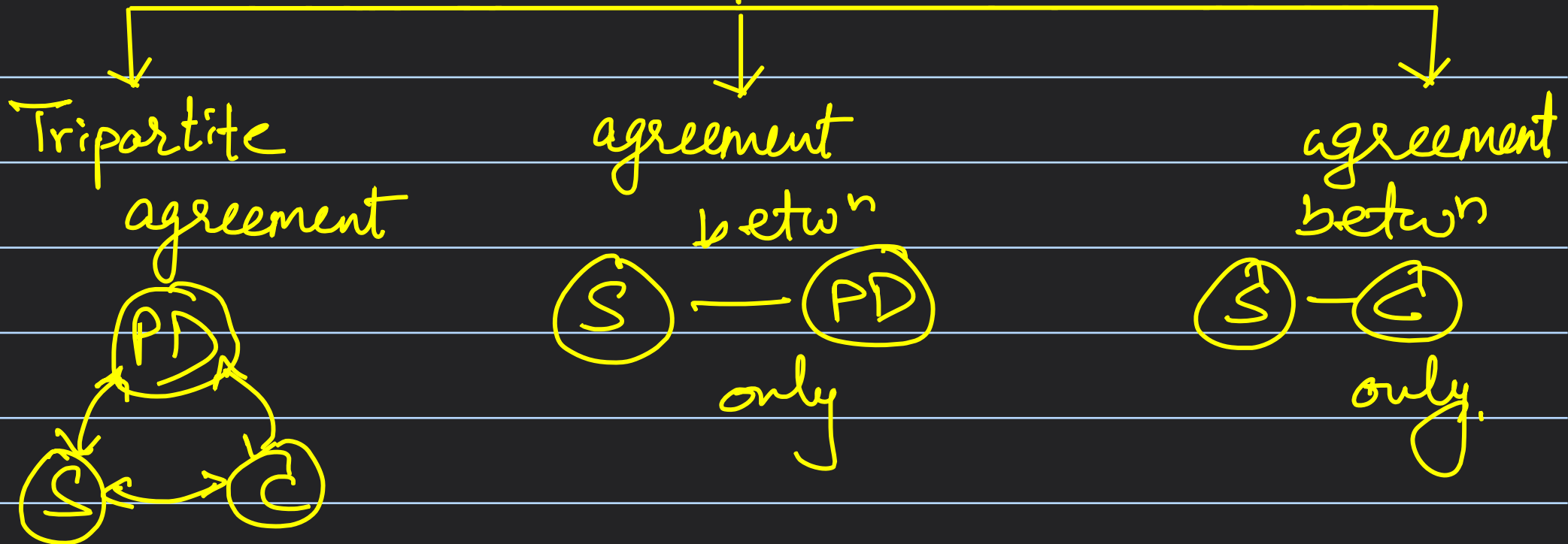
1 to nine.



series of transactions

Surety — one who promises to pay or perform an obligation owed by the principal debtor.

Suretyship arrangements



Difference Between Contract of Indemnity and Contract of Guarantee

A structured, exam-ready comparison under the Indian Contract Act, 1872, with brief English law notes wherever relevant.

<p>Indemnity Think: Loss shield Two parties, one contract, primary duty to save from loss.</p>	<p>Guarantee Think: Default backup Three parties, tripartite relationship, secondary liability after default.</p>	<p>Exam hook Indemnity focuses on loss; guarantee focuses on default of a third person.</p>
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Ground of distinction	Contract of Indemnity	Contract of Guarantee
1. Basic meaning	A contract of indemnity is a promise by one party to save the other from loss caused by the promisor himself or by the conduct of any other person. Its practical idea is reimbursement or protection against loss.	A contract of guarantee is a promise to perform the promise or discharge the liability of a third person in case that third person makes default. Its practical idea is credit support for another person's obligation.
2. Main statutory basis	It is principally governed by Sections 124 and 125 of the Indian Contract Act, 1872. Section 124 defines the contract, and Section 125 describes the rights of the indemnity-holder when sued.	It is governed by Sections 126 to 147 of the Indian Contract Act, 1872. These provisions cover definition, consideration, surety's liability, continuing guarantee, discharge of surety, subrogation, contribution and related matters.
3. Objective of the contract	The objective is to save the promisee from suffering loss. The emphasis is on protection against an actual or accrued liability.	The objective is to assure the creditor that the contract will be performed or that the liability will be discharged if the principal debtor defaults.
4. Number of parties	There are two parties: the indemnifier, who promises to save from loss, and the indemnity-holder, who is protected against loss.	There are three parties: the creditor, the principal debtor and the surety. The presence of a third person whose default is guaranteed is essential.
5. Number and nature of contracts	Ordinarily, there is one direct contract between the indemnifier and the indemnity-holder.	A guarantee involves a tripartite relationship. In substance, there is the principal contract between creditor and debtor, the surety's undertaking to the creditor, and an implied indemnity by the principal debtor to the surety.
6. Nature of liability	The liability of the indemnifier is primary. It arises because the indemnifier has promised to make good the loss or liability covered by the contract.	The liability of the surety is generally secondary in the sense that it depends on the default of the principal debtor. Under Section 128, however, the surety's liability is co-extensive with that of the principal debtor unless the contract provides otherwise.
7. When liability arises	Under the statutory definition, liability is linked to loss caused to the promisee. In equity-influenced Indian decisions, where the liability of the indemnity-holder has become absolute, he need not always wait until he has actually paid the money before seeking relief against the indemnifier.	Liability arises when the guaranteed debt becomes due or the principal debtor defaults in performing the guaranteed duty. The surety is then answerable according to the terms of the guarantee.
8. Consideration	Consideration follows the general rules of contract law. There must be lawful consideration unless the contract falls within an exception recognized by law.	Section 127 specifically provides that anything done, or any promise made, for the benefit of the principal debtor may be sufficient consideration to the surety for giving the guarantee.
9. Default of third person	Default of a third person is not the central requirement. Loss may be caused by the promisor's own conduct or by another person's conduct.	Default of the principal debtor is the central trigger. Without a third person whose liability is guaranteed, the transaction is not truly a guarantee.

Ground of distinction	Contract of Indemnity	Contract of Guarantee
10. Right to sue after payment or performance	After performing his promise, the indemnifier does not automatically step into the shoes of the promisee against a third party. He can sue the third party only where there is assignment, subrogation by agreement, or another independent legal basis.	After paying or performing all that he is liable for, the surety is invested with the creditor's rights against the principal debtor under Section 140. He also has an implied right to be indemnified by the principal debtor under Section 145.
11. Right to securities	The Indian Contract Act does not give an indemnifier a specific statutory right equivalent to Section 141. Any right to securities depends on the contract, assignment, equitable principle or facts.	Under Section 141, the surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into.
12. Discharge rules	The Act does not contain a detailed set of discharge provisions for indemnity comparable to Sections 133 to 139 for guarantee. The discharge of the indemnifier depends mainly on the contract, performance, breach, waiver, limitation and general principles.	The Act contains detailed rules for discharge of the surety. For example, variance in the contract without the surety's consent, release of the principal debtor, or creditor conduct impairing the surety's remedy may discharge the surety wholly or partly.
13. Revocation and continuing obligation	A contract of indemnity may be for a single transaction or for a continuing protection, depending on its wording. The Act does not separately label a continuing indemnity in the way it labels continuing guarantee.	A continuing guarantee is expressly recognized under Section 129. It may be revoked for future transactions under Section 130 and may also be affected by the surety's death under Section 131, subject to the contract.
14. Oral or written form	The Act does not require a contract of indemnity to be in writing. It may be express or may arise from the terms and circumstances, subject to proof and general contract requirements.	Section 126 states that a guarantee may be either oral or written. In practice, written guarantees are safer because the scope of suretyship, limitation and securities can be proved clearly.
15. Risk orientation	The indemnifier undertakes a loss-oriented risk. The focus is the loss or liability suffered by the indemnity-holder.	The surety undertakes a credit-oriented risk. The focus is the creditor's confidence in extending credit, time, goods, money or some other benefit to the principal debtor.
16. Illustrative example	A promises B that if B suffers loss because of proceedings taken by C in respect of a particular claim, A will save B from that loss. This is indemnity because A is protecting B from loss.	A bank gives a loan to D. S tells the bank that if D fails to repay, S will repay. This is guarantee because S is answering for D's default.
17. Important case-law pointer	In <i>Gajanan Moreshwar Parelkar v. Moreshwar Madan Mantri</i> , the Bombay High Court recognized that an indemnity-holder whose liability has become absolute may seek to compel the indemnifier to meet that liability, instead of waiting helplessly until actual payment.	In <i>Punjab National Bank Ltd. v. Bikram Cotton Mills</i> , the Supreme Court treated the arrangement as a guarantee because the obligation substantially depended on the principal debtor's default and involved the creditor, principal debtor and surety.
18. Best one-line exam distinction	Indemnity is a shield against loss. It is generally a two-party contract and the indemnifier's liability is primary.	Guarantee is a backup for default. It is a three-party arrangement and the surety's liability arises on the default of the principal debtor, though it is co-extensive unless otherwise agreed.

Duties / Obligations of Surety or Guarantor

① Surety's liability — is "co-existent" and equal to that of Principal Debtor. unless explicitly mentioned in contract.

Mnemonic — Section 128

one (surety) stands between 2. (creditor and principal debtor) and he/she owes equally. (8)

↑
liability of surety = liability of P.D.

→ Creditor can directly proceed against surety

→ creditor can sue surety w/o suing P.D.

→ P.D. & surety are jointly and severally liable to creditor in case of default

→ The 1^o liability is of P.D. surety's liability is 2^o

→ liability of surety is "coexistent" with that of P.D.

→ No need to serve notice of default to surety. on default surety steps into shoes of P.D.

→ A notice served to P.D. is implicitly a notice to the surety.

However, a dismissal of suit against P.D. doesn't absolve the liability of a surety — held in

↓ ↓

Karnataka State Industrial Investment & Development Corporation Ltd.

vs.

SBI. (2004) Karnataka HC

Liability of surety
Sec 128

Can never be more than amount owed by P. D.

is equal to liability of P. D.

unless it is otherwise provided by the contract.

in which case it will be not more than

amount undertaken as guarantee in the contract.

→ liability of surety is at par P.D.'s liability.

→ liability of surety is subject to terms of contract. — accordingly liability can be ordinary (specific guarantee) or continuing.

② Release of one co-surety does not discharge others. (Section 138)

③ Co-sureties liable to contribute equally (Section 146)

Illustration -

(i) A, B & C are sureties to D for sum of ₹ 3,000. given to E.
each one liable to pay ₹ 1000 if E defaults.

(ii) A, B & C are sureties to D for a sum of ₹ 5000. given to E.
E pays ₹ 2000 and then defaults.
A, B & C are liable for ₹ 1000 each.

④ Continuing guarantee (Section 129)

mnemonic — 1, 2 ... 9 → Series

A guarantee which extends to a series of transactions.

Illustration —

(i) A guarantees payment to B, a tea-dealer to the amount of ₹ 2000 for any tea he may supply to C from time to time

B supplies tea to C worth ₹ 1000 for which B pays.

Later, B buys tea worth ₹ 5000

and does not pay.

A is liable to pay ₹ 2000 as a part of continuing guarantee

(ii) A guarantees payment to B of price of five sacks of flour to be delivered by B to C and to be paid for in a month.

B delivers five sacks of flour to C.
C pays for them.

Afterwards B delivers ten sacks to C for which C does not pay.

A is not liable to pay as the guarantee undertaken was not continuous

Revocation of Continuing Guarantee (Section 130)

Mnemonic - "one" can make "Continuing guarantee" "zero", But he/she has to revoke it first

"one" "Continuous" "0"



revocation of continuing

Section

1

3

0

= → guarantee.

According to section 130, ICA, 1872. a continuing guarantee can be revoked at any time by the surety by serving a notice of revocation to creditor.

NOTE - Revocation does not absolve guarantor (surety) of existing liabilities. It only absolves surety from the onus of future transactions.

eg - A guarantees B for ₹ 10,000 to be paid to C. A revokes his guarantee. B defaults. A is still liable. (transaction was past.)

Discharge from liability of Surety

Discharge.

Section

- ① by revocation of guarantee S. 130
- ② by surety's death S. 131
- ③ by variance in terms of contract S. 133
- ④ by release or discharge of P. D. S. 134
- ⑤ when creditor
 - (i) compounds (composition)
 - (ii) promises to give time
 - (iii) promises not to sue.
 S. 135
- ⑥ by creditor's act or omission impairing surety's eventual remedy S. 139.
- ⑦ when contract becomes invalid.

- (i) guarantee obtained by misrepresentation S. 142
- (ii) guarantee obtained by concealment S. 143
- (iii) contract explicitly states that creditor shall not act on it until co-surety joins. S. 144.

Discharge from Liability of Surety

Indian Contract Act - Memory Notes based on the highlighted points

130 Revocation	131 Death	133 Variance	134 P.D. release	135 3 creditor acts	139 Remedy harm	142 Misrep.	143 Conceal	144 Co-surety
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Memory path for one-read recall

Think of the surety as a shield. The shield is discharged when the guarantee is revoked, the surety dies, the contract is changed without consent, the principal debtor is released, the creditor makes a new settlement with the debtor, the creditor harms the surety's remedy, or the guarantee itself becomes invalid.

1. Discharge when guarantee is revoked

Section 130

R

A surety is discharged when his liability comes to an end. Section 130 permits a surety to revoke a continuing guarantee at any time, but only as to future transactions. The revocation is made by serving a notice on the creditor.

2. Surety's death

Section 131

D

The death of the surety operates as a revocation of a continuing guarantee as regards future transactions, unless there is a contract to the contrary. The liability of the deceased surety may be enforced against his legal heirs only to the extent of the property inherited by them.

Past transactions

Revocation / death

Future transactions



3. Discharge by variance in terms of contract

Section 133

V

If there is any variance in the terms of the contract between the principal debtor and the creditor, the surety is discharged as to transactions subsequent to the variance. The essential condition is that the variance must have been made without the surety's consent.

Core recall: The surety is discharged the moment the original contract is altered without his consent. The surety remains liable for transactions that occurred before the variation, but the variation can discharge him for transactions that occur after the variation.



Variation without consent breaks future liability

Original contract altered -> surety discharged for later transactions



3. Variance in terms of contract - highlighted illustrations

Highlighted illustration	Why the surety is discharged
A becomes surety for B's conduct as manager in C's bank. Later, B and C alter B's terms without A's consent by raising salary and making B liable for one-fourth losses on overdrafts.	A is discharged because the liability attached to B's employment was materially changed without A's consent. A is therefore not liable to make good the loss arising after the variance.
C appoints B as a clerk to sell goods at a yearly salary upon A becoming surety for B's accounting. Later, without A's knowledge or consent, B is paid by commission instead of fixed salary.	A is not liable for the subsequent misconduct of B, because the employment arrangement guaranteed by A was changed without his consent.

4. Release or discharge of the principal debtor

4. Discharge by release or discharge of principal debtor

Section 134

P

The surety is discharged if any contract between the creditor and the principal debtor releases the principal debtor according to its terms. The surety is also discharged where some act or omission of the creditor has the legal consequence of discharging the principal debtor.

Highlighted situation	Effect on surety
The creditor supplies goods to the principal debtor and later contracts with other creditors to assign property in consideration of releasing the principal debtor from demands.	The principal debtor is released by the creditor's contract, and the surety is discharged from suretyship.
A principal debtor agrees to grow indigo on land and deliver it at a fixed rate, but the creditor diverts the stream required for irrigation.	The creditor's act prevents performance by the principal debtor. The surety is no longer liable on the guarantee.
The principal debtor agrees to build a house within a stipulated time, and the creditor guarantees performance but omits to supply the necessary timber.	The creditor's omission prevents performance; therefore, the surety is discharged.

Memory sentence

If the principal debtor is legally released, the surety cannot be kept tied to the same guarantee. The surety's liability follows the survival of the principal debtor's enforceable liability.

5. Creditor compounds, gives time, or promises not to sue

5. Discharge by creditor's arrangement with principal debtor

Section 135

C

A surety is discharged if there is any composition or new agreement between the creditor and the principal debtor by which the creditor compounds with the debtor, gives the debtor time, or promises not to sue the debtor.

Composition

More time

Promise not to sue

If done with principal debtor without surety consent, surety is discharged.

Sub-point as per chart	Highlighted rule
(i) Composition	If the debtor and creditor make a composition without the surety's consent, the surety's liability is discharged. Composition refers to a variation in the original contract by adding something that was not present in the original contract.
(ii) Promise to give time	If the principal debtor and creditor enter into a contract by which the creditor gives more time to pay the debt without keeping the surety into consideration, the surety is discharged.
(iii) Promise not to sue	If there is an explicit contract that the creditor will not sue the principal debtor in the event of default, the surety is discharged from liability.

6. Creditor’s act or omission impairing surety’s eventual remedy

6. Discharge by impairment of surety’s remedy

Section 139

A

If the creditor does any act inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety against the principal debtor is thereby impaired, the surety is discharged.

Creditor

Right impaired

Surety



Any inconsistent act or omission that harms the surety’s remedy releases the surety.

Highlighted illustration	Reason for discharge
B contracts to build a ship for C, payable by instalments as the work reaches certain stages. A becomes surety for B’s performance. Without A’s knowledge, C prepays the last two instalments to B.	A is discharged because the creditor’s prepayment removes the financial control and protection that would have supported the surety’s remedy against the principal debtor.
C lends money to B on a promissory note and on B’s furniture as security. A is surety. C later sells the furniture but, due to misconduct and wilful negligence, realizes only a small price.	A is discharged from liability on the note because the creditor’s negligent handling of the security impairs the surety’s eventual remedy.
A places M as an apprentice with B and guarantees M’s fidelity. B promises to check M’s cash at least once a month but fails to do so, and M embezzles money.	A is not liable on the guarantee, because the creditor failed to perform the protective act that the surety could expect.

Legal logic in one line

After paying the creditor, the surety expects to proceed against the principal debtor. If the creditor’s act or omission deprives the surety of the benefit of that remedy, the surety stands discharged.

7. Discharge when the contract becomes invalid



Misrepresentation



Concealment



Co-surety missing

7(i). Guarantee obtained by misrepresentation

Section 142

M

A guarantee obtained by means of misrepresentation made by the creditor is invalid. The same result follows where the guarantee is obtained through misrepresentation made with the creditor's knowledge and assent. The misrepresentation must concern a material part of the transaction.

Highlighted point: If a contract of guarantee is entered into owing to misrepresentation of a material fact known to the creditor, the contract is invalid.

7(ii). Guarantee obtained by concealment

Section 143

S

A guarantee obtained by the creditor by keeping silence as to material circumstances is invalid. If the contract of guarantee is obtained due to concealment of a material fact by the creditor, the contract is invalid.

7(iii) creditor shall not act until
co-surety joins. (Section 144)
caselaw



SECTION 144 – Conditional Guarantee and Co-Surety



Rule: If the guarantee is given on the **condition** that another co-surety must join, the guarantee is **not enforceable** until that co-surety joins.



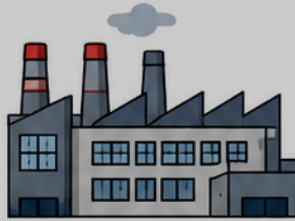
Case Used in the Note:

U.P. Financial Corporation v. Garlon Polyfeb Industries (AIR 2001 All 286)



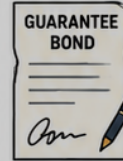
CREDITOR / LENDER
(U.P. Financial Corporation)

GRANTS
LOANS



BORROWER COMPANIES
(Including Garlon Polyfeb Industries)
Assets mortgaged / hypothecated
to U.P.F.C.

DIRECTORS EXECUTE
PERSONAL GUARANTEE
BONDS



GUARANTOR DIRECTORS / SURETIES

DIRECT ACTION ALLOWED
(As per guarantee terms in this case)

NO
co-surety-joining
condition in the
Guarantee Bond

WAIT!
SECTION 144
WOULD APPLY
ONLY IF GUARANTEE
WAS CONDITIONAL
ON ANOTHER
CO-SURETY JOINING



1 FACTS

- U.P. Financial Corporation (creditor/lender) granted loans to the plaintiff companies, including Garlon Polyfeb Industries.
- The companies' assets were **mortgaged/hypothecated** to the corporation.
- The directors executed personal guarantee bonds and became **guarantors/sureties**.
- When the companies **defaulted**, U.P.F.C. decided to recover dues from the guarantor-directors.
- The borrowers argued that the corporation should **first proceed against the company assets** under Section 29 of the State Financial Corporations Act.



2 ISSUE

- ? Could U.P.F.C. directly proceed against the guarantors?
- ? Was the corporation required to first recover from the company or mortgaged assets?
- ? Was there any **contractual condition** that action could not be taken unless some other **co-surety** joined?



3 HELD

- ✓ The High Court held that the guarantee bond allowed **direct recovery from the guarantors**.
- ✓ The liability of the surety was treated as **co-extensive** with that of the principal debtor.
- ✓ The bond said it was **not necessary to sue the company first**.
- ✓ The guarantors' liability **arose on demand**.
- ✓ Therefore, the order forcing U.P.F.C. to first proceed against the company was **not proper**.



4 SECTION 144 CONNECTION



IF THERE HAD BEEN A CLAUSE SAYING
"DO NOT ACT UNTIL ANOTHER CO-SURETY JOINS,"
SECTION 144 WOULD MATTER.



BUT IN THIS CASE,
NO SUCH CONDITION EXISTED.



SO THIS CASE SHOWS THE **OPPOSITE SIDE**:
A **CONDITIONAL CO-SURETY REQUIREMENT**
MUST BE **EXPRESSLY PRESENT**. WITHOUT THAT
CONDITION, THE CREDITOR MAY ACT ON THE
GUARANTEE ACCORDING TO ITS TERMS.



MEMORY TRICK:



Section 144 =
"Wait for the co-surety
if the guarantee says so."

This case =
"No waiting clause,
so creditor may proceed."



KEY TAKEAWAY: Section 144 protects the guarantor only when the guarantee is **CONDITIONAL** on another co-surety joining. No condition = direct action as per the guarantee.

7. Contract becomes invalid - final sub-point

7(iii). Creditor shall not act until co-surety joins

Section 144

2

Where the surety has set forth a condition that the creditor shall not act upon the contract in the absence of another co-surety, and that condition is not fulfilled, the contract becomes invalid.

How to remember Section 144

The number 144 can be remembered as: one guarantee is not to be acted upon until the fourth person, namely the co-surety, joins the arrangement. If the promised co-surety does not join, the foundation of the surety's consent fails.

Complete chart in exam-ready order

Order	Mode of discharge	Section	One-read memory cue
1	Revocation of continuing guarantee	130	Future transactions stop after notice to creditor.
2	Death of surety	131	Death revokes continuing guarantee for future transactions, unless contract says otherwise.
3	Variance in terms of contract	133	Change without surety's consent releases him for later transactions.
4	Release or discharge of principal debtor	134	If the principal debtor is released, the surety is also discharged.
5(i)	Composition	135	New settlement with debtor without surety consent discharges surety.
5(ii)	Promise to give time	135	Extra time to debtor without considering surety discharges surety.
5(iii)	Promise not to sue	135	Agreement not to sue principal debtor discharges surety.
6	Creditor impairs surety's eventual remedy	139	Creditor's inconsistent act or omission harming surety's remedy releases surety.
7(i)	Misrepresentation	142	Material misrepresentation connected with the guarantee makes it invalid.
7(ii)	Concealment	143	Silence about material circumstances by creditor makes the guarantee invalid.
7(iii)	Co-surety condition not fulfilled	144	If creditor must wait for co-surety and does not get that co-surety, the contract is invalid.

Final mnemonic: R-D-V-P-C-A-I

Revocation, Death, Variance, release of Principal debtor, Composition/time/no suit, creditor's Act or omission, and Invalid guarantee. This sequence matches the chart and helps recall the full structure during exams.

Rights of a Surety

Sections 140, 141, 145 and 146 of the Indian Contract Act - concise memory notes

Index of the four rights

1. Right on payment or performance - the surety steps into the shoes of the creditor under Section 140.
2. Right to benefit of creditor's securities - the surety receives protection from every security held by the creditor under Section 141.
3. Right to be indemnified - the surety may recover from the principal debtor whatever he has rightfully paid under Section 145; this includes the ideas of implied promise, indemnity and restitution.
4. Right against co-sureties - co-sureties ordinarily contribute equally under Section 146.

One-read memory formula

Remember the surety as a person who first pays, then steps into the creditor's position, then uses securities, then claims reimbursement from the principal debtor, and finally asks co-sureties to share the burden.



Memory chain: PAY - STEP - SECURE - CLAIM - SHARE

Payment gives creditor-rights; securities protect recovery; indemnity recovers lawful payment; co-sureties share burden.

1. Right of Surety on Payment or Performance

Section 140

Under Section 140, when the guaranteed debt has become due, or when there is default by the principal debtor in performing the guaranteed duty, the surety, upon payment or performance, becomes invested with all the rights which the creditor had against the principal debtor.

- 1 This right arises only when the surety has paid the guaranteed debt or has performed the guaranteed duty.
- 2 After payment or performance, the surety is placed in the creditor's position and can use the creditor's remedies against the principal debtor.
- 3 The right is limited to the extent of the amount paid or the obligation performed by the surety.
- 4 The core idea is simple: the law does not allow the principal debtor to escape merely because the surety has satisfied the creditor.

Memory cue

mnemonic - "I" surety pays "for" P.D. and makes balance "0" before stepping into his shoes.

Pay first, step next. Section 140 makes the surety step into the creditor's shoes only after the surety has paid or performed.

2. Surety's Right to Benefit of Creditor's Securities

Section 141

Under Section 141, a surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into. This right exists whether the surety knows about the security or not.

- 1 The word security includes every remedy or protection which the creditor has against the principal debtor, such as a mortgage, pledge, charge, decree, bond or similar safeguard.
- 2 If the creditor loses, parts with, reduces or impairs such security without the surety's consent, the surety is discharged to the extent of the value of that security.
- 3 The rule is based on fairness because the surety pays for another person's liability and should not lose the securities which could have helped him recover from the principal debtor.
- 4 The surety's right to the security exists even if he had no knowledge of that security at the time of giving the guarantee.

Quick illustration

C holds B's property as security for B's debt. A is surety for B. If C carelessly gives up that security without A's consent, A is discharged to the extent of the value of the security lost.

mnemonic. - Section 141
"I" surety is entitled "for" all securities as one right
 ↓ ↓ ↓
1 4 1

3. Surety's Right to be Indemnified

Section 145

Section 145 creates an implied promise by the principal debtor to indemnify the surety. Therefore, after the surety rightfully pays under the guarantee, the surety can recover from the principal debtor the amount which was lawfully paid. However, the surety cannot recover sums which were wrongfully or unnecessarily paid.

- 1 The right is based on an implied promise because the principal debtor is treated as having promised to protect the surety from loss arising out of the guarantee.
- 2 The surety may recover whatever sum he has rightfully paid under the guarantee.
- 3 The surety cannot recover money paid wrongfully, unnecessarily, or beyond the real liability of the principal debtor.
- 4 If the surety reasonably defends a claim and still loses, he may recover the principal amount and proper costs. If the defence was unreasonable, he may lose the right to recover such costs.

Important illustration

B owes money to C, and A is surety for B. C demands payment from A. A has reasonable grounds to contest the claim, but after litigation A is compelled to pay the debt and proper costs. A can recover from B the amount of the debt and the reasonable costs, because A acted prudently and paid under the guarantee.

Existence of implied promise and the basis of claim

Basis	Meaning in simple academic language
A. Indemnity	The principal debtor is treated as impliedly promising to reimburse the surety for all lawful payments made under the guarantee. The surety should act prudently, and where possible, should inform or consult the principal debtor before contesting or settling the creditor's claim.
B. Restitution	The principal debtor receives a benefit because his debt or duty is discharged by the surety. Therefore, justice requires the principal debtor to restore or reimburse the surety to the extent of the benefit received.

Limit of recovery

A surety may recover only what was rightfully paid. For example, if the creditor supplies goods worth less than the guaranteed limit but wrongly obtains the full limit from the surety, the surety can recover from the principal debtor only the real value of goods supplied.

mnemonic - "1" surety has right "for" putting "five" fingers in to P.D.'s pocket

① →

② → "1" surety's happy for Right to indemnified.

"1" ↓ "4" ↓ "5"

4. Right Against Co-Sureties: Equal Contribution

Section 146

Section 146 provides that where two or more persons are co-sureties for the same debt or duty, they are liable as between themselves to pay equal shares of the whole debt, or of that part of it which remains unpaid by the principal debtor. This rule applies unless there is a contract to the contrary.

- 1 Co-sureties contribute equally when they stand for the same debt or duty.
- 2 The rule applies even if the co-sureties are bound by the same contract or by separate contracts.
- 3 The rule also applies whether the co-sureties know of each other or not.
- 4 If one co-surety pays more than his proper share, he can claim contribution from the other co-sureties.
- 5 The equality under Section 146 is subject to any contrary agreement among the parties.

Illustration for Section 146

A, B and C are co-sureties for a debt of Rs. 9,000 owed by the principal debtor to D. If the principal debtor defaults and A pays the entire Rs. 9,000 to D, A may claim Rs. 3,000 from B and Rs. 3,000 from C, because each co-surety must ultimately bear an equal share.

One-glance revision map	Core legal effect	Memory hook
Section 140	After payment or performance, the surety gets the creditor's rights against the principal debtor.	Pay - Step
Section 141	The surety gets the benefit of every creditor-security and is discharged if the creditor impairs it without consent.	Security - Shield
Section 145	The principal debtor must indemnify the surety for amounts rightfully paid under the guarantee.	Recover - Reimburse
Section 146	Co-sureties for the same debt or duty contribute equally unless there is a contrary contract.	Share - Equal

Final mnemonic

140 pays, 141 protects, 145 reimburses, 146 shares. This sequence captures the practical journey of a surety after the principal debtor defaults.

"Liability of surety arises —
"strictissimi juris"

It means surety is considered a "favoured debtor" in the eyes of law.

His/her legal obligation cannot be stretched, presumed or altered w/o their explicit consent.

↳ Why?

① b'coz surety is entering liability not for oneself but for a third person.

② Surety often does not receive any benefit for his/her onerous obligation.

Rights of Bailee and Duties of Bailor - Comparative Memory Table

Indian Contract Act, 1872 - Sections 150, 155, 158, 159, 164, 165, 167, 170, 171 and 180

One-read memory formula: Where the bailee can claim something, the bailor normally has the corresponding duty or liability. Remember the core chain: 150 = faults/damages, 158 = necessary expenses, 159 = early termination indemnity, 164 = defective authority/title compensation, and 155 = shared interest in mixed goods with consent.

A. Comparative points - right of bailee and corresponding duty/liability of bailor

Point / Section	Right of the Bailee	Corresponding Duty or Liability of the Bailor
S.150 - Faults in goods bailed Cue: hidden fault = damage claim	The bailee has the right to claim damages if undisclosed faults in the goods materially interfere with their use or expose the bailee to extraordinary risk.	The bailor has the duty to disclose known faults. In a gratuitous bailment, he is liable for damage caused by faults known to him and not disclosed. In a bailment for hire, the bailor is responsible for such damage even if he was not aware of the fault.
S.155 - Mixture with bailor's consent Cue: consent = common bowl	The bailee has the right to a proportionate share in the mixture when the goods of the bailor are mixed with the bailee's goods with the bailor's consent.	The bailor must accept that both parties have an interest in the mixed goods in proportion to their respective shares. This is not a fault-based liability; it is a sharing rule.
S.158 - Necessary expenses Cue: expense bill	The bailee has the right to recover necessary expenses incurred for the purpose of the bailment, where the goods are to be kept, carried, or worked upon for the bailor and no remuneration is payable to the bailee.	The bailor has the duty to repay necessary expenses incurred by the bailee for the purpose of the bailment.
S.159 - Gratuitous bailment ended early Cue: early recall = indemnity	The bailee has the right to be indemnified if a gratuitous bailment is terminated by the bailor before the agreed time or before the purpose is achieved, and the bailee suffers loss because of such early termination.	The bailor has the duty to indemnify the bailee for loss or damage caused by premature termination of a gratuitous bailment.
S.164 - Bailor not entitled Cue: defective authority/title	The bailee has the right to claim compensation if he suffers loss because the bailor was not entitled to make the bailment, receive back the goods, or give directions about them.	The bailor is responsible to compensate the bailee for loss arising from the bailor's lack of title, authority, or entitlement concerning the goods.

B. Rights of bailee which do not create a direct matching duty of the bailor

Point / Section	Right of the Bailee	Why there is no direct opposing duty of the Bailor
S.165 - Joint bailors Cue: one joint owner may receive	Where several joint owners bail goods, the bailee may deliver the goods to one joint bailor or according to the directions of one joint bailor, unless there is an agreement to the contrary.	This is mainly a protection to the bailee. It tells the bailee how he may safely return the goods. It does not impose a new payment or compensation duty on the bailor.

Point / Section	Right of the Bailee	Why there is no direct opposing duty of the Bailor
S.167 - Third-party claim Cue: doubt = court	If a person other than the bailor claims the goods, the bailee may apply to the court to stop delivery to the bailor and to decide the title to the goods.	The opposite party here may be the bailor or a third-party claimant. The section gives the bailee a neutral court remedy, not a simple duty of the bailor.
S.180 - Wrong-doer Cue: outsider injury	If a third person wrongfully deprives the bailee of use or possession of the goods, or injures them, the bailee may file a suit against the wrong-doer and use remedies similar to those of the owner.	This right is primarily against a third party, not against the bailor. Therefore, there is no direct corresponding duty of the bailor in this point.
S.170 and S.171 - Lien Cue: unpaid work = hold goods	The bailee may have a right of lien, meaning a right to retain the goods until lawful charges or dues connected with the bailment are paid.	The practical opposite is the bailor's need to pay lawful charges to recover the goods, but the highlighted text treats lien separately under Sections 170 and 171 rather than as a specific bailor-duty entry.

C. Duties/liabilities/effects appearing on the bailor-side topic, without a simple bailee-right match

Point / Section	Position of the Bailee	Position of the Bailor / Why it is not a simple bailor duty
S.156 - Mixture without consent, goods separable Cue: unauthorized mix but separable	The bailee has no special right against the bailor here. Instead, if the bailee mixes the goods without consent, he must bear the expense of separation or division and any damage arising from the mixture.	This protects the bailor. The property in the goods remains with the respective parties, but the burden falls on the bailee because the mixing was without the bailor's consent.
S.157 - Mixture without consent, goods inseparable Cue: unauthorized mix and impossible separation	The bailee again has no corresponding right. Where the bailee wrongfully mixes goods in a way that they cannot be separated, he becomes liable for the consequence.	The bailor becomes entitled to be compensated by the bailee for the loss of the goods. So this is really a bailor's remedy against the bailee, not a duty of the bailor.

Quick Revision Chain

150	Faults hidden by bailor -> bailee claims damages
155	Consent to mixing -> proportionate share for both
158	Necessary expenses -> bailor repays bailee
159	Gratuitous bailment stopped early -> bailor indemnifies bailee
164	Bailor lacked entitlement -> bailee gets compensation
165 / 167 / 180 / 170-171	Independent protective remedies of bailee: deliver safely, approach court, sue wrong-doer, retain goods by lien

Exam tip: In an answer, first write the section number, then state the bailee's right, then immediately write the matching duty or liability of the bailor. This creates a natural comparison and avoids repetition.

Rights of the Bailor and Duties/Liabilities of the Bailee

Indian Contract Act, 1872 - comparative revision chart based on the highlighted portions. Read the middle and right columns together: in bailment, the bailor's right usually mirrors the bailee's duty.

Memory Ladder: CARE -> CORRECT USE -> NO MIXING -> RETURN -> COMPENSATE -> ACCRETIONS

A. Main Comparative Table - Where the Bailor's Right Directly Corresponds to the Bailee's Duty

Point / Section	Right of the Bailor	Corresponding Duty or Liability of the Bailee
Reasonable care Sections 151 and 152	Right to claim damages if the bailee has not taken reasonable care and the goods are lost, destroyed, or deteriorated. The bailor can insist that the bailee must protect the goods with the care of a person of ordinary prudence.	Duty to take care of goods bailed. Under Section 151, the bailee must take as much care of the bailed goods as a prudent person would take of his own goods of similar bulk, quality and value. Under Section 152, if such care is taken, the bailee is generally not liable for accidental loss, subject to any special contract.
Unauthorised use Sections 153 and 154	Right to avoid the contract when the bailee does an act regarding the goods that is inconsistent with the terms of bailment. The bailor may terminate the bailment before its ordinary completion.	Duty not to make unauthorised use of goods. If the bailee uses the goods in a manner not permitted by the bailment, he becomes liable to compensate the bailor for any damage arising from or during such use.
Damages for wrongful use Section 154	Right to claim damages when the bailee uses the goods contrary to the bailment conditions and damage is caused to the goods.	Liability to compensate the bailor. Even if the immediate accident is not deliberate, the bailee is answerable when the loss occurs during unauthorised or wrongful use.
Mixing with consent Section 155	Right to claim proportionate share in mixed goods. Where mixing is done with the bailor's consent, both bailor and bailee have interests in the mixture according to their respective shares.	Permitted mixing with shared interest. If the bailee mixes the bailor's goods with his own goods with consent, the resulting mixture belongs to both in proportion to their shares.
Mixing without consent - goods separable Section 156	Right to claim his goods after separation and to recover expenses or incidental damage caused by the unauthorised mixing.	Duty to bear separation expenses and damage. If the goods can be separated, the property in the goods remains with the parties respectively, but the bailee must bear the cost of separation or division and any damage arising from the mixture.
Mixing without consent - goods inseparable Section 157	Right to compensation for loss of goods when the bailee wrongfully mixes the goods and they cannot be separated.	Liability to compensate the bailor. If the goods cannot be separated because of unauthorised mixing, the bailor is entitled to be compensated for the loss of his goods.
Return of goods Section 160	Right to demand return of goods after expiry of the bailment period or after accomplishment of the purpose for which the goods were bailed.	Duty to return or deliver goods as directed. The bailee must return or deliver the goods according to the bailor's directions without demand, once time has expired or the purpose is completed.

Point / Section	Right of the Bailor	Corresponding Duty or Liability of the Bailee
Non-return at proper time Section 161	Right to claim compensation for loss, destruction or deterioration from the time when the bailee defaults in returning the goods.	Responsibility when goods are not duly returned. If, by the bailee's fault, the goods are not returned, delivered or tendered at the proper time, the bailee is responsible for any loss, destruction or deterioration from that time.
Accretion or profit Section 163	Right to demand increase or profit that has accrued from the goods bailed, unless there is a contract to the contrary.	Duty to return accretions. The bailee must deliver the goods together with any increase or profit accruing from them, such as a calf born to a cow left in custody.

B. Special / Independent Rights and Duties - Not a Simple Mirror Image

These points are important because exam answers often ask: "Are all rights merely duties in reverse?" The answer is: many are corresponding, but some provisions have a special independent character.

Point / Section	Bailor's Right or Position	Bailee's Duty / Liability or Why It Is Special
Gratuitous bailment Section 159	Right to restore goods lent gratuitously. In a gratuitous bailment, the bailor or lender may require the bailee to return the goods at any time, even before expiry of the agreed period or before accomplishment of the purpose.	Corresponding protection for bailee. If premature termination causes loss to the bailee beyond the benefit derived from the bailment, the bailor must indemnify the bailee. This is not merely a bailee duty; it is a special limit on the bailor's right.
Burden of proof in care cases	Practical right to explanation. When goods are lost in the bailee's custody, the bailor can call upon the bailee to explain that reasonable <u>care was taken</u> .	Practical evidentiary burden. The bailee must show that he exercised reasonable care and took reasonable precautions. If he succeeds, he may avoid liability for <u>unavoidable</u> loss.
Owner's risk clauses	Right not defeated by labels alone. Even where goods are carried at "owner's risk", the bailor can still complain if the bailee/carrier failed in the duty of reasonable care.	Duty of care remains central. "Owner's risk" does not ordinarily give a licence for negligence; it does not remove the bailee's basic obligation to take reasonable care.
Accidental loss after due care Section 152	No automatic right to damages. If the bailee proves ordinary prudent care and there is no special contract, the bailor may not recover for accidental loss.	Protection from liability. Section 152 protects the bailee where he has taken the standard of care required by Section 151.

C. One-Read Revision Formula

Trigger word	Immediate recall	Legal effect
Care	Section 151 duty; Section 152 protection	Bailor gets damages only when ordinary prudent care is not taken.
Wrong use	Sections 153-154	Bailor may avoid bailment and claim compensation for damage.

Trigger word	Immediate recall	Legal effect
Mixing	Sections 155-157	With consent: proportionate share. Without consent: separation cost or compensation.
Return	Sections 160-161	Bailee must return on time; default creates liability from that time.
Increase	Section 163	Accretions and profits go back with the goods unless contract says otherwise.
Gratuitous return	Section 159	Bailor can terminate early but must indemnify excess loss to bailee.

D. Mini Illustrations for Fast Recall

Provision trigger	Picture to remember	Legal answer in one sentence
151-152 Care	Jewellery box kept with bank: if contents are missing, the bailee must explain proper care.	Bailor can recover when bailee fails to show reasonable care; bailee is protected only after proving prudent care.
153-154 Wrong use	Horse given for riding is driven in a carriage or taken on an unauthorised route.	Wrong use allows the bailor to avoid bailment and claim compensation for damage during such use.
155-157 Mixing	Bailor's marked cotton bales are mixed with bailee's different bales.	Consent gives proportionate share; no consent creates separation cost or compensation liability.
160-161 Return	Goods are not returned after the fixed period or after the work is completed.	Delay by the bailee makes him responsible for loss, destruction or deterioration from that time.
163 Accretion	Cow left for custody gives birth to a calf.	The calf or profit must be returned with the original goods unless the contract provides otherwise.

Finder of Goods as a Special Bailee

Core Idea: A **finder of goods** is a person who finds goods that do not belong to him. He must try to find the true owner and hand over the goods to that owner. In law, the finder is treated as a **special type of bailee**. Therefore, many duties of a bailee apply to him, while his rights are specially highlighted under **Sections 168 and 169** of the Indian Contract Act, 1872.

Memory Line: Found but not Free — the finder may keep the goods safe, **not use** them, **not mix** them, **return** them with any increase, and may **retain** or sometimes **sell** them only in situations allowed by law.

How the Finder Mirrors the Bailee: Duty Comparison

Colour Guide for Quick Memory

Green = clear equivalent

Amber = adapted / narrower rule

Rose = no direct provision highlighted in the supplied finder extract

Point / Section	Duties of a Bailee	Equivalent Provision for Finder of Goods
Reasonable care Section 151	The bailee must take as much care of the goods bailed as a person of ordinary prudence would take of his own goods of similar nature, quality and value.	Duty to take reasonable care — the finder must take reasonable care of the goods as he would have taken of his own goods.
No unauthorised use Section 154	The bailee must not make any use of the goods that is inconsistent with the terms or purpose of the bailment. Wrongful use makes him liable for damage.	Duty not to make unauthorised use — the finder must not make any unauthorised use of the goods found.
No mixing with own goods Sections 155–157	The bailee should not mix the bailor's goods with his own goods. The legal consequences depend on whether the mixing was with consent, without consent but separable, or without consent and inseparable.	Duty not to mix goods — the finder is bound not to mix the found goods with his own goods.
Return of goods Section 160	The bailee must return or deliver the goods according to the bailor's directions when the time expires or the purpose is accomplished.	Duty to return the goods — the finder must return the goods to the owner. He may exercise lien if lawful charges remain unpaid.
Return of increase / accretion Section 163	The bailee must return not only the goods but also any increase or profit arising from them, unless there is a contract to the contrary.	Duty to return the increase — the finder must return any increase or profit in the goods to the owner.
Liability when goods are not duly returned Section 161	If the bailee fails to return, deliver or tender the goods at the proper time due to his fault, he is responsible for any loss, destruction or deterioration from that time.	Implied equivalent — though the supplied finder extract does not separately restate Section 161, the finder, being treated as a bailee, must responsibly return the goods and may be answerable if wrongful retention causes loss.

Rights Angle: Bailee and Finder of Goods

Point / Section	Rights of a Bailee	Equivalent Position of Finder of Goods
Right to claim expenses Section 158	A gratuitous bailee is entitled to the necessary expenses incurred for the purpose of bailment where he receives no remuneration.	Modified rule under Section 168 — the finder cannot ordinarily sue the owner for general trouble and expenses incurred in preserving the goods. However, he may retain the goods until lawful charges or promised reward are paid.
Right to lien Sections 170–171	A bailee may in certain cases retain the goods until lawful charges are paid. This is the bailee's right of lien.	Clear equivalent — under Section 168, the finder may retain the goods against the owner until he receives the lawful charges / compensation / specified reward. This operates as a particular lien .
Right to sue / claim reward Section 168	The ordinary bailee's rights list does not separately mention a right to sue for a <i>reward offered</i> .	Special right of finder — if the owner has offered a specific reward , the finder may sue for that specified reward and can retain the goods until it is paid.
Right to sell goods in necessity Section 169	The ordinary bailee does not have a broad independent right to sell the goods merely because he is a bailee.	Special right of finder — the finder may sell goods when the owner cannot with reasonable diligence be found, or refuses lawful charges, and either (a) the goods are in danger of perishing or losing the greater part of value, or (b) the lawful charges amount to two-thirds of the value.
Other general bailee rights Sections 150, 155, 164, 165, 167, 180	These include rights such as claiming damages for undisclosed defects, claiming a share in mixed goods, claiming compensation, applying to the court, and suing a wrong-doer.	No direct separate statement in the supplied finder pages. Since the book says the finder's rights are the same as those of a bailee, these ideas may conceptually support the finder; however, the attached extract specifically highlights Sections 168 and 169 as the key finder-right provisions.

One-Read Revision

Finder of Goods = Special Bailee. He must **care** for the goods, **not misuse** them, **not mix** them, **return** them, and **return any increase**. His notable special rights are: **(1) lien-like retention and suit for specified reward under Section 168, and (2) sale in limited necessity under Section 169.**

Quick Memory Formula: CARE - DON'T USE - DON'T MIX - RETURN - RETURN INCREASE - RETAIN / SELL ONLY BY LAW

Bailee's Right to Lien - Particular Lien and General Lien

Meaning of Lien	One-Line Memory
A lien is the right of a person in lawful possession of goods belonging to another to retain those goods until the lawful claim, remuneration, charges or balance due is paid. It is primarily a right to retain possession , not a right to sell, unless some separate law or contract allows sale.	LIEN = LOCK IT, IF EXPENSES NOT PAID. The bailee cannot normally use or sell the goods. He only keeps possession as legal pressure until payment is made.

Kinds of Lien - The Main Comparison

Basis	Particular Lien - Section 170	General Lien - Section 171
Meaning	A right to retain only those particular goods in respect of which the bailee has rendered labour, skill or service and remuneration is due.	A right to retain goods or securities of another person for a general balance of account due from that person.
Section	Section 170 of the Indian Contract Act, 1872.	Section 171 of the Indian Contract Act, 1872.
Who can claim?	Any bailee who has lawfully received goods and has improved, repaired, preserved, worked upon, or rendered service involving labour or skill in relation to those goods.	Only special classes expressly recognised: bankers, factors, wharfingers, High Court attorneys and policy brokers . Other persons need an express contract giving such right.
Connection with goods	There must be a direct connection between the goods retained and the charges claimed. The claim must arise in respect of those very goods .	The goods retained may be held as security for the general balance due, even if the claim is not only for service done on those exact goods.
Purpose	To secure payment for service done on the particular goods.	To secure the general account balance due to the recognised professional or commercial holder.
Example	A gives a rough diamond to B, a jeweller, for cutting and polishing. B may retain that diamond until his charges are paid.	A banker may retain securities deposited by a customer for the customer's general balance, unless an express or implied contract is inconsistent with lien.
Limit / exception	If the bailee agreed to deliver first and give credit for payment, he cannot retain the goods until payment. Example: tailor agrees to deliver coat immediately and give three months credit.	General lien is subject to contract to the contrary. If the goods/securities were deposited for a specific inconsistent purpose, general lien may not apply.
Memory hook	Particular = same goods, same charges.	General = recognised persons, general balance.

Particular Lien - Section 170 in Exam-Ready Form

Condition	Explanation	Quick Example
Goods must be bailed	The goods must have been delivered to the bailee for some purpose connected with bailment.	Diamond given to jeweller; cloth given to tailor; vehicle given to workshop.
Labour or skill must be exercised	The bailee must have rendered service involving labour or skill in respect of those goods.	Cutting, polishing, repairing, preserving, improving or maintaining goods.
Charges must remain unpaid	The bailee may retain the goods until due remuneration is paid.	Jeweller retains polished diamond until service charges are paid.
Only particular goods can be retained	The lien is confined to the goods in respect of which the charges arose; it is not for unrelated debts.	Repairer can retain the repaired article, not some other article for another unrelated debt.
Subject to contract	The parties can agree against lien, expressly or impliedly.	Tailor promises to deliver coat immediately and allow three months credit; he cannot then retain the coat for the price.

Bailee's Right to Lien - General Lien Users

General Lien - Section 171: Who Uses It and How?

Recognised Holder	How the Lien Works	Memory Cue
Bankers	Bankers generally have a lien over securities or goods deposited by a customer for the customer's general balance, unless a special contract or circumstances show the deposit was for a purpose inconsistent with lien.	Bank = Balance security
Factors	A factor is an agent entrusted with possession of goods for sale. The factor's lien arises over goods coming into his actual or constructive possession in that capacity.	Factor = Agent selling goods
Wharfingers	A wharfinger receives goods at a wharf for loading, unloading, storing, forwarding or delivery. He may retain goods until wharf-related charges are paid.	Wharf = Water-side warehouse
High Court Attorneys	High Court attorneys can retain goods bailed to them as security for a general balance of account, unless there is a contract to the contrary. However, client files and documents entrusted to an advocate are not treated as saleable goods in the same way; in <i>R. D. Saxena v. Balram Prasad Sharma</i> , the Supreme Court held that such files/documents cannot be retained as lien in that manner.	Attorney = limited legal lien
Policy Brokers	Policy brokers are included in Section 171 and can exercise general lien for balances due in the recognised course of their business.	Policy broker = insurance papers
Other persons	No other person can claim general lien merely by status. They need an express contract giving such a right.	No status, no general lien

Fast Decision Chart for Exams

Question	Answer Path
Did the bailee work on the same goods and charges for those goods are unpaid?	Yes - Think Particular Lien under Section 170 . Example: jeweller, tailor, repairer, workshop.
Is the claimant a banker, factor, wharfinger, High Court attorney or policy broker claiming a general balance?	Yes - Think General Lien under Section 171 , subject to contract to the contrary.
Is the claimant some other person claiming a general balance?	No general lien unless there is an express contract creating that right.
Was there a contract inconsistent with lien, such as agreed credit or a special purpose deposit?	Lien may be excluded . Contract to the contrary defeats both Section 170 and Section 171 situations.

One-Read Memory Capsule

Lien is possession pressure. It lets the bailee retain goods until lawful charges are satisfied. **Section 170** is **Particular Lien**: same goods, same service, same charges. **Section 171** is **General Lien**: only bankers, factors, wharfingers, High Court attorneys and policy brokers, or anyone else only by express contract. Both are subject to a contract to the contrary.

Mnemonic: 170 = ONE-SEVEN-ZERO = ONE specific goods, service by skill, ZERO payment.
171 = ONE-SEVEN-ONE = one general balance retained by the special five.

Bailment and Pledge - Comprehensive Comparative Table

Memory Hook: Every pledge is a bailment, but every bailment is not a pledge.

Bailment is the broad genus. Pledge is a narrower species of bailment where goods are delivered as **security** for a debt or performance of a promise.

Exam Focus: First write the common base: **delivery of possession of goods without transfer of ownership**. Then show the special feature of pledge: **security + pawnee's special rights on default**.

A. Similarity Foundation - Why Pledge is a Type of Bailment

Common Point	Bailment	Pledge	Memory Cue
Nature	A legal relationship arising from delivery of goods by one person to another for a purpose.	A special form of bailment where the purpose is to secure payment of debt or performance of a promise.	Pledge = Bailment + Security
Subject matter	It concerns goods . Possession is transferred, not ownership.	It also concerns goods . Possession is transferred to the pawnee as security; ownership remains with the pawnor.	Possession moves; ownership stays.
Return idea	Goods are returned or dealt with according to the bailor's directions after the purpose is completed.	Goods are returned when the debt is paid or the promise is performed, subject to the pawnee's lawful rights.	Return after purpose / payment.

B. Main Differences - Bailment vs Pledge

Ground of Difference	Bailment	Pledge
1. Governing idea	Bailment is the general contract of delivery of goods for a special purpose.	Pledge is the special bailment of goods as security for debt or performance of a promise.
2. Statutory definition	Section 148 defines bailment as delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of as directed by the person delivering them.	Section 172 defines pledge as bailment of goods as security for payment of a debt or performance of a promise.
3. Parties	The person delivering goods is the bailor ; the person receiving goods is the bailee .	The bailor is called the pawnor ; the bailee is called the pawnee .
4. Purpose	The purpose may be broad: safe custody, repair, carriage, hire, work on goods, lending, or any other lawful special purpose.	The purpose is narrow and specific: the goods are delivered as security for a debt or for performance of a promise.
5. Consideration	Consideration may be present or absent, depending on the terms. A bailment may be gratuitous or non-gratuitous.	Consideration is practically central because the pledge secures a debt or promise. Without debt or promise to secure, the arrangement is not a true pledge.
6. Right to use goods	The bailee may use the goods only to the extent permitted by the bailor and consistent with the purpose of bailment.	The pawnee generally has no right to use the pledged goods. He keeps them as security until payment or performance.
7. Right to sell goods	An ordinary bailee has no general right to sell the goods merely because he holds them. He must return them after the purpose is fulfilled.	On default by the pawnor, the pawnee may either sue on the debt / promise and retain the goods as collateral security, or sell the pledged goods after giving reasonable notice of sale under Section 176 .

Ground of Difference	Bailment	Pledge
8. Right of retainer	A bailee may have lien in appropriate cases, such as particular lien under Section 170 for labour or skill, and general lien for certain persons under Section 171 .	The pawnee has a special statutory right of retainer under Section 173 for the debt, interest, and necessary expenses relating to possession or preservation of the pledged goods.
9. Retention for other debts	Ordinary bailment lien depends on the kind of lien and the facts. Particular lien is usually limited to charges connected with the specific goods.	Section 174 says the pawnee cannot retain goods for debt or promise other than that for which the goods were pledged, unless there is a contract to the contrary. Later advances may create a presumption in some cases.
10. Expenses	Bailee may claim necessary expenses in appropriate bailment situations, especially in gratuitous bailment.	Under Section 175 , the pawnee is entitled to receive extraordinary expenses incurred for preservation of the goods pledged.
11. Default consequences	Default by bailee in returning goods may create liability for loss, destruction, or deterioration from that time.	Default by pawnor gives the pawnee stronger remedies: retain, sue, or sell after reasonable notice, subject to surplus / deficiency rules under Section 176 .
12. Surplus after sale	In ordinary bailment, sale by bailee is generally not the normal remedy, so surplus rules do not arise in the same way.	If sale proceeds exceed the debt, the pawnee must pay the surplus to the pawnor. If sale proceeds are less than the debt, the pawnor remains liable for the balance.
13. Right of redemption	A bailor normally gets goods back after the purpose ends, as per the terms of bailment.	A defaulting pawnor may redeem the goods before the actual sale by paying the debt and expenses arising from default under Section 177 .
14. Ownership	Ownership remains with the bailor; only possession goes to the bailee.	Ownership remains with the pawnor; possession goes to the pawnee as security. Sale by pawnee on default is an exceptional statutory remedy.
15. Example	A gives cloth to B, a tailor, to stitch a coat. This is bailment for work on goods.	A borrows money from B and gives a gold chain to B as security. This is pledge.

C. Quick One-Look Memory Chart

Bailment	Pledge	Best Exam Sentence
Delivery of goods for any special lawful purpose .	Delivery of goods as security .	Pledge is security bailment.
Parties: Bailor and Bailee .	Parties: Pawnor and Pawnee .	Pawnor = pledging bailor; Pawnee = secured bailee.
Bailee generally must return after purpose.	Pawnee may retain until debt / promise, interest and expenses are satisfied.	In pledge, return follows redemption/payment.
No general power of sale.	Sale possible on default after reasonable notice.	Default converts security into sale remedy.

Source note: Prepared from the attached textbook page and the Indian Contract Act, 1872: Sections **148** and **172-177**.

Pawnor and Pawnee: Comparative Rights and Duties

Key relationship: In a pledge, the **pawnor** gives goods as security, and the **pawnee** receives and holds those goods as security. Therefore, many rights and duties are mirror images: the **right of one party** often becomes the **duty of the other**.

Memory formula:

Pawnee protects debt. He may **retain, sue, sell** after default, but must preserve and return the goods.

Pawnor protects ownership. He may **redeem, recover, receive increase**, but must repay and meet necessary dues.

A. Pawnee's Rights and Corresponding Duties of Pawnor

Point / Section	Pawnee's Right	Corresponding Duty / Liability of Pawnor	Memory Cue
Right of retainer S. 173	The pawnee may retain the pledged goods until payment of the debt or performance of promise . He may also retain them for interest and necessary expenses incurred for preserving the pledged goods.	The pawnor must repay the loan / perform the promise , pay agreed interest, and bear necessary preservation charges so that the goods can be released.	Debt first, goods later.
Special property in goods	The pawnee has a special property / security interest in the pledged goods. The general ownership remains with the pawnor, but the pawnee's security right continues until the debt is satisfied.	The pawnor must respect that, until repayment, the goods stand as security. Other creditors or third-party interference cannot normally defeat the pawnee's special security right.	Ownership with pawnor; security with pawnee.
Not to retain for unrelated debt S. 174	The pawnee cannot retain the pledged goods for a different debt or promise from the one for which they were pledged, unless there is a contract to the contrary. Such a contract is presumed for subsequent advances , unless shown otherwise.	The pawnor is liable only for the debt/promise for which the pledge was made, unless he has agreed that the goods will secure other or subsequent advances also.	Same pledge - same debt.
Extraordinary expenses S. 175	The pawnee is entitled to recover from the pawnor extraordinary expenses incurred for preserving the pledged goods.	The pawnor must pay extraordinary expenses reasonably incurred by the pawnee to keep the pledged goods safe.	Special expense, pawnor pays.
Default by pawnor S. 176	If the pawnor defaults in payment or performance, the pawnee may sue on the debt / promise while retaining the goods as collateral security.	The pawnor remains liable for the debt or promise even though the goods remain with the pawnee as collateral security.	Sue and hold.
Right of sale after default S. 176	On default, the pawnee may sell the pledged goods after giving the pawnor reasonable notice of sale . The pawnee is not under compulsion to sell; sale is his option/discretion.	The pawnor must accept that, after default and proper notice, sale can take place. If the sale proceeds are insufficient, he remains liable for the balance.	Notice before sale.
Application of sale proceeds S. 176	The pawnee must apply sale proceeds towards the debt. If the sale produces a surplus , it must be paid to the pawnor. If there is a deficit , the pawnor remains liable.	The pawnor has a duty to pay the deficit, if sale proceeds do not fully satisfy the debt. Conversely, he has a right to receive any surplus.	Debt first; surplus back.

B. Pawnor's Rights and Corresponding Duties of Pawnee

Point / Section	Pawnor's Right	Corresponding Duty / Liability of Pawnee	Memory Cue
Right to safety of goods	The pawnor has a right to expect that the pawnee will preserve and properly maintain the pledged goods.	The pawnee must take reasonable care of the pawnor's goods like his own goods. Example: gold pledged as loan security must be kept safely.	Security is not ownership.
Right to get back goods	After repayment of loan / performance of promise, the pawnor has a right to get back the pledged goods.	The pawnee must give back the goods after repayment . Satisfaction of debt extinguishes the pawn, and the pawnee is bound to redeliver the pledged property.	Pay debt - get goods.
Right against unauthorised use	The pawnor may claim compensation if the pawnee makes unauthorised use of the pledged goods and loss occurs.	The pawnee must not use the pledged goods without authority . If he uses the goods wrongly, he is liable to compensate the pawnor.	Hold, don't use.
Right to increase / increment	The pawnor has a right to receive any increase or accretion in the pledged goods. Example: bonus or rights shares arising during the pledge period.	The pawnee must give back any increment in the pledged goods along with the goods themselves.	Goods plus growth.
Right against mixing	The pawnor has a right that his goods should not be mixed with pawnee's own goods in a manner creating confusion or loss.	The pawnee must not mix the pawnor's goods with his own goods.	Keep separate.
Right to redeem S. 177	If a time is fixed and the pawnor defaults, he may still redeem the pledged goods before the actual sale by paying the debt and any expenses caused by default.	The pawnee must allow redemption before actual sale if the pawnor tenders the debt and default expenses. Once the goods are lawfully sold, the right of redemption is extinguished.	Redeem before sale.
Right to decide redemption	Where no fixed redemption period is involved, the pawnor may decide whether to redeem by full payment until the pledged goods are lawfully sold.	The pawnee cannot force the pawnor to redeem in a manner contrary to law, but may exercise lawful remedies for recovery after default.	Choice till sale.
Right when pawnee sues on debt	If the pawnee sues for the debt while retaining the pledge, the pawnor is entitled to redeem the goods by payment of the debt. The pawnee should be in a position to redeliver the pledged goods.	The pawnee cannot claim both the full debt and keep or lose the pledged goods. If he cannot redeliver the goods, he may have to give credit for their value and recover only the balance.	No double benefit.
Right to surplus after sale S. 176	If sale proceeds exceed the debt, the pawnor has a right to receive the surplus .	The pawnee must apply sale proceeds to the debt and pay the surplus to the pawnor.	Extra returns to owner.

C. Default and Sale: One-Look Flow Chart

1. Pledge created Goods are delivered as security. Pawnor owns generally; pawnee has special security interest.	2. Debt remains unpaid / promise not performed Pawnor is in default.	3. Pawnee chooses remedy He may sue while retaining goods, or may sell after reasonable notice.	4. Before actual sale Pawnor can redeem under S. 177 by paying debt and default expenses.
5. If sale occurs lawfully Right to redeem is extinguished.	6. Sale proceeds Applied first to debt.	7. Surplus / deficit Surplus goes to pawnor; deficit remains payable by pawnor.	8. Final memory Pawnee can secure debt, but cannot unjustly keep both debt and goods.

D. Case-Law Hooks from the Textbook Extract

Case / Principle	Exam Use
Bank of Bihar v. State of Bihar	Pawnee's special property / pledge right is not destroyed merely because pledged goods are seized by government authorities. The pawnee remains entitled to protection / indemnity for his security interest.
Lallan Prasad v. Rahmat Ali	Payment or satisfaction of debt extinguishes the pawn. The pawnee must redeliver the pledged property. If he is not in a position to return the goods, he cannot claim both payment and the goods.
Vimal Chandra Grover v. Bank of India	The pawnee is not bound to sell merely because the pawnor asks him to. Before actual sale, the pawnor may redeem the goods by discharging the debt.
Central Bank of India v. Siriguppa Sugars and Chemicals Ltd.	Pawnee's special property and lien are stronger than ordinary claims against the pawnor's property while the debt remains unsatisfied.
Kamili v. Indian Bank	When pledged ornaments were redeemable by the widow of the deceased pawnor, the bank could not insist on probate or succession certificate where it was unnecessary.

Final Memory Sentence

Pawnee's power: retain - recover expenses - sue - sell after notice. **Pawnor's protection:** safety - return - increase - surplus - redemption before sale. **Core justice:** security can recover debt, but cannot become unjust enrichment.

③ Statutory Basis } ICA, 1872 → Bailment of Pledges
 ↳ [S.172 - 181] 4

PLEDGE

① Pledge is a kind of bailment. Pledge is also known as Pawn. It is defined under section 172 of the Indian Contract Act, 1892. By pledge, we mean bailment of goods as a security for the repayment of debt or loan advanced or performance of an obligation or promise. The person who pledges the goods as security is known as Pledger or Pawnor and the person in whose favour the goods are pledged is known as Pledgee or Pawnee.

④ who is who

Pawn or Pledge is a special kind of bailment where a movable thing is bailed as security for the repayment of a debt or for the performance of a promise.

⑤ what can be bailed

⑥ purpose of bailment

For example, if you borrow rupees one hundred from B and keep your cycle with him as security for repayment, it is a contract of pledge. The person taking the loan is called the pledger or pawnor and the person with whom goods are pledged is called the pawnee. Ownership of the pledged goods does not pass to the pledgee. The general property remains with the pledger but a "special property" in it passes to the pledgee. The special property is a right to the possession of the articles along with the power of sale on default. 'delivery of the goods pawned is a necessary element in the making of a pawn. The property pledged should be delivered to the pawnee. Thus, where the producer of a film borrowed a sum of money from a financier-distributor and agreed to deliver the final prints of the film when ready, the agreement was held not to amount to a pledge, there being no actual transfer of possession. Delivery of possession may be actual or constructive. Delivery of the key of the godown where the goods are stored is an example of constructive delivery. Where the goods are in the possession of a third person, who, on the directions of the pledger, consents to hold them on the pledgee's behalf, that is enough delivery. A railway receipt is a document of title of the goods and a pledge of the receipt operates as a pledge of the goods.

Essential elements involved in bailment

Meaning of 'Pledge', 'Pawnor', 'Pawnee' (Sec.172)

Defn → 'Pledge': The bailment of goods as security for payment of a debt or performance of promise is called 'pledge'.

'Pawnor': The bailor in case of a pledge is called as 'pawnor'.

who gives movable property

'Pawnee': The bailee in case of pledge is called as 'pawnee'.

who keeps property

Illustration of contract of pledge 63

A borrowed Rs.100 from B and gave his cycle as a security for the repayment of the amount, in the condition that if A pays back to B he will get his cycle back. it is called the contract of Pledge.

In case of *Lallan Prasad v. Rahmat Ali*, **Supreme Court of India defined Pledgeas**: "Pawn or pledge is a bailment of personal property as a security for some debt or engagement. A pawner is one who being liable to an engagement gives to the person to whom he is liable a thing to be held as security for payment of his debt or the fulfilment of his liability".

Difference between Bailment and Pledge

Basis	Bailment <u>S. 148, ICA 1872</u>	Pledge <u>S. 172, ICA 1872</u>
Meaning	Transfer of goods from one person to another for a specific purpose is known as the bailment.	Transfer of goods from one person to another as security for repayment of debt is known as the pledge. <u>or performance of promise</u>
Defined In	It is defined under section 148 of the Indian Contract Act, 1872.	It is defined under section 172 of the Indian Contract Act, 1872.
Parties	The person who delivers the bailed goods is known as Bailor and the person receiving such goods is known as Bailee.	The person who delivers the pledged goods is known as Pledger or Pawnor and the person receiving such goods is known as Pledgee or Pawnee.
Consideration	The consideration may or may not be present.	Consideration is always there.
Right to Sell	Bailee has no right to sell the goods bailed.	Pledgee or Pawnee has the right to sell the goods.
Use of Goods	Bailee can use the goods only for a specific purpose only and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.
Purpose	The purpose of bailed goods is for safekeeping or repairs etc.	The purpose of pledged goods is to act as security for repayment of debt or performance of the promise.

score
brownie
points

primary point of distinction between pledge and hypothecation. However, alike pledge the hypothecatee under pledge to have the right to sue and even to sell the thing for recovering the loan amount. In hypothecation the position of the true owner becomes that of a bailee of goods acting for the bailor who in this case is hypothecatee. In simpler words the distinctiveness can be made clear by saying that while pledge involves transfer of possession, hypothecation involves transfer of rights or interest, those too limited.

The Differences Pledge and Hypothecation

Basis	<u>Pledge</u>	<u>Hypothecation</u>
<u>Defined</u>	It is defined under Section 172 of the Indian Contract Act, 1872.	As such it is <u>not defined in the Indian Contract Act, 1872</u> but has been recognized by the usage since very long.
<u>Transfer of Property</u>	Property is <u>transferred from one person to another as security</u> .	Property is <u>not transferred; it stays with the owner</u> .
<u>Dealing in Property</u>	Once the property is pledged, the <u>owner loses the right to deal in that property</u> .	Since the property stays with the <u>owner, therefore he can deal in the property subject to certain condition</u> .
<u>Right of Lien</u>	The right of lien can be <u>exercised since the property is with the Pawnee</u> .	The right of lien cannot be <u>exercised since the property is not with the creditor</u> .

Pledge and Lien- While a pledge creates special property in the thing pledged, lien is merely a personal right which the party is entitled to exercise in case where payment is due. The difference between the two arises on the basis of the rights the party have. While a pledge permits the pledgee to retain, sue and even sell the property of good pledged, under lien only the right of retainment is provided. To some extent lien can be regarded as an inverse of hypothecation as where the former involves transfer of possession, the later requires transfer of rights.

Hypothecation → goods remain with person but right is transferred

Lien → transfer of possession but not rights.

Pledge and Mortgage- pledge involves transfer of possession of a thing in return for certain sum or as a security for fulfilling an obligation. A pledge gives pledgee special rights to the pledgor that in case of default he has remedies available with him. However, under a mortgage, other than these special rights, the juristic rights or the legal rights are also transferred. That is to say that the right of enjoyment is not transferred in the case of pledge, but in case of mortgage, the mortgagee has the right of enjoyment. Also, another point of distinction here is that a contract of mortgage does not require actual delivery of the goods or the things. Further, while only moveable goods are pledged under a contract of pledge, mortgage can be of both, moveable as well as immoveable property.

WHO MAY PLEDGE:

Any of the following persons may make a valid pledge:

- i) The owner, or his authorised agent, or
- ii) One of the several co-owners, who is in the sole possession of goods, with the consent of other owners, or
- iii) A mercantile agent, who is in possession of the goods with the consent of real owner, or (sec 178)
- iv) A person in possession under a voidable contract, before the contract is rescinded, or (sec 178 A)
- v) A seller, who is in possession of goods after sale (sec 30(1)) or a buyer who has obtained possession of the goods before sale, sec-30 (2) or
- vi) A person who has a limited interest in the property. In such a case the pawn is valid only to the extent of such interest. (Sec 179)

Note: If a servant has the custody of the goods, or a tenant gets the possession of a furnished house, the servant cannot pledge the goods, nor can a tenant pledge the furnishing materials in his possession.

A person obtaining the goods fraudulently does not have any right to pledge them. In **Purshottam Das v Union of India**, the goods were pledged on the basis of a forged railway receipt and it is not a valid pledge.

The 'document of title' has the same meaning as the **Sale of Goods Act 1930**, acc to **sec 2(4)** of that act, includes a bill of lading, dock warrant, warehousekeeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary

course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

If the person entrusts some valuables to his neighbour for safe custody for some time, and he happens to be a mercantile agent, a pledge made by him will not be covered by this provision. So the mercantile agent has not got the possession as such agent but in a different capacity, a pledge made by him not be a valid one.

Essentials of a Valid Contract of Pledge (Sec.172)

Since Pledge is a special kind of bailment, therefore all the essentials of bailment are also the essentials of the pledge. Apart from that, the other essentials of the pledge are:

There shall be a bailment for security against payment or performance of the promise.

Note: in order to constitute a valid pledge, the foremost requirements must be satisfied.

- i- There should be bailment of goods, i.e, and the delivery of goods from one person to another.
- ii- The purpose of such bailment is to make the goods bailed serve as security for the payment of a debt, or performance of a promise.

Contract-There must be a contract. The contract may be expressed or implied.

Moveable Property: The pledge is concerned with the movable property. All types of goods and valuable documents are included in it.

Goods:Pledge can be made of goods only.The subject matter of pledge is goods,

Goods pledged for shall be in existence. (future goods not possible)

Delivery:There must be delivery of goods by one person to another person.

There shall be the delivery of goods from pledger to pledgee Purpose of delivery- The goods must be delivered for some purpose.

The purpose must be to deliver the goods as security for

- (a) Payment of a debt; or
- (b) Performance of a promise.

Transfer of Possession: In case of pledge only possession, of goods transferred by the pawnor to the Pawnee. Example: Mr. Nelson pledges car with Mr. Mcculan and gets 1,00,000. He gives the possession of car to Mr. Mcculan.

Ownership Right: In the case of a pledge, the ownership of the goods remains with the pawnor. It is not transferred to Pawnee. Example: Mr. Wali pledges the plot with Mr. Raffel and gets 10 lac. The ownership of the plot remains with Mr. Wali. There is **no transfer of ownership** in case of the pledge: Exception: In exception circumstances pledgee has the right to sell the movable goods or properties that are been pledged.

Return of goods-The delivery of goods must be conditional

The condition shall be that the goods shall be –

- returned (either in original form or in altered form); or
- Disposed of according to the directions of the pawnor when the purpose is accomplished.

A case of Mere Custody: Those people who have only mere custody of the goods cannot pledge them. Example: A custodian cannot pledge his master's bang low. It will be an invalid pledge.

Limited Interest: Pledge property cannot be used for unlimited interest. When a person pledges goods in which he has only limited interest, the pledge is valid to the extent of that interest only. Example: Mr. Nelson gives a car to Mr. Andre for repair, but does not pay 20,000 repair charges. Mr. Andre pledges the car with Mr. Smith and borrows fifty thousand. This pledge is valid only up to ten thousand

Revenue authority v Sudarsanam pictures,

It has been held that an agreement wherein, the producer of a film agrees to deliver final prints of the film under production, when the same are ready, to a financier- distributor in return for the finance provided by the latter, is not pledge because there is no delivery of the goods.

Plot cant
be pledged
wrong
example

Morvi Mercantile Bank v Union of India, AIR 1965, S.C. 1954.

The delivery of a railway receipt was considered to be enough to constitute delivery of the goods represented by that railway receipt for the purpose of pledge. It was held with the majority that according to the prevailing Indian law, railway receipt is a document of title, and therefore delivery of the railway receipt means delivery of the goods represented by the railway receipt.

Bank of India V. Vinod Steel Ltd AIR 1977 MP 188:

In this case, Court held that when certain movables have been pledged by a company to a Bank, they cannot be attached and sold for satisfaction of claims of other creditors of the company without first satisfying the claim of the bank.

Reeves v. Copper (1933)

In this case, the captain of the ship pledged his chronometer with his employer, the ownership. The captain was allowed to keep the chronometer and to use it for the purpose of a voyage later on the captain pledged it again with another person. It was held that the first place was valid as it was a case of constructive delivery.

Rights of Pawnor

As per Section 177 of the Indian Contract Act, 1872 the Pawnor has the Right to Redeem. By this, we mean that on the repayment of the debt or the performance of the promise, the Pawnor can redeem the goods or property pledged from the Pawnee before the Pawnee makes the actual sale. The right of redemption is extinguished once the actual sale is done by the Pawnee as per his right under section 176 of the Indian Contract Act, 1872.

Rights of Pawnor If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before their actual sale; but he must, in that case, pay in addition, any expenses which have arisen from his default. Besides this, all the duties of a pawnee are the rights of a pawnor and so he has the right to get pawnee's duties duly enforced.

S. 176 → Pawnee can sell

→ S. 177 → Pawnor can redeem before Pawnee sells.

Duty of Pawnor ↘

- 1) It is the duty of pawnor to comply with the terms of pledge and repay the debt on the stipulated date or to perform the promise at the stipulated time. '
- 2) It is the duty of pawnor to compensate the pawnee for any extraordinary expenses incurred by him for preserving the goods pawned

Rights of a Pawnee (Sec.173 and 176)

The rights of the Pawnee as per Indian Contract Act, 1872 are:

Right to retain the goods: If the Pawnor fails to make the payment of a debt or does not perform as per the promise made, the Pawnee has the right to retain the goods pledged as security. Moreover, Pawnee can also retain goods for non-payment of interest on debt or non-payment of expenses incurred. But Pawnee cannot retain goods for any other debt or promise other than that agreed for in the contract. (Section 173-174)

Right of Retainer [Sec.173]. The pawnee has right to retain the pledged goods till his payments are made (Sections 173 and 174). He can retain the goods for the following payments; Pawnee may retain the goods pledged for –

- (a) Payment of the debt or the performance of promise,
- (b) Any interest due on the debt; and
- (c) All necessary expenses incurred by him with respect to possession or for preservation of goods pledged.

This right of the pawnee to retain the pledged goods till he is paid, is known as pawnee's right of particular lien. In the absence of a contrary contract, the pawnee cannot retain the goods pledged for any debt or promise other than the debt or promise for which the goods are pledged. However, in the absence of any thing to the contrary, such a contract shall be presumed when subsequent advances are made without any further security. If fresh security is provided for the fresh advance, this presumption will not apply.

Retainer for subsequent advances [Sec.174]

- (a) Where the Pawnee lends money to the Pawnor subsequently, after the date of pledge, it shall be presumed that the he has a right of retainer over the goods already pledged in respect of the subsequent lending also.

(b) This presumption can be made invalid only by an expenses provision to that effect.

Right to recover extraordinary expenses: The expenses incurred by Pawnee on the preservation of goods pledged can be recovered from Pawnor (Section 175).

Reimbursement of Expenses [Sec.175]: Where the Pawnee incurs extraordinary expenses to preserve the goods pledged with him; he is entitled to receive such amount from the Pawnor. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged. This right does not entitle the pawnee to retain the goods for recovery of such expenses, however, he can sue the pawnor to pay such amount.

The right of suit to procure debt and sale of pledged goods: On the failure to make repayment to Pawnee of the debt, the Pawnee has two rights: either to initiate suit proceedings against him or sell the goods. In the former case, the Pawnee retains the goods with himself as collateral security and initiate the court proceedings. He need to provide reasonable notice of such proceedings to the Pawnor. And in the latter case, the Pawnee can sell the goods after giving due notice of sale to the Pawnor. If the amount received from the sale of goods is less than the amount due then the rest amount can be recovered from Pawnor. And if the Pawnee gets more amount than the due amount then such surplus is to be given back to Pawnor. (Section 176)

Right to Sale (Sec. 176): Upon a default being made by the pawnor in the payment of the debt or performance of the the pawnee gets two distinct rights. Firstly, the pawnee may bring a suit against the pawnor for the recovery of the due amount or for the performance of the promised duty and in addition to it he may retain the goods as a collateral security. Secondly, he may sell the goods pledged but only after giving reasonable notice of the intended sale, to the pawnor. If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance, if the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus, to the pawnor. A further the pawnee cannot sell the goods to himself. If the does so the sale is void and the pawnor can take back the goods after paying the amount due.

As you already know pledge is an extension of bailment, therefore the pawnor and pawnee have almost the same rights and duties as those of the bailor and bailee.

Rights in case of default by Pawnor [Sec.176]

(a) Suit/ Right to sue: Pawnee may institute a suit against Pawnor when there is a default in payment of debt or performance of promise at the stipulated time.

(b) Retention / Sale of goods: Pawnee may – (a) retain the goods pledged as collateral security, or (b) sell the goods pledged by giving a reasonable notice to the Pawnor.

Remedies of filing suit and sale of goods are disjunctive- in case the pawnor commits default in the payment of debt within the stipulated time, 2 avenues are available to the pawnee:

- either to file a suit against the pawnor, by retaining the pledged goods as collateral security

- to resort to sale of goods after giving reasonable notice to the pawnor.

K.M.Hidaathulla v Bank of India, It has been held that the 2 remedies available to the pawnee are disjunctive in nature. It means that if three years period is prescribed by the limitation act for filing the suit, this does not imply that the time available for sale to the pawnee will be the same and such time shall be automatically extended.

(c) Surplus / Deficit on Sale: When there is a surplus on sale, Pawnee shall pay the excess to the Pawnor. In case of deficit, Pawnor shall be liable for the balance amount.

(d) Notice before suit: Where the Pawnee does not give a reasonable notice to the Pawnor. The section does not contemplate any notice before the institution of the suit. A suit for the debt due can be brought through notice is not given. The pawnee can also bring a suit to sell the goods pledged. However, a suit to recover the debt by sale of pledged articles must be preceded by notice.

Right against true owner of goods [Sec.178A]

When the pawnor has acquired, possession of pledged goods, under a voidable contract, but the contract has not been rescinded, at the time of pledge, the pawnee acquires a good title to the goods, even against the true owner, provided

that pawnee had no notice of the pawnor's defect in title and he acts in good faith.

(a) Where the Pawnor has acquired possession of pledged goods, under a voidable contract u/s 19 or 19A but contract has not been rescinded at the time of pledge, the Pawnee acquires a good title to the goods, against the true owner.

(b) The title of Pawnee is good only where – (a) he had no notice of the Pawnor's defect in title and (b) he acts in good faith.

Reasonable notice u/s 176 means that a notice of intended sale of the security by the Creditor within a certain date, so as to afford an opportunity to the Debtor to pay the amount within the time mentioned in the notice.

Requisites of a valid Notice- This notice must be clear and specific in its language and must indicate the pawnee's intention to dispose of the security. It can't be implied. It must be reasonable and not vague under this section. Merely an intimation that arrangements would be made for sale, not notice for sale. The debt for which the pledged goods are being sold must be mentioned.

Effect of sale without notice: Notice of sale is essential and a clause in the agreement excluding the requirement of Notice is inconsistent with the Act & is void and unenforceable.

Sale without notice is void, and a vendee without notice of the pledgee, takes only the limited rights or interest of the pawnee, in other words, he steps into the shoes of the pawnee.

Duties of a Pawnor(Sec.175)

Pay the debt: The pawnor is liable to pay the debt or perform his promise as the case may be.

Pay deficit on sale: If the pawnee sells the goods due to default by the pawnor, the pawnor must pay the deficit.

Pay extra – ordinary expenses: The pawnor is liable to pay to the pawnee any extraordinary expenses incurred by the pawnee for preservation of goods.

Disclose faults in goods: The pawnor is liable to disclose all the faults which

(a) Are material for use of the goods; or

(b) May put the pawnee to extraordinary risks.

Indemnify the pawnee: If loss is caused to the pawnee due to defect in pawnor's title to the goods, the pawnor must indemnify the pawnee.

Duties of a Pawnee

Not to use the goods: The pawnee has no right to use the goods. However, he may use the goods, if he has been so authorised by the pawnor. Duty not to make unauthorised use of goods pledged.

Return the goods: The pawnee must return the goods if the pawnor pays the debt or performs his promise. Duty to return the goods when the debt has been repaid or the promise has been performed.

Take reasonable care: The pawnee must take such care of goods pledged as a man of ordinary prudence would take care of his own goods. Duty to take reasonable care of the pledged goods.

Not to mix goods: The pawnee must not mix his own goods with the goods pledged. Duty not to mix his own goods with the goods pledged.

Return increase in goods: The pawnee must return to the pawnor any accretion to the goods pledged with him. Duty to deliver increase (if any), to the goods pledged.

Duty not to do any act which is inconsistent with the terms of pledge.

In *Central Bank of India v. Abdul Mujeeb Khan*, the bank took over the possession of the hypothecated truck but thereafter neither sold it according to the agreed terms nor took care of it, leaving it in open place, the bank was liable for the extraordinary depreciation in the value of the vehicle.

Important Note:

Requirement of Notice:- Before making the sale, the pledger is required to give to the pawnor, a reasonable notice of his intention to sell. The requirement of 'reasonable notice' is a statutory obligation and, therefore, cannot be excluded by a contract to the contrary. In a case of *Prabhat Bank v. Babu Ram*, before the Allahabad High Court: One of the terms of an agreement of loan enabled the lending banker to sell the securities without any notice to the pawnor. The pawnor defaulted in the payment. The bank sent a reminder, but the pawnor asked for more time. The bank thereupon disposed of the securities.

The sale was held to be bad in law. The court said, “What is contemplated by section 176, is not merely a notice but a reasonable notice, meaning thereby a notice of intended sale of the security by the creditor within the certain date so as to afford an opportunity to the debtor to pay an amount within the time mentioned in the notice.” The court refused to agree with the bank’s contention that the sale notice should be inferred from the pawner’s request for time. “A notice of the character contemplated by section 176 cannot be implied. Such notice has to be clear and specific in language...”.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

When the pawnee sells the pledged goods, he does not do so as full owner, but by virtue of an implied authority from the pawnee to do so. The sale must be for the benefit of both the parties. After sale, it is the pawnee’s ordinary right ‘to recover the balance of the loan unsatisfied on the sale of the pledge’. And if there is any surplus amount from such sale, it must be accounted for and refunded to the pawnor. The words ‘such sale’ in the second paragraph indicate that no liability can be fastened on the pawnor for loss, if the pawnee does not exercise his right of sale according to section 176. Before a sale, the goods are the property of the pawnor in pawnee’s custody. If there arises dispute regarding the quality of the goods, the pawnee cannot proceed in the matter without referring to the pawnor. In such a situation, pawnee is the agent of the pawnor.

Loss of Security due to Pledgee’s Negligence: Where goods are lost due to the negligence of the pledgee, the liability of the pledger is reduced to the extent of the value of such goods which are lost. In a case of *Gurbax Rai v. Punjab National Bank*, before the Supreme Court: Certain goods in the godown of a firm were under the pledge of a bank. The godown was insured against fire. A part of them was damaged by fire. The bank received insurance money to the extent of the fire.

Sale by Hypothecatee: A hypothecatee is not in actual possession of the goods. He grants the right of use to the borrower. He naturally has a right to take possession of the goods if the borrower makes default. He can then sell them in his capacity as a pledgee. Intervention of the court is not necessary.

Pawner’s Right to Redeem:-

Section 177 of the Act provides for the most valuable right of the pawner:

Defaulting pawnor's right to redeem-

If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

This provision is supplementary to the earlier section. Even after the time for payment of the debt or the performance of the promise has expired, the pawnor is entitled to redeem the goods pledged until they are actually sold; but he must then also pay any expenses which arise from his default. It has been pointed out by the Supreme Court in a case of *Jaswantrao Manilal Akhaney v. State of Bombay*, that: "The special interest of the pledgee comes to an end as soon as the debt for which the goods were pledged is discharged. It is open to the pledger to redeem the pledge by full payment of the amount for which the pledge had been made at any time if there is no period fixed for redemption, or at any time after the fixed date and the right continues until the thing pledged is lawfully sold."

Redemption means the enforcement of the right to have the title to corpus of the pledged property restored to the pledger free and clear of the pledge. A suit for redemption has to be filed for exercising this specific remedy and not just for a declaration of the right of redemption.

Heritable Right: Certain gold ornaments were pledged with a bank as a security for a gold loan. The pawnor died. His wife sought to redeem the pledge by repaying the loan. She produced a 'will' of her husband to show her right. The court said that she was entitled to redeem. The bank could not ask her for submitting a probate of the will or a succession certificate. Her son and daughter raised no objection.

Premature Redemption: Where the pawnor redeems before expiry of the specified period, he would remain bound by the terms of the loan, if any, which require that a premium would be leviable on premature payment.

Statutory Right: Where the property of an employer was pledged with a bank as security for repayment of a loan, the court said that it could be attached and sold for recovery of employee's Provident Fund dues. (Section 11(2) of the Provident fund Act, 1952 operates against mortgage and pledge executed by employer to give priority to employees Provident Fund claims.)

KINDS OF AGENTS

One-look memory sheet for Agency Law: authority, accountability and commercial roles

G GENERAL AGENT

Wide authority to do usual business acts for the principal. Third parties may assume ordinary authority if they act **bona fide**.

M MERCANTILE AGENT

Commercial agent with authority to **sell goods, buy goods, or raise money** on security of goods.

S SPECIAL AGENT

Specific authority for one act or one set of transactions. Once that act is done, authority **ends**.

Memory Ladder: G-S-S-S-M

General - Special - Sub - Substituted - Mercantile

S SUB-AGENT

Employed by the original agent and works **under the control** of that original agent in agency business.

F

Factor

possession + sale

C

Commission

best terms + commission

D

Del credere

guarantees payment

B

Broker

link + brokerage

S SUBSTITUTED AGENT

Appointed in place of the agent when authority exists. He is **directly accountable** to the principal.

One-line formula: Identify an agent by asking: **How much authority?** wide or specific; **Who controls him?** original agent or principal; **What commercial role?** goods, money, commission or guarantee.

1. Main Kinds of Agents - Comparative Table

Kind of agent	Core idea	Authority / scope	Third-party caution	Memory hook
General agent	Regular business representative of the principal.	Can carry out different kinds of transactions in the name and on behalf of the principal. Can bind the principal by acts within the ordinary scope of the business or employment.	Third party may assume the usual authority of a general agent if acting bona fide .	G = General Manager : broad day-to-day authority.
Special agent	Single-purpose or limited-purpose agent.	Authority is confined to a specific instance or a specific set of transactions. Example: a real estate broker engaged to find a buyer.	Third parties should inquire into the extent of authority. If the agent acts outside authority, the principal is not bound .	S = Specific Step : authority ends after the task.
Sub-agent	Person employed by the original agent in the business of agency.	Acts under the control of the original agent . His role flows through the original agent.	Focus on the chain: principal - original agent - sub-agent.	Sub = below the original agent.
Substituted agent	Person appointed by an agent to act in the agent's place where the agent has authority to make such appointment.	Not a sub-agent. He becomes directly connected to the principal.	He is directly liable and accountable to the principal.	Substituted = steps into the seat and faces the principal directly.
Mercantile agent	Commercial agent dealing with goods or money on security of goods.	Authority may include selling goods, buying goods, or raising money on security of goods .	Its sub-kinds must be identified separately: factor, commission agent, del credere agent and broker.	M = Market agent : goods, money, market transactions.

Exam trigger: If the facts show wide day-to-day business power, think **general agent**. If the facts show one transaction, think **special agent**. If another person is brought in by the agent, ask whether he is **under the original agent** or **directly accountable to the principal**.

2. Mercantile Agents - Factor, Commission Agent, Del Credere Agent and Broker

Mercantile kind	What he does	Possession of goods?	Special legal point	Memory image
Factor	Goods are entrusted for sale . He enjoys extensive powers relating to sale of the goods entrusted to him.	Yes . Goods are entrusted to him.	Because goods are with him, his practical control over sale is strong.	Factory shelf : goods are placed with him for sale.
Commission agent	Buys and sells goods for his principal on the best possible terms , generally in his own name, and receives commission for labour.	Usually transaction-focused; not the central feature.	His reward is commission . The key is best commercial bargain for principal.	Commission coin : best deal, paid by commission.
Del credere agent	For extra commission , guarantees that the third party will pay on due date. If the purchaser fails, he pays.	Depends on transaction; guarantee is the key feature.	Occupies the position of a surety and indemnifies the principal against loss caused by non-payment.	Del = Debt : he stands behind the buyer's payment.
Broker	Employed to purchase or sell goods on behalf of principal. Acts as connecting link between principal and third party.	No . He is not given possession of goods.	If transaction materializes, he earns brokerage .	Bridge broker : connects two sides, no goods in hand.

Fast distinction: Factor has possession; broker has no possession.

Risk distinction: Del credere agent takes an extra commission because he also takes payment risk.

Payment words: Commission agent earns commission; broker earns brokerage.

Agency chain: Sub-agent answers through original agent; substituted agent answers directly to principal.

3. One-Page Revision Drill

Use this page as the final memory checkpoint before an exam. Cover the answer column and test yourself.

Question / trigger in facts	Instant answer	Why?
Agent manages normal business transactions for principal.	General agent	Wide authority; principal may be bound by usual business acts.
Agent is appointed only to find a buyer for one property.	Special agent	Authority is specific and ends when the act is performed.
Original agent employs another person under his control.	Sub-agent	The person works under the original agent in agency business.
Agent is authorised to appoint someone in his place, and that person is directly accountable to principal.	Substituted agent	He is not a sub-agent; he is directly liable to the principal.
Goods are entrusted to an agent for sale.	Factor	Possession of goods plus extensive sale powers.
Agent sells or buys for principal on best terms and gets commission.	Commission agent	Best terms plus commission is the key.
Agent guarantees buyer payment for extra commission.	Del credere agent	He takes the position of surety and protects principal against non-payment.
Agent only connects buyer and seller; he has no possession of goods.	Broker	Connecting link plus brokerage; no goods in hand.

Final mnemonic: GSSSM = General, Special, Sub-agent, Substituted agent, Mercantile agent. Inside Mercantile remember **FCDB = Factor, Commission agent, Del credere agent, Broker.** Think: **Factory goods - Commission coin - Debt guarantee - Bridge broker.**

SUB-AGENT AND SUBSTITUTED AGENT

Sections 191 to 194 and 210 - Indian Contract Act, 1872

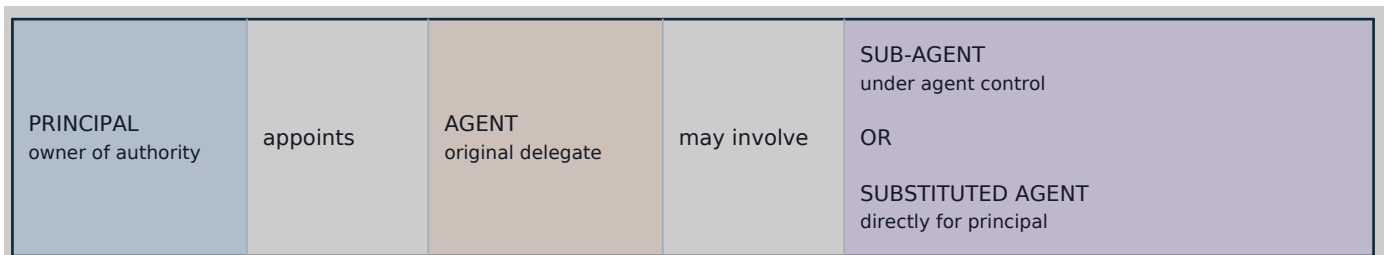
A visual, revision-friendly PDF with memory hooks, legal positions, and comparison table.

ONE-LINE MEMORY

Sub-agent works under the original agent.
Substituted agent steps into a direct relationship with the principal.

1. Core idea of delegation in agency

The ordinary rule is that an agent should personally perform the authority given to him. This principle is often expressed as delegatus non potest delegare, meaning that a delegate cannot further delegate his authority. However, in suitable cases, an agent may involve another person. The legal effect depends on whether that person is a sub-agent under Section 191, or a substituted agent under Section 194.



2. Section-wise map

Section	Concept	Memory line
191	Definition of sub-agent: a person employed by, and acting under the control of, the original agent in the business of agency.	191 = 1 original agent + 1 sub-agent + 1 agency business.
192	Where a sub-agent is properly appointed, the principal is represented by the sub-agent as to third parties; the original agent is responsible to the principal for the sub-agent.	192 = proper appointment protects representation.
193	Where an agent appoints a sub-agent without authority, the agent is responsible for the sub-agent; the principal is not represented by, nor responsible for, that sub-agent.	193 = unauthorised sub-agent creates risk for agent.
194	Where an agent names another person to act for the principal in the agency business, that person is not a sub-agent but a substituted agent of the principal.	194 = named person becomes principal-connected.
210	Termination of the authority of an agent causes termination of the authority of all sub-agents appointed by him, subject to the rules regarding termination.	210 = agent authority ends, sub-agent chain ends.

3. Sub-agent under Sections 191 to 193 and 210

Definition - Section 191

A sub-agent is a person employed by, and acting under the control of, the original agent in the business of agency. The crucial idea is control by the original agent.

A sub-agent is therefore not independently introduced into a direct contractual relationship with the principal. He is brought into the transaction by the original agent and works under that agent. The relationship between the original agent and sub-agent is similar to the relationship between principal and agent; however, the relationship between the principal and the sub-agent depends upon whether the appointment was authorised and proper.

Situation	Legal position	Exam memory
Properly appointed sub-agent Section 192	The sub-agent may represent the principal to third parties for the concerned business. The original agent remains accountable to the principal for the acts of the sub-agent, including negligence, fraud, intentional wrongdoing, or breach of duty.	Proper appointment = representation possible + agent accountable.
Sub-agent appointed without authority Section 193	The original agent becomes responsible for the acts of the sub-agent. The principal is not represented by that sub-agent and is not responsible for his acts. Likewise, the unauthorised sub-agent cannot make the principal liable merely because the original agent appointed him.	No authority = risk returns to agent.
Termination Section 210	When the authority of the agent ends, the authority of all sub-agents appointed by him also ends, subject to the general rules regarding termination of agency.	Root cut = branches fall.

4. Substituted agent under Section 194

Definition - Section 194

Where an agent has express or implied authority to name another person to act for the principal in the business of agency, and names such person accordingly, that person is not a sub-agent. He is treated as an agent of the principal for that part of the business.

A substituted agent is different because the original agent is not appointing a subordinate under himself. Instead, he is selecting or naming another person who directly acts for the principal for a particular part of the agency work. Therefore, after such appointment, a direct legal relationship is created between the principal and the substituted agent.

Illustration	Who is who?	Legal conclusion
Solicitor and auctioneer	A directs B, his solicitor, to sell an estate by auction and to employ an auctioneer. B names C, an auctioneer, to conduct the sale.	C is not B's sub-agent. C is A's substituted agent for conducting the auction.
Merchant and solicitor	A authorises B, a merchant, to recover money due from C & Co. B instructs D, a solicitor, to take legal proceedings.	D is not B's sub-agent. D is the solicitor for A, because he acts in the principal's business.

5. Comparison table: Sub-agent and Substituted agent

This table is the most important revision page. The core distinction is control and responsibility. A sub-agent is controlled by the original agent; a substituted agent is directly connected with the principal.

Ground of distinction	Sub-agent	Substituted agent
Statutory basis	Defined in Section 191; legal effect covered especially by Sections 192 and 193.	Covered by Section 194.
Who appoints?	Employed by the original agent.	Named by the agent, but for the principal.
Control	Acts under the control of the original agent.	Acts as an agent of the principal for the entrusted part of business.
Relationship with principal	Usually there is no direct privity of contract between principal and sub-agent.	Direct privity is established between principal and substituted agent; both can sue each other where appropriate.
Responsibility	The sub-agent is primarily responsible to the agent.	The substituted agent is responsible to the principal.
Liability of original agent	The original agent is responsible to the principal for the sub-agent, especially where the sub-agent is appointed by him.	The original agent is generally not responsible for the acts of the substituted agent if he properly named him.
Legal image	Principal → Agent → Sub-agent A chain of control.	Principal ↔ Substituted agent A direct line after nomination.
Best memory phrase	Sub-agent = under agent.	Substituted agent = substituted into principal's line.

6. Visual memory sheet: never confuse the two

SUB-AGENT	SUBSTITUTED AGENT
Think: a branch below the agent. Principal gives authority to Agent. Agent employs Sub-agent. Sub-agent remains under the agent's control. If the agent was not authorised to appoint him, the principal is not responsible.	Think: a direct replacement for a specific task. Agent names another person for the principal. That person becomes the principal's agent for the entrusted work. The legal connection is direct.
Memory picture: A purple assistant standing behind the orange agent.	Memory picture: A green specialist shaking hands directly with the blue principal.
Key risk: unauthorised sub-agent makes the original agent responsible.	Key benefit: proper substitution creates direct responsibility to principal.

7. Exam-ready short answer

A sub-agent under Section 191 is a person employed by, and acting under the control of, the original agent in the business of agency. If properly appointed, Section 192 permits such sub-agent to represent the principal as regards third persons, while the original agent remains responsible to the principal for the sub-agent. If the sub-agent is appointed without authority, Section 193 makes the original agent responsible for his acts, and the principal is not represented by or responsible for such sub-agent. Further, under Section 210, the termination of the agent's authority also terminates the authority of sub-agents appointed by him, subject to the general rules regarding termination of agency.

A substituted agent under Section 194 is different. When an agent, having express or implied authority, names another person to act for the principal in the business of agency, that person is not a sub-agent. He is treated as an agent of the principal for the part of the business entrusted to him. Therefore, the main difference is that a sub-agent is under the control of the original agent, whereas a substituted agent has a direct legal relationship with the principal.

□ **FINAL MNEMONIC** SUB = Stays Under Broker/agent.
 SUBSTITUTED = Steps Up Beside The Principal.
 So remember: under agent for sub-agent; beside principal for substituted agent.

8. Rapid revision drill

Question	Quick answer
Who is a sub-agent?	A person employed by and acting under the control of the original agent in the business of agency.
Which section defines sub-agent?	Section 191.
What happens if the sub-agent is properly appointed?	The principal may be represented by him as regards third persons, but the original agent remains accountable to the principal.
What happens if the sub-agent is appointed without authority?	The original agent is responsible; the principal is not represented by or responsible for that sub-agent.
What is the effect of termination of agent's authority?	Under Section 210, authority of sub-agents appointed by him also terminates, subject to termination rules.
Who is a substituted agent?	A person named by an authorised agent to act for the principal in the business of agency; he becomes agent of the principal for that part.
Most important distinction?	Sub-agent: under original agent. Substituted agent: directly connected with principal.

Use this last page for one-minute revision before the exam. First recall the color code, then recall the legal test: Who controls him? If the answer is the original agent, it is a sub-agent. If the answer is the principal, it is a substituted agent.

DISTINCTION BETWEEN AGENT AND SERVANT

Agent may be distinguished from servant on the following grounds—

Agent	Servant
<ul style="list-style-type: none">● An agent is employed to bring the principal into the legal relationship with the third person or to represent him in dealing with third persons.	A servant does not ordinarily create the legal relationship between his employer and third persons.
<ul style="list-style-type: none">● A principal is liable for only those acts which are within the scope of the authority given to the agent.	A master is liable for the wrongs of his servants committed in the course of employment.
<ul style="list-style-type: none">● An agent may work for several principals at the same time.	A servant usually serves only one master.
<ul style="list-style-type: none">● An agent is paid commission on the basis of work done.	A servant is paid by way of salary or wages.
<ul style="list-style-type: none">● An agent is bound to follow all the lawful instructions of the principal but he is not subject to the direct control and supervision of the principal	A servant acts under the direct control and supervision of his employer and is bound to follow all reasonable orders given to him in the course of his employment.

An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor—A servant acts under the direct control and supervision of his master. He is bound to conform to all reasonable orders given to him in the course of his work. An independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result.

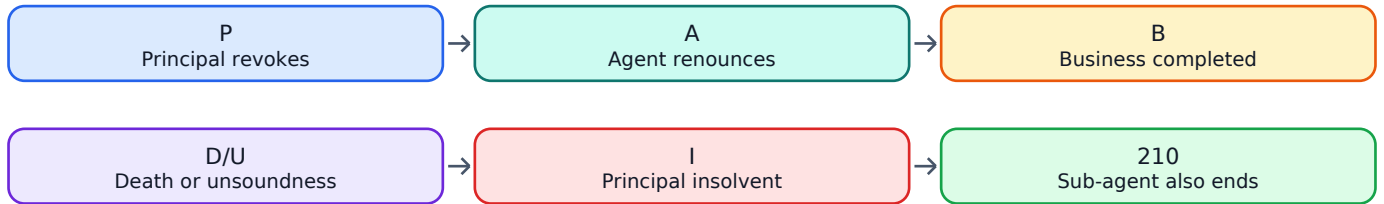
TERMINATION OF AGENCY

Sections 201 to 210 of the Indian Contract Act, 1872

ONE-LOOK MEMORY FORMULA

Termination means the legal ending of the authority of the agent to act for the principal. The central section is Section 201, but the practical rules are completed by Sections 202 to 210.

Remember the main causes through P-A-B-D-U-I: Principal revokes, Agent renounces, Business is completed, Death or unsoundness occurs, Unsoundness affects either party, and Insolvency of the principal occurs.



Source note: This booklet is prepared from the supplied textbook photographs and from the official statutory scheme of the Indian Contract Act, 1872. Case law references appearing in the photographs have been deliberately omitted, as requested.

1. Meaning and Master Provision under Section 201

An agency is a legal relationship in which the agent is authorised to act on behalf of the principal. The termination of agency means that this authority comes to an end. Once the authority is terminated, the agent ordinarily loses the power to bind the principal by future acts, subject to the special protection given to agents and third persons under the Act.

SECTION 201 - THE MASTER LIST

Section 201 states that an agency is terminated by the principal revoking the agent's authority, by the agent renouncing the business of the agency, by completion of the business of the agency, by the death or unsoundness of mind of either the principal or the agent, or by the principal being adjudicated insolvent.

This section should be read as the main gateway. Sections 202 to 210 then explain exceptions, timing, notice, compensation, and consequences.

Mode in Section 201	Simple meaning	Memory colour
Revocation by principal	The principal withdraws the authority previously given to the agent.	Blue = principal pulls back authority.
Renunciation by agent	The agent gives up the business of the agency and refuses to continue as agent.	Teal = agent steps away.
Completion of business	The object for which the agency was created is fully performed, so the authority naturally ends.	Green = task completed.
Death or unsoundness	If either the principal or the agent dies or becomes of unsound mind, the agency is ordinarily terminated.	Red = incapacity event.
Insolvency of principal	When the principal is adjudicated insolvent, the agent's authority ends because the principal's legal capacity over the property is affected.	Amber = financial incapacity.

2. Termination by Act of Parties

Termination by act of parties means that the agency ends because of the will or conduct of the principal, the agent, or both. In examination writing, this part should be explained through mutual agreement, revocation by the principal, renunciation by the agent, notice, and compensation.

Point	Rule in complete sentence	Relevant section
Mutual agreement	The principal and the agent may terminate the agency by mutual agreement because agency is based on consent and confidence. If both sides agree to end the relationship, the authority ends according to the terms agreed between them.	General contractual principle read with Section 201
Revocation by principal	The principal may revoke the authority of the agent before the authority has been exercised so as to bind the principal. This right is controlled by the rules relating to agency coupled with interest and partly exercised authority.	Section 203
Renunciation by agent	The agent may renounce the business of the agency. However, when the agency was meant to continue for a fixed period, renunciation without sufficient cause may require compensation.	Sections 201 and 205
Reasonable notice	Reasonable notice must be given for revocation or renunciation. If notice is not given, the party who suffers damage because of the absence of notice must be compensated.	Section 206
Express or implied termination	Revocation or renunciation need not always be in formal words. It may be implied from conduct, such as when the principal himself performs the very act for which the agent was appointed.	Section 207

UNILATERAL TERMINATION - WHEN ONE SIDE ENDS IT

A principal may normally cancel an agency where the agent's conduct destroys the confidence required in the agency relationship. Examples include serious breach of duty, dishonesty, untrustworthiness, refusal to obey reasonable instructions, failure to maintain proper accounts, misconduct, or secret profit.

Before termination on serious allegations such as fraud or dishonesty, fairness requires that the agent should ordinarily get an opportunity of being heard, because termination based on loss of confidence can seriously affect the agent's rights and reputation.

3. Termination by Operation of Law and by Passage of Time

Termination by operation of law occurs when the relationship ends not merely because one party chooses to end it, but because a legal event makes the continuation of agency impossible, unnecessary, or inconsistent with law. The most important statutory examples are found in Section 201.

Event	Legal effect	Revision cue
Completion of business	When the specific business for which the agent was appointed is completed, the agency ends automatically because no authority remains to be exercised.	Task done = power gone.
Expiry of fixed time	If the agency is created for a fixed duration, it ends on the expiry of that duration, provided the terms clearly show that the agency was to terminate at that time.	Time ends = agency ends.
Reasonable time where no time is fixed	Where no appropriate time is fixed, the contract is generally understood to last for a reasonable time. What is reasonable depends on the nature of the act, the formalities of authorisation, the purpose of the principal, and the surrounding circumstances.	No date = reasonable time.
Death or unsoundness	The death or unsoundness of mind of either the principal or the agent ordinarily terminates the agency, subject to the protective duties under Section 209 and the timing rule under Section 208.	Person gone or mind gone = authority gone.
Principal's insolvency	The principal's adjudication as insolvent terminates the agency because the law transfers control over the insolvent's property and estate to the insolvency process.	Insolvency changes control.

CONTINUITY AFTER EXPIRY - A PRACTICAL POINT

If parties continue to act as principal and agent even after the stated period has expired, a court may infer from their conduct that the relationship has been continued or renewed. This is not automatic in every case; it depends on whether the conduct clearly shows an intention to continue the agency.

For revision, remember this as: Expired paper may not end practical power if both sides continue the same agency conduct.

4. Important Restrictions on Revocation

Although the principal has power to revoke the agent's authority, the Act protects certain situations where revocation would be unfair or would disturb rights already created. These restrictions are highly important for examination purposes because they qualify the general rule of Section 201.

Section	Provision explained in simple academic language	Exam importance
Section 202 Agency coupled with interest	Where the agent has an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. This protects an agent who is not merely acting as a representative but also has a beneficial interest in the subject matter.	Very important exception. Death, insanity, or ordinary revocation will not defeat the agent's protected interest.
Section 203 Revocation before authority is exercised	The principal may revoke the authority of the agent at any time before the authority has been exercised in such a manner as to bind the principal. Once binding consequences have arisen, revocation cannot undo them.	Use it to explain the timing of revocation.
Section 204 Partly exercised authority	The principal cannot revoke the authority after it has been partly exercised, so far as regards acts and obligations that arise from acts already done in the agency. This preserves legal consequences already created.	It prevents unfair withdrawal after the agent has acted.
Section 205 Compensation for premature termination	Where there is an express or implied contract that the agency should continue for a period of time, premature revocation by the principal or premature renunciation by the agent without sufficient cause creates a duty to compensate the other party.	Connect with fixed-period agency.
Section 206 Reasonable notice	Reasonable notice must be given for revocation or renunciation. If reasonable notice is absent, the damage caused by such absence must be made good by the party who failed to give notice.	Always write notice separately in answers.

5. When Termination Becomes Effective

The termination of agency is not always effective at the same moment for every person. The Act carefully distinguishes between the agent and third persons, because a third party may deal with the agent without knowing that the authority has ended.

SECTION 208 - KNOWLEDGE IS THE SWITCH

As regards the agent: termination of authority does not take effect before it becomes known to the agent.

As regards third persons: termination does not take effect before it becomes known to them.

This means that acts done before knowledge of termination may still bind the principal, because the law protects honest dealing and commercial certainty.

Person concerned	When termination becomes effective	Practical result
Agent	It becomes effective only when the agent knows about the termination.	If the agent acts before receiving knowledge, the principal may still be bound.
Third person	It becomes effective against a third person only when the third person knows about the termination.	If the third person deals in good faith without knowledge, the transaction may remain protected.
Principal's estate	Where the principal dies but the agent does not yet know of the death, a payment or act done before knowledge may be treated as valid against the representative of the principal.	The law avoids punishing persons who had no knowledge of the termination event.

SECTION 209 - DUTY AFTER PRINCIPAL'S DEATH OR INSANITY

When the agency is terminated because the principal dies or becomes of unsound mind, the agent must take all reasonable steps, on behalf of the representatives of the late principal, for the protection and preservation of the interests entrusted to him.

This provision shows that termination does not instantly free the agent from every responsibility. The agent must protect the principal's property until the representatives can take charge.

6. Termination of Sub-agent's Authority under Section 210

A sub-agent derives his authority through the original agent. Therefore, when the authority of the original agent is terminated, the authority of the sub-agent also comes to an end, subject to the rules regarding termination of an agent's authority.

SECTION 210 - THE DOMINO RULE

Section 210 states that the termination of the authority of an agent causes the termination of the authority of all sub-agents appointed by him.

The easiest way to remember this provision is the domino image: if the first authority falls, the dependent authority of the sub-agent also falls. However, this is subject to the statutory protections relating to timing, knowledge, and rights already created.

Situation	Effect on sub-agent	Reason
Agent's authority ends	The sub-agent's authority also ends.	The sub-agent's power is dependent on the original agent's authority.
Third person has no knowledge	Section 208 may protect acts done before the third person knows of the termination.	The law protects third persons who deal without knowledge of termination.
Rights already created	Termination will not ordinarily undo rights and obligations that have already arisen under valid acts.	Sections 203 and 204 prevent unfair undoing of completed or partly completed acts.

Exam sentence: The authority of a sub-agent is not independent authority. It stands upon the authority of the original agent, and therefore Section 210 makes it fall when the original agent's authority falls.

7. Section-wise Revision Map: Sections 201 to 210

Section	Heading	What to write in exams
201	Termination of agency	Agency ends by revocation, renunciation, completion of business, death or unsoundness of either party, or insolvency of the principal.
202	Agent's interest in subject matter	Agency coupled with interest cannot be terminated to the prejudice of that interest, unless there is an express contract.
203	When principal may revoke	Principal may revoke before authority has been exercised so as to bind him.
204	Partly exercised authority	Authority cannot be revoked as regards acts and obligations already arising from acts done.
205	Compensation	Premature revocation or renunciation of fixed-period agency without sufficient cause gives rise to compensation.
206	Reasonable notice	Reasonable notice must be given, otherwise resulting damage must be made good.
207	Express or implied	Revocation and renunciation may be express or implied from conduct.
208	When termination takes effect	Termination is effective as to the agent only when known to him, and as to third persons only when known to them.
209	Duty after death or insanity	Agent must take reasonable steps to protect and preserve the principal's interests for the representatives.
210	Sub-agent's authority	Termination of agent's authority terminates the authority of all sub-agents appointed by him.

8. Exam-friendly Answer in Academic Tone

The termination of agency under the Indian Contract Act, 1872 means the ending of the legal authority of an agent to represent and bind the principal. The principal-agent relationship is based on consent, authority and confidence; therefore, when the authority ends, the agent can no longer act for the principal in future transactions, subject to statutory protections for acts already done and for third persons who had no knowledge of termination.

Section 201 gives the principal modes by which agency is terminated. An agency is terminated by the principal revoking the authority of the agent, by the agent renouncing the business of the agency, by completion of the business for which the agency was created, by the death or unsoundness of mind of either the principal or the agent, or by the principal being adjudicated insolvent. This section gives the broad statutory foundation for termination.

However, the general power of termination is subject to important qualifications. Under Section 202, where the agent has an interest in the property which forms the subject matter of the agency, the agency cannot be terminated to the prejudice of such interest unless there is an express contract to the contrary. Section 203 permits revocation before the authority has been exercised so as to bind the principal, while Section 204 prevents revocation, so far as regards acts and obligations already arising, after the authority has been partly exercised.

Sections 205 and 206 add the rules of compensation and reasonable notice. If the agency was meant to continue for a fixed period, premature revocation or renunciation without sufficient cause may require compensation. Reasonable notice must also be given for revocation or renunciation; otherwise, the damage caused by the absence of notice must be made good. Under Section 207, revocation and renunciation may be express or implied from the conduct of the principal or agent.

Section 208 is especially important because termination does not take effect against the agent until it becomes known to him, and it does not take effect against third persons until it becomes known to them. Section 209 imposes a continuing duty on the agent, when the agency is terminated by the principal's death or insanity, to take reasonable steps for the protection and preservation of the principal's interests. Finally, Section 210 provides that the termination of the authority of an agent also terminates the authority of all sub-agents appointed by him.

FINAL MEMORY SNAPSHOT

201 tells how agency ends. 202 protects agency coupled with interest. 203 and 204 control when revocation is allowed. 205 and 206 require fairness through compensation and notice. 207 recognises express and implied termination. 208 protects persons without knowledge. 209 preserves the principal's interests after death or insanity. 210 ends the sub-agent's authority when the agent's authority ends.

9. One-page Revision Drill

Question you must ask	Answer you must remember
What is termination of agency?	It is the legal ending of the agent's authority to act for and bind the principal.
Which is the main section?	Section 201 is the main section because it lists the principal modes of termination.
What is the exception under Section 202?	Agency coupled with interest cannot be terminated to the prejudice of the agent's interest, unless there is an express contract.
Why are Sections 203 and 204 important?	They determine whether revocation is still possible after the agent has acted or partly acted.
What do Sections 205 and 206 ensure?	They ensure fairness by requiring compensation for premature termination and reasonable notice for revocation or renunciation.
What is the key rule of Section 208?	Termination becomes effective against the agent or third person only when it becomes known to that person.
What does Section 209 require?	The agent must protect and preserve the principal's interests after termination caused by the principal's death or insanity.
What is the Section 210 domino rule?	When the original agent's authority ends, the authority of all sub-agents appointed by him also ends.

EXAM WRITING TIP

In a long answer, begin with the definition, write Section 201 as the main rule, explain Sections 202 to 210 in order, and conclude that termination ends future authority but does not automatically destroy protected interests, completed acts, or rights of third persons who had no knowledge.

AGENCY BY RATIFICATION

Indian Contract Act, 1872 - Sections 196 to 200 | Academic Memory Note

One-glance idea

Agency by ratification means that a person, who was not originally bound by an unauthorized act done on his behalf, later approves the act. Once the approval is legally valid, the law treats the act as if authority had existed from the beginning. This is why ratification is often described as ex post facto agency.

Memory formula: R-A-T-I-F-Y

R - Representative acted for another. A - Authority was absent or exceeded. T - True principal had knowledge and capacity. I - Intention to adopt the act was clear. F - Full transaction must be accepted, not selectively chosen. Y - Your ratification must not injure a third person.

196: Ratify or Disown

197: Express or Implied

198: Knowledge

199: Whole Transaction

200: Third Party Safety

1. Meaning and nature of agency by ratification

Under the law of contract, an agency may be created not only by express appointment or implied conduct, but also by ratification. Ratification arises when one person acts on behalf of another without authority, or acts beyond the authority originally given, and the person on whose behalf the act was done later accepts that act as his own.

The legal effect of valid ratification is powerful. The relationship of principal and agent comes into existence after ratification, but the effect relates back to the date of the original act. Therefore, the act is treated as if it had been performed by an agent who was properly authorized from the very beginning.

Core psychological hook

Think of ratification as a legal stamp placed later on an earlier unauthorized act. The stamp says: "I accept this act as mine." Once the stamp is valid, the earlier defect of want of authority is cured, subject to statutory limitations.

2. Situations in which agency by ratification may arise		
Situation	Academic explanation	Result if ratified
Unauthorized act	A person acts on behalf of another person even though no authority had been given at all.	The principal may accept the act and make it binding as if authority had existed.
Excess of authority	A duly appointed agent acts beyond the limits of the authority originally conferred upon him.	The principal may adopt the excess act if it is otherwise capable of ratification.
Election by principal	The person on whose behalf the act was done has a choice to either approve the act or reject it.	Approval creates binding consequences; rejection leaves the unauthorized act without ratification.

3. Essentials of valid ratification
<p>1. The act must be done by a person who is not acting with authority at that time. Ratification is needed only when there was no authority or when the available authority was exceeded.</p>
<p>2. The act must be done on behalf of the principal. A person cannot ratify an act that was originally done by the actor for himself. The actor must have purported to act for another.</p>
<p>3. The principal must know the material facts. A ratification given in ignorance of material facts is not valid, because approval must be informed approval.</p>
<p>4. The principal must have capacity to ratify. A person who could not have authorized the act in the first place cannot make it valid by later ratification.</p>
<p>5. The principal must intend to become bound. Ratification is not accidental; it must show an intention to adopt the act and accept its legal consequences.</p>
<p>6. Ratification must take place within a reasonable time. The option to ratify cannot be kept hanging indefinitely, because uncertainty may affect third parties and commercial dealings.</p>

4. Section-wise statutory framework: Sections 196 to 200

Section	Rule in simple academic language	Memory trigger
Section 196 Right to ratify or disown	Where acts are done by one person on behalf of another, but without that person's knowledge or authority, the person may elect to ratify or disown such acts. If he ratifies them, the same effects follow as if the acts had been performed by his authority.	Choice button: Accept or Reject.
Section 197 Ratification may be express or implied	Ratification need not always be made by formal words. It may be express, when the principal clearly says or writes that he accepts the act, or implied, when his conduct shows acceptance.	Words or conduct.
Section 198 Knowledge is necessary	No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. The principal must know the important facts before he can properly adopt the act.	No knowledge, no ratification.
Section 199 Ratify whole transaction	A person ratifying an unauthorized act forming part of a transaction must ratify the whole transaction of which such act formed a part. He cannot select only the favourable part and reject the burdensome part.	Whole plate, not one sweet.
Section 200 No injury to third person	Ratification of an unauthorized act cannot be given effect if it would injure a third person or harm rights or interests that have already arisen in favour of a third person.	Third party shield.

Exam sentence

The doctrine of ratification converts an originally unauthorized act into an authorized act, but only when the person ratifying has capacity, knowledge, intention, and legal freedom to adopt the act without harming third-party rights.

5. Express and implied ratification under Section 197

Section 197 recognizes two modes of ratification. The first is express ratification, where the principal adopts the act by clear words, written communication, or direct approval. The second is implied ratification, where the principal does not use formal words, but his conduct reasonably shows that he has accepted the unauthorized act.

Mode	How it appears	Illustrative understanding
Express ratification	The principal directly states that he approves the act done on his behalf.	A sends a message saying, "I accept the purchase made for me." This is direct approval.
Implied ratification	The principal acts in a manner that shows acceptance, although he does not formally say that he ratifies.	A accepts the benefit of the transaction or deals with the property as his own. His conduct may imply ratification.

6. Limits on ratification: why every unauthorized act cannot be cured

Ratification is a remedial doctrine, but it is not unlimited. The Act places important restrictions so that ratification does not become a tool for unfairness or retrospective manipulation.

Knowledge limit - Section 198	Ratification is invalid if the principal does not know the material facts. A person cannot truly approve what he does not substantially understand.
Whole transaction limit - Section 199	The principal must adopt the whole transaction. He cannot approve only the advantageous part and reject the connected disadvantageous part.
Third-party limit - Section 200	Ratification cannot be used to injure a third person or disturb rights that have already come into existence in favour of that person.
Capacity limit	A person who was not competent to authorize the act cannot acquire competence by later ratification. Ratification cannot cure incapacity.

7. Consequences of valid ratification

When ratification is valid, it retrospectively creates legal rights and obligations between the principal and the third party. The act is no longer treated as a merely unauthorized act; it becomes the act of the principal. Consequently, the principal may become entitled to the benefits of the act and may also become bound by its burdens.

Consequence	Effect
Retrospective authority	The ratified act is treated as if it had been done with authority from the beginning.
Binding effect on principal	The principal becomes bound by the transaction and cannot ordinarily escape the consequences after valid ratification.
Rights against third party	The principal may claim the benefit of the transaction because the act is treated as his own act.
Voidable arrangement may become valid	A transaction subject to ratification may become legally enforceable when the principal validly ratifies it.
No ratification means no adoption	If the principal disowns the act, the transaction does not become binding on him merely because another person purported to act on his behalf.

Do not forget

Ratification is not merely a moral approval. It is a legal adoption of the act with legal consequences. Therefore, once a principal validly ratifies, he generally cannot accept the benefit and reject the burden of the same transaction.

8. Memory map for one-look revision

Step	Ask this question	Answer needed for valid ratification
1. Act	Was an act done on behalf of another person?	Yes, the act must be connected with another person as principal.
2. Authority	Was authority absent or exceeded?	Yes, otherwise ordinary agency is enough and ratification is unnecessary.
3. Election	Did the principal choose to ratify rather than disown?	There must be a clear election to adopt the act.
4. Knowledge	Did the principal know the material facts?	Knowledge must not be materially defective.
5. Whole	Is the whole transaction adopted?	The principal must accept the whole connected transaction.
6. Third party	Will ratification injure a third person?	Ratification cannot harm third-party rights.

9. Exam-ready academic note

Agency by ratification is one of the recognized modes by which the relationship of principal and agent may arise under the Indian Contract Act, 1872. It applies where a person has acted on behalf of another without authority, or has exceeded the authority originally given to him, and the person on whose behalf the act was done subsequently accepts that act as his own.

The foundation of this doctrine is that subsequent approval may, in law, be treated as equivalent to prior authority. Therefore, when ratification is valid, the act is deemed to have been authorized from the beginning. For this reason, agency by ratification is also described as ex post facto agency.

Section 196 gives the person on whose behalf the act was done a choice. He may either ratify the unauthorized act or disown it. If he ratifies it, the same effects follow as if the act had been performed by his authority. Section 197 states that ratification may be express or implied. It may be made by clear words, or it may be inferred from conduct, such as accepting the benefit of the transaction.

However, ratification is subject to important safeguards. Under Section 198, no valid ratification can be made by a person whose knowledge of the facts is materially defective. Under Section 199, where an unauthorized act forms part of a transaction, the principal must ratify the whole transaction and cannot adopt only the beneficial part. Under Section 200, ratification of an unauthorized act cannot be allowed to injure a third person or prejudice rights already acquired by him.

Thus, agency by ratification is a useful doctrine because it validates certain unauthorized acts after they are adopted by the principal. At the same time, it is carefully controlled by the requirements of capacity, knowledge, intention, completeness of adoption, and protection of third-party rights.

10. Last-minute revision card

Definition	Later approval of an act done on behalf of another without authority.
Nickname	Ex post facto agency.
Main section	Section 196 gives the right to ratify or disown.
Mode	Section 197 says ratification may be express or implied.
Knowledge rule	Section 198 says materially defective knowledge prevents valid ratification.
Whole transaction rule	Section 199 requires ratification of the entire connected transaction.
Third-party rule	Section 200 prevents ratification from injuring third-party rights.

RIGHTS AND DUTIES IN A CONTRACT OF AGENCY

Indian Contract Act, 1872 - Sections 203, 211 to 225 and 235 | Comparative Revision Table

This note compares the rights of the agent with the corresponding duties of the principal, and the rights of the principal with the corresponding duties of the agent. The central idea is simple: in agency law, one party's right often appears as the other party's duty. Therefore, the provisions can be remembered as a two-way mirror: Agent serves faithfully, while Principal pays, protects and compensates.

Memory Hook

Agent duties: D-S-A-C-S
Directions - Skill - Accounts - Communicate - Secret profit avoided

Agent rights: R-R-L-I-C
Retain money - Remuneration - Lien - Indemnity - Compensation

A. Principal's Rights and Agent's Corresponding Duties

Section and provision	Agent side - duty or liability	Principal side - right or remedy
Section 211 Agent's duty in conducting principal's business	The agent must conduct the principal's business according to the directions given by the principal. If no directions are given, the agent must follow the custom prevailing in similar business at the same place. If he acts otherwise, he must make good the loss and account for any profit.	The principal has a corresponding right to insist on obedience to instructions and trade custom. If the agent's departure causes loss, the principal can claim compensation; if it produces profit, the principal can demand that profit.
Section 212 Duty to act skilfully and diligently	The agent must conduct the agency business with reasonable skill, diligence and prudence. He is liable for the direct consequences of his neglect, want of skill or misconduct, but he is not liable for remote or indirect loss.	The principal has a right to claim compensation for direct loss caused by the agent's negligence, want of skill or misconduct. This is the principal's practical remedy when the agent does not act judiciously.
Section 213 Duty to render proper accounts	The agent is bound to render proper accounts to the principal whenever the principal demands them. The duty covers money received, money spent, and transactions done in the course of agency.	The principal has a clear right to demand accounts relating to the agency business. This enables the principal to verify whether the agent has acted faithfully and whether any money or benefit is due.
Section 214 Duty to communicate in difficulty	In cases of difficulty, the agent must use all reasonable diligence in communicating with the principal and in seeking instructions. The agent should not take avoidable risky steps without guidance when guidance can reasonably be obtained.	The principal has a corresponding right to be consulted in difficult situations and to have his instructions sought before the agent takes material decisions affecting the agency business.
Section 215 Agent must not deal on his own account without principal's consent	The agent must not deal on his own account in the business of agency without first obtaining the principal's consent and without disclosing all material circumstances known to him.	The principal may repudiate the transaction if a material fact was dishonestly concealed or if the dealing was disadvantageous to him. The principal may also choose to adopt the transaction if that is beneficial.
Section 216 Principal's right to benefit gained by agent dealing on his own account	The agent must not make secret profit or place himself in a position where his personal interest conflicts with his fiduciary duty. Any benefit obtained by using the agency position must be accounted for.	The principal is entitled to claim any benefit or profit which may have resulted from the transaction. The principal may recover secret profit, claim damages, and refuse to allow the agent to retain improper benefits.

Section and provision	Agent side - duty or liability	Principal side - right or remedy
Section 220 Agent not entitled to remuneration for misconducted business	Where the agent is guilty of misconduct in the business of agency, he is not entitled to remuneration for that part of the business which he has misconducted.	The principal has a corresponding right to refuse remuneration for the misconducted part of the agency business. This operates as a protective remedy against dishonest or negligent service.
Section 235 Liability of pretended agent	A person who falsely represents himself as an authorised agent, and thereby induces a third person to deal with him, must compensate that third person for loss caused if the alleged principal does not ratify the act.	This provision primarily protects the third party, not the principal. It should be remembered separately because it deals with the liability of a pretended agent, rather than ordinary rights between principal and authorised agent.

B. Agent's Rights and Principal's Corresponding Duties

Section and provision	Agent side - duty or liability	Principal side - right or remedy
Section 217 Agent's right to retain sums received on principal's account	The agent may retain out of sums received for the principal money due to himself, including advances made, expenses properly incurred, and remuneration payable for acting as agent.	The principal has a corresponding duty to allow proper deduction of lawful expenses, advances and remuneration from money received by the agent in the course of agency.
Section 219 Agent's right to remuneration	The agent is entitled to the remuneration agreed between the parties. Where no agreement exists, he is entitled to reasonable remuneration for the work done as agent.	The principal has a duty to pay the agreed fee or, in the absence of agreement, reasonable compensation for the agent's services, subject to the agent having acted properly.
Section 221 Agent's lien on principal's property	The agent may retain the principal's goods, papers and other property received by him until the amount due for commission, disbursements and services has been paid or accounted for.	The principal must discharge the agent's lawful dues if he wants the property released. The lien is a right of retention only; ordinarily it does not itself authorise sale of the goods.
Section 222 Right to be indemnified against consequences of lawful acts	When the agent performs lawful acts within the authority conferred by the principal, the agent is entitled to be indemnified against the consequences of those acts.	The principal has a duty to indemnify the agent for losses, costs and liabilities arising from lawful authorised acts done in the execution of the agency.
Section 223 Right to be indemnified for acts done in good faith	If the agent acts in good faith under the principal's instructions, he is entitled to indemnity even where the act later exposes him to liability, provided he acted honestly and without wrongful intent.	The principal must indemnify the agent for consequences of acts done in good faith on the principal's behalf. This protects an honest agent who obeys the principal's directions.
Section 224 No indemnity for criminal acts	An agent cannot claim indemnity for acts that are criminal or unlawful. No agency arrangement can legally protect a person for committing a criminal act.	The principal is not bound to indemnify the agent for criminal conduct. This provision limits the agent's right of indemnity and prevents illegal agency from being enforced.
Section 225 Compensation for injury caused by principal's neglect	The agent has a right to be compensated where he suffers injury because of the principal's neglect or want of skill. The agent should not bear loss caused by the principal's careless conduct.	The principal has a duty to compensate the agent for injury caused by the principal's negligence, want of skill, or unsafe arrangements connected with the agency work.

C. One-Glance Cross-Matching Chart

Agent's main duty	Principal's matching right	Memory phrase
Sec. 211: Follow directions or custom.	Claim loss or profit caused by departure.	Obey the route.
Sec. 212: Act with skill and diligence.	Claim compensation for direct negligence loss.	Work with care.
Sec. 213: Render accounts.	Demand proper accounts.	Show the books.
Sec. 214: Communicate in difficulty.	Expect consultation and instructions to be sought.	Ask before risk.
Sec. 215: Do not self-deal without consent.	Repudiate concealed or disadvantageous transaction.	No secret self-deal.
Sec. 216: Do not make secret profit.	Claim benefit or profit obtained by agent.	No hidden gain.

D. Exam-Ready Academic Note

In a contract of agency, the relationship between the principal and the agent is fiduciary in character. The agent acts for the principal, and therefore the law imposes strict duties of obedience, care, accounting, communication and loyalty upon the agent. Sections 211 to 216 mainly protect the principal by ensuring that the agent conducts the business according to directions, acts with reasonable skill, renders accounts, communicates in difficulty, avoids self-dealing and does not earn secret profit. These duties create corresponding rights in favour of the principal, including the right to claim compensation, repudiate improper transactions and recover benefits improperly obtained by the agent.

At the same time, the law also protects the agent because an agent acts on behalf of another and may incur expenses, liabilities or risks while performing the agency work. Sections 217, 219 and 221 give the agent financial protection by recognising his right to retain sums, receive remuneration and exercise lien over the principal's property until lawful dues are paid. Sections 222 and 223 further protect the agent by granting indemnity for lawful acts and acts done in good faith. Section 225 gives the agent a right to compensation where injury is caused by the principal's neglect or want of skill. Thus, the law balances the principal's right to faithful service with the agent's right to fair payment and protection.

E. Fast Revision Cards

Principal can demand	Agent can demand	Danger words in exam
Obedience, skill, accounts, communication, no self-dealing, no secret profit.	Retain sums, remuneration, lien, indemnity, compensation for injury.	Neglect, misconduct, secret profit, self-dealing, material facts, reasonable diligence, good faith.

Difference between Sale and Agreement to Sell (Section 4, Sale of Goods Act, 1930)

Basis	Sale	Agreement to Sell
Meaning	In a contract of sale, the ownership in the goods is transferred immediately from the seller to the buyer at the time of the contract.	In an agreement to sell, the ownership in the goods is not transferred immediately but is agreed to be transferred at a future time or upon the fulfillment of certain conditions.
Nature of Contract	A sale is a contract along with conveyance, meaning that it not only creates obligations but also transfers ownership in the goods.	An agreement to sell is a contract pure and simple, meaning it only creates obligations between the parties without transferring ownership.
Rights Created	A sale creates a right in rem, which means a right against the entire world in respect of the goods.	An agreement to sell creates a right in personam, which means a right only against the seller and not against third parties.
Ownership of Goods	In a sale, the buyer becomes the legal owner of the goods immediately upon the completion of the contract.	In an agreement to sell, the seller continues to remain the owner of the goods until the agreed time or condition is fulfilled.
Rights of Buyer	In a sale, the buyer acquires proprietary rights in the goods and can exercise rights such as suing for conversion or wrongful detention of goods.	In an agreement to sell, the buyer does not acquire any proprietary rights over the goods and can only enforce contractual rights.
Remedy of Buyer	If the seller fails to deliver the goods after a sale, the buyer can sue for specific performance or for recovery of the goods themselves.	If the seller fails to perform an agreement to sell, the buyer can only sue for damages for breach of contract and cannot claim the goods themselves.
Resale by Seller	If the seller resells the goods after a sale, the buyer may follow the goods and claim them even from a third party, unless the third party has purchased them in good faith without notice of the original sale.	If the seller resells the goods under an agreement to sell, the buyer cannot follow the goods in the hands of third parties because ownership has not yet passed.
Risk of Loss	In a sale, the risk of loss or damage to the goods generally passes to the buyer, even if the goods have not yet been delivered.	In an agreement to sell, the risk of loss or damage remains with the seller since ownership has not yet passed to the buyer.
Remedy of Seller	If the buyer defaults after a sale, the seller can sue the buyer for the price of the goods as the ownership has already been transferred.	If the buyer defaults in an agreement to sell, the seller can only sue for damages and not for the price of the goods.
Destruction of Goods	If the goods are destroyed after a sale, the loss falls upon the buyer because the ownership has already been transferred.	If the goods are destroyed before the completion of an agreement to sell, the loss falls upon the seller.

Basis	Sale	Agreement to Sell
Transfer of Property	In a sale, the transfer of property in goods takes place immediately and absolutely.	In an agreement to sell, the transfer of property in goods is postponed to a future time or depends on the fulfillment of a condition.

Indian Partnership Act 1932

Case law – “Pratiba Rane vs Suraj Kumar”

1. Agreement
 2. Sharing of Profit
 3. Mutual Agency
-



Sec 6

COX v HICKMAN (1860)



Test of Partnership | Section 6, Indian Partnership Act, 1932



1. FACTS (FLOW OF EVENTS)



1 Benjamin Smith and Josiah Smith carried on business as B. Smith & Son.



2 Nature of business: iron merchants / iron works business.



3 The firm fell into serious financial difficulties.



4 A meeting of creditors was called.



5 A deed of arrangement was executed in favour of creditors.



6 Under the deed, five trustees / creditor-representatives were appointed, including Cox and Wheatcroft.



7 The business was to be continued under this arrangement so that debts could be paid.



8 The net income / profits of the business were to be applied towards payment of creditors.



9 Hickman supplied goods to the business.



10 Three bills of exchange were accepted / drawn on behalf of the business for the goods supplied.



11 The bills of exchange were dishonoured when they became due.



12 Hickman sued Cox and Wheatcroft, alleging that they were liable as partners.



2. ISSUE INVOLVED



Whether creditors or persons receiving a share of profits under such an arrangement become partners and are liable as partners?



Core controversy: Is profit-sharing enough to create partnership?



3. LEGAL PRINCIPLE / TEST

REAL TEST OF PARTNERSHIP = MUTUAL AGENCY

- ✓ Partnership depends on the true relation between the parties.
- ✓ The business must be carried on by all or any of them acting for all.
- ✓ Sharing profits is only evidence of partnership, not conclusive proof.
- ✓ Mere creditor status or profit-sharing for repayment of debts does not by itself create partnership.



4. JUDGMENT / HELD

Held: Cox and Wheatcroft were **NOT** liable as partners.

- They were acting as trustees / representatives under the deed of arrangement.
- They were not carrying on the business as partners on their own behalf.
- No mutual agency existed.
- Therefore, mere participation in profits for repayment of debts did not make them partners.
- Hickman could not hold them personally liable on the dishonoured bills of exchange as partners.



Ratio: Profit-sharing alone is not the test; mutual agency is the real test of partnership.

Seth Bikhraj Jaipuria v. Union of India (1961) is a landmark Supreme Court of India ruling dealing with the enforceability of government contracts. The Court held that contracts made on behalf of the state are void and non-binding if they fail to strictly comply with mandatory statutory formalities. ● CaseMine +1



Key Facts of the Case

- **The Background:** During the 1943 food scarcity, Seth Bikhraj Jaipuria, a merchant, entered into agreements with the Divisional Superintendent of the East Indian Railway to supply foodgrains to railway employees.
- **The Dispute:** The Railway Administration later refused to accept the remaining deliveries. Jaipuria sued the Union of India to recover the difference in price and damages for breach of contract.
- **The Legal Issue:** The contracts were signed by the Divisional Superintendent but were not formally executed in the name of the Governor-General, nor did they mention that the officer was acting on his behalf. 📖 Indian Kanoon +1

The Court's Decision

The Supreme Court ruled in favor of the Union of India, dismissing the merchant's claims. 📄

- **Statutory Requirement:** The case hinged on **Section 175(3) of the Government of India Act, 1935** (the predecessor to Article 299(1) of the Indian Constitution). This section mandated that all contracts made in the exercise of the executive power of the State must be expressed to be made by the Governor-General and executed on his behalf by authorized personnel.
- **Void Ab Initio:** Because the purchase orders were signed solely by the Divisional Superintendent without fulfilling these strict procedural formalities, the Supreme Court declared the contracts void and unenforceable.
- **No Compensation:** Consequently, the government could not be sued for damages for the breach of an improperly executed contract. 📖 Indian Kanoon +2

⁹⁴[Power to carry on trade, etc.]

298. The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that—

- (a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and
- (b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.]

Contracts.

299. (1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor ⁹⁵[***] of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor ⁹⁵[***] by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor ⁹⁶[***] shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Suits and proceedings.

300. (1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the

94. Substituted by the Constitution (Seventh Amendment) Act, 1956, w.e.f. 1-11-1956.

95. Words "or the Rajpramukh" omitted, *ibid.*

96. Words "nor the Rajpramukh" omitted, *ibid.*

State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution—

- (a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and
- (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

Meaning -

“Standard form of contract” is generally the terms and conditions of the contract that are pre-drafted by one of the party and the other party is supposed to sign it, without having any time or opportunity to get the terms changed.

“Drafted by one party- made with numerous Parties”

Illustration:

- **Insurance Contract**
- **Employment Contracts**
- **Telephone Utility Contract**
- **Terms and conditions printed by railway authorities.**

Also known as-

- **Contracts of Adhesion**
- **Take it or leave it Contract**
- **Boilerplate Contract**

What is the need of such Contract?

- 1. Saves time for both parties**
- 2. Procedure is easy to get into contracts**
- 3. Cost effective**
- 4. One Contract for all**
- 5. Take it or leave it- no negotiation**

Main Problem-

- Unequal Bargain**
- Exploitation of Consumers**

Protective Devices:

- 1. Reasonable Notice**
- 2. Notice should be contemporaneous with Contract**
- 3. Theory of Fundamental Breach**
- 4. Strict Construction**
- 5. Liability in Tort**
- 6. Unreasonable Terms**

STANDARD FORM OF CONTRACT

Nature, Advantages, Exemption Clauses and Judicial Control against Exploitation

Memory Map: Contract Formed Fast - Court Controls Fairness

Pre-drafted terms make mass contracting possible, but the law does not allow the stronger party to use hidden, misleading or unreasonable clauses as a shield against liability. The core judicial question is: **Was there real assent to the term, and is the term fair enough to be enforced?**

reasonable enough

1. Meaning and Nature

what → A **standard form contract** is a contract whose terms are prepared in advance by one party and offered to many persons on substantially identical terms. The other party usually has no real opportunity to negotiate; he merely accepts the document, ticket, receipt, policy, form or digital terms as presented. Such contracts are common in transport, insurance, banking, dry-cleaning, hotel services, parking, online services and public utility transactions.

eg → Its nature is therefore double-edged. Commercially, it is a convenient instrument for repetitive transactions. Legally, it may become a source of unequal bargaining power, because the stronger party can insert limitation or exclusion clauses and expect the weaker party to sign, click, or accept them without understanding their effect.

where

Advantages	Dangers Requiring Legal Control
<ul style="list-style-type: none"> • Speed and efficiency: avoids repeated negotiation in everyday transactions. • Uniformity: similar customers receive similar terms. • Lower transaction cost: useful where thousands of small contracts are made. • Certainty: parties know the standard procedure, price and obligations. • Business practicality: essential for insurance, railways, parking, tickets and online trade. 	<ul style="list-style-type: none"> • No real negotiation: the weaker party often only signs on the dotted line. • Hidden terms: clauses may be printed on the reverse of tickets or receipts. • Exemption clauses: liability for negligence, loss or breach may be limited. • Misrepresentation: the effect of a term may be wrongly explained. • Unreasonableness: terms may be opposed to fairness and public policy.

2. Exemption Clauses and Limitation Clauses

An **exemption clause** seeks to exclude liability; a **limitation clause** seeks to cap liability at a fixed amount. In standard contracts, such clauses are often drafted by the party with superior bargaining power. Courts do not reject every exemption clause; they examine whether the term became part of the contract, whether fair notice was given, whether there was misrepresentation, whether the clause is reasonable, and whether it attempts to defeat the main obligation of the contract.

3. Principles of Protection against Exploitation

Principle	Effect
1. Contractual document	The clause must appear in a document which a reasonable person would treat as contractual. A mere receipt is normally not enough. <i>Chapelton v. Barry UDC</i> held that a deck-chair ticket was only a receipt and not the contract containing exemption terms.
2. No misrepresentation	Even if signed, the document will not protect the stronger party if the term was explained falsely or misleadingly. In <i>Curtis v. Chemical Cleaning</i> , the customer was told the receipt concerned beads and sequins, while it actually contained a broad exemption clause. The clause failed.
3. Reasonable notice	The stronger party must take reasonable steps to bring unusual or burdensome terms to the other party's attention before or at the time of contracting. Mere printing on the reverse may be insufficient.
4. Contemporaneous notice	Notice must be given before or at the moment of contract formation. In <i>Olley v. Marlborough Court</i> , a notice inside the hotel room came too late because the contract was completed at reception.
5. Reasonableness and public policy	Even if notice is given, the term itself must not be arbitrary, oppressive, unconscionable or opposed to public policy.
6. Strict interpretation	Exemption clauses are construed strictly against the party relying on them. Ambiguity is read against the stronger party, especially where negligence or breach of an implied condition is involved.

4. Notice: The Gateway through which Terms Enter the Contract

The doctrine of notice asks whether the party relying on the printed condition took **reasonably sufficient steps** to bring the term to the other party's attention. If the other party signs a contractual document, actual reading is generally not necessary. However, where a ticket, receipt, parking slip or luggage ticket is used, the court asks whether the term was **reasonably brought to notice** before the contract was concluded.

Case	Notice Principle
<i>Parker v. South Eastern Railway Co.</i>	Cloakroom ticket contained words such as "See Back"; limitation of liability printed on reverse. The court treated sufficient notice as a factual question: if reasonable steps were taken to draw attention to the terms, the limitation may bind.
<i>Richardson Spence & Co. v. Rowntree</i>	A limitation printed on a passenger ticket failed because the ticket was folded and part of the condition was obliterated by a stamp. Notice was not reasonably sufficient.
<i>Thornton v. Shoe Lane Parking</i>	Parking ticket was issued by machine after the customer had already entered. Terms displayed inside the premises were too late and not practically brought to notice at the time of contract.
<i>M/s Prakash Road Lines v. H.M.T. Bearing Ltd.</i>	A carrier could rely on a limitation only if the customer had proper notice that goods were carried at owner's risk or that compensation was limited.

5. Reasonableness of Standard Terms

Reasonableness is a substantive control. It is not enough that the weaker party technically had notice of the clause. A court may still refuse enforcement if the clause is **unfair, arbitrary, excessively one-sided, or destructive of the essential promise**. Thus, a laundry or dry-cleaning receipt limiting liability to a trivial sum, despite possible loss of valuable garments, may be held unreasonable and against public policy.

Judicial Reasonableness Checklist

- **Commercial purpose:** Does the clause protect a genuine business risk, or does it only remove responsibility?
- **Proportionality:** Is the compensation cap reasonable compared with the value of the goods or expected loss?
- **Clarity:** Are the words plain, visible and understandable?
- **Timing:** Was notice given before the bargain was complete?
- **Conduct:** Did the stronger party mislead the weaker party about the effect of the term?
- **Public policy:** Does the term permit negligence, misappropriation, arbitrary termination or evasion of core obligations?

6. Bargaining Power and Unconscionability

Standard form contracts become problematic when one party has **gross inequality of bargaining power**. In such a situation, consent may be formal rather than real. Indian courts have controlled such clauses through **Section 16** of the Indian Contract Act, where undue influence is established, and especially through **Section 23**, where the clause is opposed to public policy. The law therefore balances freedom of contract with protection against exploitation.

Important Indian Case on Unequal Bargaining Power

1986

Central Inland Water Transport Corporation Ltd. v. Brojo Nath: A service rule allowed the employer to terminate a permanent employee by giving three months notice or salary in lieu. The Supreme Court held that, because of gross inequality of bargaining power, such a clause was unreasonable, unconscionable and opposed to public policy. It was therefore void under Section 23. This is the strongest Indian authority in the uploaded text for controlling oppressive standard terms.

7. Judicial Approach: Balance, Not Blind Enforcement

The judicial approach is not to destroy standard form contracts. Courts recognise their necessity in modern commerce. But they also recognise that fine print may become a tool of exploitation. Therefore, courts generally follow a layered approach: first, decide whether the term became part of the contract; second, decide whether sufficient notice was given; third, examine misrepresentation; fourth, interpret the clause strictly; fifth, test whether the clause is reasonable, fair and consistent with public policy.

Document?	Notice?	No Misrepresentation?	Reasonable?	Strictly Construed?
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8. Exemption Clauses: Limits of Protection

An exemption clause is especially suspect when it attempts to protect the party from the consequences of its own negligence, failure to perform the main promise, or liability towards third parties. The clause must be expressed in clear language and will not be expanded by implication. If two interpretations are possible, the court will prefer the interpretation that preserves liability rather than destroys it.

Control Technique	Case Application
Strict construction	<i>Wallis v. Pratt</i> : the seller supplied a wrong kind of seed. A clause excluding warranty did not exclude liability for breach of an implied condition that goods would correspond with description/sample. The seller could not hide behind the clause.
Fundamental breach	<i>Alexander v. Railway Executive</i> : luggage was not delivered to the passenger without production of the ticket. Non-delivery was treated as a fundamental breach, so the exemption clause did not protect the railway.
Sub-contracting and control	<i>Davies v. Collins</i> : cleaners passed a uniform to sub-contractors without proper care; the loss amounted to fundamental breach and the cleaners remained liable.
Non-contractual liability	<i>White v. John Warrick & Co.</i> : a clause excluding contractual liability did not automatically exclude liability in tort.
Third-party liability	<i>Morris v. C.W. Martin & Sons</i> : a contract between the owner and furrier could not be used to exempt a cleaner who was not a party to that contract.

9. Special Illustration: Party Breached the Contract but Still Relied on the Clause

The uploaded extract contains a particularly useful illustration in *Wallis v. Pratt*. The sellers contracted to sell seeds described as "English sainfoin", but supplied a different and inferior type. After the seeds were sown and the crop was ready, the buyers had to compensate their own purchasers and then sued the sellers. The sellers relied on a printed exemption clause stating that there was no warranty, express or implied, as to growth, description or other matters. The court applied **strict construction** and held that the clause excluded only warranty liability; it did not exclude liability for breach of an **implied condition** that the goods must correspond with description or sample. Thus, even though the written contract contained an exemption clause, the party in breach could not use it to defeat the essential obligation.

This case is important because it shows the difference between a clause that merely limits a collateral warranty and a clause that attempts to defeat the very root of the bargain. A standard form clause will not be allowed to convert a promise into an illusion.

10. Position in India and Statutory Protection

The uploaded text notes that India does not have a separate comprehensive legislation exactly like the English Unfair Contract Terms Act, but courts have used the Indian Contract Act to strike down unfair standard terms. Section 16 may apply where consent is affected by undue influence, while Section 23 is used where the term is opposed to public policy. The Law Commission of India, in its 103rd Report, recommended insertion of provisions to control unconscionable contracts, including clauses exempting liability for wilful breach or negligence.

Exam-ready conclusion

Standard form contracts are legally valid and commercially useful, but their enforceability depends on fairness in formation and fairness in substance. The weaker party is protected through rules of contractual document, reasonable notice, absence of misrepresentation, contemporaneous notice, strict interpretation, reasonableness, public policy and control of unequal bargaining power. The modern judicial approach is therefore not anti-business; it is anti-exploitation.

Source: Uploaded textbook extract, "Standard Form Contracts," including the discussion on contractual document, misrepresentation, notice, reasonableness, strict construction, fundamental breach, non-contractual liability, third-party liability, statutory protection and Indian position.

Sec 16 → undue influence.
Sec 23 → against public policy.

Law of Contract II - Complete Question Bank Answers

LAW OF CONTRACT - II

Complete Academic Answers to Question Bank

Indemnity, Guarantee, Bailment, Agency, Sale of Goods, Property in Goods and Partnership

How this file is designed

Each answer follows an exam-friendly structure: introduction, statutory provision, essentials, explanation, case law, distinctions where needed, and a memory hook. Blue boxes mark statutory points; amber boxes mark case law; tables are used only where comparison improves recall.

Source base

Primary base: uploaded question bank CONTRACT-II.pdf and uploaded Law of Contract II notes PDF. Statutory base: Indian Contract Act, 1872; Sale of Goods Act, 1930; Indian Partnership Act, 1932. Supplemented with settled leading cases commonly used in Indian law examinations.

Question Bank Map

Unit	Core Area	Questions covered
Unit I	Indemnity, Guarantee, Bailment and Lien	9 answers
Unit II	Agency	4 answers
Unit III	Sale of Goods	7 answers
Unit IV	Property, Delivery and Unpaid Seller	6 answers
Unit V	Partnership	7 answers

UNIT I - Question 1: Define contract of indemnity. State the rights of a promisee in a contract of indemnity.

1 Introduction and statutory definition

A contract of indemnity is a protective special contract. Its object is not to create profit, but to save the promisee from a specified loss. It is therefore a loss-shifting mechanism: the indemnifier undertakes that if the indemnity-holder suffers a covered loss, the indemnifier will make that loss good.

Section 124, Indian Contract Act, 1872

A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called a contract of indemnity. Parties: indemnifier and indemnity-holder.

2 Essential elements

There must be two parties: the indemnifier who promises to save from loss, and the indemnity-holder or promisee who is protected.

There must be a promise to make good loss. The promise may be express, or in suitable cases may be implied from relationship or circumstances.

The loss contemplated under Section 124 is loss caused by human conduct: either by the promisor or by another person. Pure act of God is not within the narrow statutory wording, though wider indemnities may be recognised by contract or equity.

Like all contracts, it must satisfy the general requirements of a valid contract: free consent, competent parties, lawful consideration, lawful object and intention to create legal relations.

Its purpose is compensatory. The indemnity-holder should be placed in the position in which he would have stood if the covered loss had not occurred.

→ status quo before loss.

Rights of indemnity-holder when sued

Section 125: three statutory rights

The indemnity-holder, acting within the scope of his authority, may recover from the indemnifier: (1) damages which he is compelled to pay in a covered suit; (2) costs which he is compelled to pay, provided he acted prudently or as authorised; and (3) sums paid under a compromise, provided the compromise was not contrary to the indemnifier's orders and was prudent or authorised.

The right to damages is the core right. If the indemnity-holder is sued on a matter covered by indemnity and is compelled to pay damages, he can recover the amount from the indemnifier. The right to costs prevents the indemnifier from saying that only the decree amount is payable; litigation costs reasonably and prudently incurred also fall on him. The right to compromise is important because business realities may require settlement before final judgment. The compromise must, however, be prudent and within authority.

When does liability commence?

Although Section 125 uses the expression "when sued", Indian courts have not treated indemnity as helpless until actual payment in every case. If the indemnity-holder's liability has become absolute, he may seek relief so that he need not first suffer actual out-of-pocket loss. This makes indemnity commercially useful, especially where the promisee faces a definite liability but has not yet paid.

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Case Law: Gajanan Moreshwar Parelkar v. Moreshwar Madan Mantri, Bombay High Court, 1942

Facts: The plaintiff had incurred liability and the defendant had promised to indemnify him. The indemnity-holder sought protection before actual payment to the third party.

Issue: Whether an indemnity-holder must first pay out of his pocket before enforcing indemnity.

Held: The court held that once liability of the indemnity-holder has become absolute, he can compel the indemnifier to save him from that liability; he need not wait until he has actually paid.

Case Law: Adamson v. Jarvis, King's Bench, 1827

Facts: An auctioneer sold cattle on the defendant's instructions. It later turned out that the defendant had no title, and the true owner recovered against the auctioneer.

Issue: Whether the auctioneer could recover the loss from the person who instructed him.

Held: The defendant was held liable to indemnify the auctioneer, because the auctioneer had acted on his authority and suffered loss due to the defendant's want of title.

Memory hook

Indemnity = Loss shield. Section 124 defines the shield; Section 125 tells what the shield covers: damages, costs and prudent compromise.

UNIT I - Question 2: What are the kinds of guarantee?

Meaning of contract of guarantee

Section 126, Indian Contract Act

A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The person giving the guarantee is the surety; the person in respect of whose default the guarantee is given is the principal debtor; and the person to whom the guarantee is given is the creditor.

Guarantee is a credit-support contract. It enables the creditor to give credit, goods, time or another benefit to the principal debtor because the surety stands behind the principal debtor's performance.

Main kinds of guarantee

Kind	Meaning	Illustration / effect
Specific guarantee	A guarantee limited to one debt, one transaction or one particular obligation.	A guarantees repayment of a single loan of Rs. 1,00,000 advanced by B to C. Once that loan is repaid or discharged, the guarantee ends.
Continuing guarantee	A guarantee which extends to a series of transactions. It is expressly recognised by Section 129.	A guarantees payment for goods supplied by B to C from time to time up to Rs. 2,00,000.
Retrospective guarantee	A guarantee covering an already existing debt or obligation, provided there is consideration recognised by law.	A guarantees an existing overdraft when the bank agrees to continue the facility or forbear from immediate suit.
Prospective guarantee	A guarantee relating to a future advance or future transaction.	A tells a bank that he will be surety for any loan to be granted to C next month.
Limited guarantee	Liability is restricted by amount, time, transaction or condition.	A guarantees C's account only up to Rs. 50,000 or only for six months.
Unlimited guarantee	No monetary ceiling is expressly fixed, though liability remains governed by the	A guarantees all amounts due from C to B without stating a maximum amount.

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	contract and by the principal debtor's liability.	
Fidelity guarantee	A surety guarantees honesty or faithful performance of an employee.	A guarantees that C, a cashier, will faithfully account for employer's money.

Revocation of continuing guarantee

Under Section 130, a continuing guarantee may be revoked as to future transactions by notice to the creditor. Past transactions remain unaffected.

Under Section 131, death of the surety operates, in the absence of contract to the contrary, as revocation for future transactions.

A continuing guarantee is therefore not automatically a life-long unlimited risk; its future operation can be stopped according to the Act and contract terms.

Case Law: Madan Lal Sobti v. Rajasthan State Industrial Development and Investment Corporation Ltd., Delhi High Court, 2007

Facts: The surety's collateral security/guarantee was questioned after the borrower defaulted and the creditor had forbore from immediate action.

Issue: Whether forbearance to sue or continued accommodation could amount to consideration for a guarantee.

Held: The court treated forbearance and benefit to the principal debtor as sufficient consideration under Section 127, confirming that guarantee arrangements may rest on benefit to the principal debtor, not direct benefit to the surety.

Memory hook

Specific guarantee = one transaction. Continuing guarantee = series of transactions. Section 129 has "1-2-9": think one, two, nine transactions continuing in a series.

UNIT I - Question 3: Explain the rights of a surety as against the principal debtor, the creditor and his co-sureties.

Introduction

A surety is not a mere volunteer. Once he pays or performs under the guarantee, the law gives him strong remedial rights so that the burden ultimately falls on the person whose debt was guaranteed, namely the principal debtor, or is shared fairly among co-sureties.

Against whom	Main rights	Sections
Principal debtor	Right of subrogation and right to indemnity	Sections 140 and 145
Creditor	Right to securities and right not to be prejudiced by creditor's conduct	Sections 133 to 141 especially 141
Co-sureties	Right to contribution	Sections 138, 146 and 147

Rights against the principal debtor

Sections 140 and 145

Section 140: where the surety has paid or performed all that he is liable for, he is invested with all rights which the creditor had against the principal debtor. Section 145: in every contract of guarantee, there is an implied promise by the principal debtor to indemnify the surety.

The right of subrogation means that the surety steps into the shoes of the creditor after satisfying the debt. The right of indemnity means that the surety can recover from the principal debtor all sums rightfully paid under the guarantee, but not sums wrongfully paid. For example, if the surety pays a time-barred or non-existent claim without legal liability, he cannot automatically shift it to the principal debtor.

Rights against the creditor

The creditor must not vary the contract between himself and the principal debtor without the surety's consent; otherwise the surety may be discharged under Section 133.

The creditor must not release the principal debtor or enter into a binding arrangement that prejudices the surety's remedy, subject to statutory exceptions.

Under Section 141, the surety is entitled to the benefit of every security which the creditor had against the principal debtor at the time of suretyship. If the creditor loses or parts with such security without surety's consent, the surety is discharged to that extent.

Case Law: Amrit Lal Goverdhan Lalan v. State Bank of Travancore, Supreme Court of India, 1968

Facts: A bank held securities connected with the debt and issues arose concerning the surety's entitlement to those securities.

Issue: What is the scope of the surety's right to creditor's securities under Section 141.

Held: The Supreme Court emphasised that the surety is entitled to securities held by the creditor, and if the creditor impairs them, the surety is discharged to the extent of the value lost.

Rights against co-sureties

Sections 138, 146 and 147

Release of one co-surety does not discharge the others. Co-sureties are liable to contribute equally, unless their contracts prescribe different maximum liabilities; where they are bound in different sums, contribution is regulated by Section 147.

Contribution is founded on equality. If several sureties guarantee the same debt and one pays more than his share, he can recover proportionate contribution from the others. The purpose is to prevent one surety from unfairly bearing the entire burden when all undertook the risk.

Answer conclusion

Suretyship is balanced: the creditor receives extra security, but the surety receives subrogation, indemnity, securities and contribution. These rights prevent suretyship from becoming unjust enrichment for the creditor or principal debtor.

UNIT I - Question 4: What is bailment? Explain briefly the various types of bailments.

Definition and nature

Section 148, Indian Contract Act

Bailment is the delivery of goods by one person to another for some purpose, upon a contract that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering

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them. The person delivering is the bailor; the person receiving is the bailee.

Bailment deals only with goods, not immovable property. Ownership generally remains with the bailor, while possession passes to the bailee. The bailee must deal with the goods according to the purpose of bailment and must return them or dispose of them as directed.

Types of bailment

Basis	Type	Meaning and example
Benefit	For exclusive benefit of bailor	A leaves goods with B without reward for safe custody. B receives no benefit, but must take reasonable care.
Benefit	For exclusive benefit of bailee	A lends his book to B without charge. B receives the benefit and must return it.
Benefit	For mutual benefit	A gives his car to a repairer for paid repair. Both parties benefit: A gets service and repairer gets remuneration.
Reward	Gratuitous bailment	No remuneration is payable. Example: borrowing a book without charge.
Reward	Non-gratuitous bailment	Reward or consideration exists. Example: paid warehousing, paid repair, paid transport.
Purpose	Bailment for safe custody	Goods are deposited for protection, as with a warehouse or locker.
Purpose	Bailment for carriage	Goods are delivered to a carrier for transport.
Purpose	Bailment for repair or work	Goods are delivered to a mechanic, tailor, goldsmith or repairer.
Purpose	Pledge	Special bailment of goods as security for debt or performance, governed by Sections 172 to 179.
Operation of law	Finder of goods as bailee	A finder of goods is treated as bailee of the true owner under Sections 168 and 169.

Case Law: Coggs v. Bernard, 1703

Facts: The defendant undertook to move barrels of brandy without reward but handled them negligently, causing loss.

Issue: Whether a gratuitous bailee could be liable for negligence.

Held: The court held that even a gratuitous bailee must take due care according to the nature of the bailment; bailment duties arise from possession and undertaking, not merely from reward.

Memory hook

Bailment = possession for a purpose. If there is no delivery of possession and no duty to return or dispose as directed, it is not true bailment.

UNIT I - Question 5: What are the essential characteristics of bailment?

Core essentials

Delivery of possession of goods is essential. The bailee must receive possession, actual or constructive. Mere custody without control may not amount to bailment.

The subject matter must be goods. Bailment does not apply to land or immovable property.

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Delivery must be for a specific purpose, such as repair, safe custody, carriage, use, pledge or return after trial.

There must be a contract, express or implied, although in certain cases like finder of goods, obligations similar to bailment arise by operation of law.

Ownership is not transferred. Only possession is transferred. This distinguishes bailment from sale.

There must be an obligation to return the same goods or dispose of them according to the bailor's directions after the purpose is accomplished.

The bailee must take reasonable care under Section 151 and must not make unauthorised use under Section 154.

Actual and constructive delivery

Delivery need not always mean physical handing over. Delivery may be constructive where the bailee obtains control over goods without manual transfer, for example by handing over keys of a warehouse containing goods. Acknowledgement by a person already in possession that he now holds on behalf of another may also amount to delivery.

Case Law: Kaliaperumal Pillai v. Visalakshmi Ammal, Madras High Court, 1938

Facts: Jewellery was delivered to a goldsmith for making jewels, but the transfer of possession and acceptance for the purpose were in dispute.

Issue: Whether there was sufficient delivery to constitute bailment.

Held: The court explained that delivery of possession is the central element of bailment; without transfer of possession for the agreed purpose, bailment is not complete.

Characteristic	Why it matters
Possession, not ownership	Shows difference from sale and gift.
Goods only	Keeps bailment within movable property.
Purpose	Explains why bailee received goods and limits his authority.
Return or disposal duty	Creates the bailee's core obligation.
Reasonable care	Prevents bailee from treating another's goods casually.

Exam conclusion

The essence of bailment is this: one person entrusts goods to another for a purpose, possession passes, ownership remains, and the goods must come back or be disposed of as directed.

UNIT I - Question 6: Distinguish between bailment and agency.

Introduction

Bailment and agency both involve trust and another person acting in relation to property or affairs. But their legal core is different. Bailment is concerned with possession of goods; agency is concerned with authority to create legal relations between principal and third parties.

Point	Bailment	Agency
Statutory basis	Sections 148 to 181 of the Indian Contract Act mainly deal with bailment and pledge.	Sections 182 to 238 of the Indian Contract Act deal with agency.
Main idea	Delivery of goods for a purpose, with obligation to return or dispose of them.	Authority of one person to act for another and affect legal relations with third parties.
Subject matter	Goods only.	Any lawful act capable of being done through an agent, except acts requiring

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Parties	Bailor and bailee.	personal performance. Principal and agent; third parties are often involved.
Possession	Possession of goods passes to bailee.	Possession of goods is not essential; authority is essential.
Ownership	Ownership remains with bailor.	Agent may or may not deal with principal's property; ownership is not the key element.
Power to bind	Bailee ordinarily cannot bind bailor by contract with third parties merely as bailee.	Agent can bind principal within actual or apparent authority.
Consideration	May be gratuitous or for reward.	No consideration is necessary to create agency under Section 185.
Return duty	Return or disposal of goods is central.	Duty is to act according to authority, skill and loyalty; return of goods may be incidental.
Example	A gives a watch to B for repair.	A appoints B to sell the watch to C on his behalf.

Case Law: Pannalal Jankidas v. Mohanlal, Supreme Court of India, 1951

Facts: An agent failed to insure goods when instructed, and the goods were later lost.

Issue: Whether the agent was liable for loss caused by failure to obey instructions.

Held: The Supreme Court held that an agent must follow instructions and is liable for consequences of breach. The case shows the agency emphasis on authority and duty, not mere possession.

Memory hook

Bailment asks: "Who has the goods?" Agency asks: "Who has authority to bind whom?"

UNIT I - Question 7: Discuss the duties and rights of a bailor.

Duties of bailor

Duty	Provision / principle	Explanation
Disclose known faults	Section 150	The bailor must disclose faults in the goods known to him which materially interfere with use or expose the bailee to extraordinary risk. In non-gratuitous bailment, liability is stricter because the bailor is responsible even for faults which he ought to have known.
Bear necessary expenses in gratuitous bailment	Section 158	Where bailment is gratuitous, the bailor must repay necessary expenses incurred by the bailee for the purpose of bailment.
Indemnify bailee in certain cases	Sections 159 and 164	If the bailor terminates gratuitous bailment before agreed time and the bailee suffers loss exceeding benefit, or if bailor has defective title causing loss, he must indemnify.
Take back goods	General duty from Sections 160 and 161	Once the purpose is accomplished, the bailor should accept return. If he refuses, he may be liable for expenses and risk according to general principles.
Pay agreed remuneration	Contractual duty	In non-gratuitous bailment, if payment is agreed, bailor must pay the bailee's charges.

Rights of bailor

Right to enforce reasonable care: The bailor can claim compensation if the bailee fails to take care required by Section 151 and loss follows.

Right to terminate for unauthorised use: Under Section 153, if the bailee makes unauthorised use inconsistent with conditions of bailment, the bailor may terminate the bailment.

Right to compensation for unauthorised use: Section 154 makes the bailee liable for damage caused by unauthorised use of goods.

Right to claim separation or compensation where goods are mixed without consent: Sections 155 to 157 regulate mixing of goods.

Right to demand return: Under Sections 160 and 161, the bailor can demand return after time expires or purpose is accomplished, and the bailee is liable for loss after default.

Right to accretions: Section 163 gives the bailor the benefit of increase or profit from goods bailed, unless contract provides otherwise.

Right to sue wrongdoers: Sections 180 and 181 allow bailor or bailee to sue third persons who wrongfully deprive use or possession of goods.

Case Law: *Ultzen v. Nicols, 1894*

Facts: A restaurant customer became ill after consuming food and an oyster shell/defect issue arose in the context of goods supplied for consumption.

Issue: Whether supplier/bailor-like provider owed duty regarding defects.

Held: The case is often used to show that where goods are supplied for reward, the supplier must take care that they are reasonably fit and safe; in bailment for reward, the bailor's disclosure duty is stronger.

Exam conclusion

The bailor's duties protect the bailee from hidden risks and expenses; the bailor's rights protect his ownership and ensure that the bailee does not misuse, mix, damage or retain the goods unlawfully.

UNIT I - Question 8: Discuss the duties and rights of a bailee.

Duties of bailee

Duty	Section	Explanation
Take reasonable care	151 and 152	The bailee must take as much care of the goods as a person of ordinary prudence would take of his own goods of similar bulk, quality and value. If he does so, he is not liable for loss despite absence of special contract.
No unauthorised use	153 and 154	If bailee uses the goods inconsistently with the bailment, bailor may terminate and bailee is liable for damage caused by such use.
Not to mix goods without consent	155 to 157	If mixing is with consent, parties share interest proportionately. If without consent and goods can be separated, bailee bears expenses. If they cannot be separated, bailee compensates bailor.

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Return goods	160 and 161	Bailee must return or deliver goods according to bailor's direction when time expires or purpose is complete. If he defaults, he bears responsibility for loss, destruction or deterioration from that time.
Return increase or profit	163	Unless otherwise agreed, accretions belong to bailor, such as a calf born to a bailed cow.
Not to set up adverse title	General principle	Bailee cannot ordinarily deny the bailor's title while holding under bailment.

Rights of bailee

Right to necessary expenses in gratuitous bailment under Section 158.

Right to compensation or indemnity where bailor had defective title or wrongfully terminates gratuitous bailment under Sections 159 and 164.

Right of lien: particular lien under Section 170 for labour or skill improving goods; general lien under Section 171 for bankers, factors, wharfingers, attorneys of High Court and policy-brokers, subject to contract.

Right to sue third parties under Sections 180 and 181 if they wrongfully deprive him of possession or injure the goods.

Right to deliver goods to one of several joint bailors under Section 165, according to the statutory rule.

Right to recover agreed remuneration in non-gratuitous bailment.

Case Law: Coggs v. Bernard, 1703

Facts: A gratuitous carrier undertook to carry barrels but damaged them through negligence.

Issue: Whether absence of reward removed liability.

Held: The bailee was held liable because once a person undertakes custody, he must exercise due care.

Memory hook

Bailee's duties: Care, No misuse, No mixing, Return, Return increase. Bailee's rights: Expenses, Indemnity, Lien, Sue wrongdoers.

UNIT I - Question 9: What do you mean by lien? Write the different kinds of lien with relevant English and Indian cases.

Meaning of lien

Lien is the right of a person in lawful possession of another's goods to retain those goods until a debt or claim is satisfied. It is a possessory right: if possession is voluntarily lost, lien is generally lost. It is not ordinarily a right of sale unless the statute or contract gives such power.

Sections 170 and 171, Indian Contract Act

Section 170 recognises particular lien of a bailee who has, in accordance with the purpose of bailment, rendered service involving labour or skill in respect of the goods. Section 171 recognises general lien of bankers, factors, wharfingers, attorneys of High Court and policy-brokers, in the absence of contract to the contrary.

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Type of lien	Meaning	Example
Particular lien	Right to retain specific goods for charges relating to those very goods.	A mechanic repairs a car and can retain that car until repair charges are paid.
General lien	Right to retain goods for a general balance of account, not necessarily connected with those particular goods.	A banker may retain securities of the customer for general balance due, subject to contrary agreement and nature of deposit.
Contractual lien	Lien expanded, limited or modified by agreement.	Warehouse terms may provide retention for storage charges.
Equitable lien	Right recognised by equity in certain situations even without possession, depending on jurisdiction and facts.	Vendor's lien for unpaid purchase money in some contexts.

Case Law: Brandao v. Barnett, 1846

Facts: A banker claimed lien over securities belonging to the customer.

Issue: Whether bankers have a general lien.

Held: The court recognised banker's general lien as an implied pledge, subject to the nature of transaction and absence of contrary agreement.

Case Law: Morvi Mercantile Bank Ltd. v. Union of India, Supreme Court of India, 1965

Facts: A bank as pledgee/holder of railway receipts claimed rights after loss of goods during transit.

Issue: Whether the bank had sufficient special property/interest to sue.

Held: The Supreme Court recognised that a pledgee or holder with special property in goods can sue for loss, illustrating the strength of possessory/security interests.

Case Law: Bank of Bihar v. State of Bihar, Supreme Court of India, 1971

Facts: Goods pledged to a bank were seized or dealt with by State authorities, affecting the bank's security.

Issue: Whether pledgee's rights could be defeated by such action.

Held: The Court protected the pledgee's special property and security interest, showing that lien/pledge rights are legally enforceable possessory rights.

Answer conclusion

Particular lien is narrow and transaction-linked; general lien is broader and profession-linked. Both are based on possession and both secure payment without immediately transferring ownership.

UNIT II - Question 1: Define agent. What are the different kinds or modes of agents?

Definition

Section 182, Indian Contract Act

An agent is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done or who is so represented is called the principal.

The core of agency is representative authority. An agent is not merely a helper; he is a person who can affect the principal's legal relations with third parties within the scope of authority.

Kinds of agents

Kind	Meaning	Example
General agent	Agent authorised to act generally in matters connected with a particular business or employment.	Manager of a shop authorised to buy and sell goods in ordinary course.
Special agent	Agent appointed for a specific act or transaction.	Agent appointed to sell one specific car.
Universal agent	Agent with very wide authority to act on behalf of principal in almost all matters; rare in practice.	A person given comprehensive power of attorney to manage all affairs.
Mercantile agent	Agent having authority in customary course of business to sell goods, consign goods, buy goods or raise money on security of goods.	Factor or commission agent dealing in goods.
Factor	Mercantile agent entrusted with possession of goods and authority to sell in his own name.	Cloth factor selling goods for principal.
Broker	Agent who brings parties together and negotiates contracts but usually has no possession of goods.	Share broker or property broker.
Auctioneer	Agent appointed to sell goods by public auction.	Auctioneer selling pledged goods after due notice.
Commission agent	Agent paid by commission on business done.	Sales agent earning percentage of sales.
Del credere agent	Agent who, for extra commission, guarantees performance by third parties.	Agent guarantees buyer's payment to principal.
Sub-agent	Person employed by and acting under control of original agent in the business of agency.	A selling agent appoints another person under him to assist in sales.
Substituted agent	Person named by the agent to act for the principal, not under the original agent's control.	Solicitor named by an agent to conduct legal work for principal.

Modes of appointment of agent

By express authority: spoken or written words, including power of attorney.

By implied authority: inferred from conduct, circumstances, business usage or relationship.

By necessity: emergency authority to act to protect principal's interest when communication is impossible.

By estoppel or holding out: principal's conduct leads a third party reasonably to believe that the agent has authority.

By ratification: principal later adopts an act done without authority, making it as effective as if originally authorised.

Memory hook

Agent = legal representative. Kinds tell “how wide is the authority” and “what commercial role does he perform”.

UNIT II - Question 2: What is the difference between sub-agent and co-agent/substituted agent?

Statutory meaning

Sections 191 and 194

Section 191: a sub-agent is a person employed by, and acting under the control of, the original agent in the business of the agency. Section 194: where an agent has authority to name another person to act for the principal, that person is not a sub-agent but a substituted agent of the principal.

Point	Sub-agent	Substituted agent / co-agent
Appointment	Appointed by the original agent to assist in agency work.	Named or selected by the agent to act directly for the principal.
Control	Acts under control of the original agent.	Acts under control of the principal after appointment.
Privity with principal	Generally no direct privity unless properly appointed and circumstances create liability.	Direct relationship arises with principal.
Responsibility of original agent	Original agent is responsible to principal for acts of sub-agent, subject to rules.	Original agent is not responsible for acts of substituted agent if he exercised due care in selection.
When valid	Only where delegation is permitted by custom, nature of agency, necessity or principal's authority.	Valid where agent has authority to name another person.
Example	A appoints B as selling agent; B appoints C to canvass orders under B's control.	A authorises B to choose a solicitor for litigation; B names C, who becomes A's solicitor.

Rule against delegation

The maxim delegatus non potest delegare means that a delegate cannot further delegate. Agency involves confidence in the agent's skill, honesty and discretion. Therefore, an agent cannot ordinarily appoint another to perform acts requiring personal judgment. Exceptions exist where delegation is permitted by express authority, implied authority, trade custom, ministerial acts, necessity or where the principal knows and accepts the arrangement.

Case Law: De Bussche v. Alt, 1878

Facts: An agent appointed another person in a foreign port to assist in sale of a ship due to practical necessity.

Issue: Whether delegation was valid.

Held: The court accepted delegation where the nature of business and circumstances made it necessary and consistent with commercial usage.

Memory hook

Sub-agent is under the agent. Substituted agent stands in place of the agent and directly faces the principal.

UNIT II - Question 3: Define agency. What are the various modes in which the relationship of agency is created?

Meaning of agency

Agency is the legal relationship by which one person, the agent, is authorised to act for another, the principal, so as to affect the principal's legal relations with third parties. Agency is therefore a bridge between the principal and third parties.

Sections 182 and 185

Section 182 defines agent and principal. Section 185 states that no consideration is necessary to create an agency. Thus, authority, not consideration, is the foundation.

Modes of creation

Mode	Explanation	Illustration
Express agency	Created by spoken or written words.	A gives B written authority to sell his house.
Implied agency	Inferred from conduct, circumstances or relationship.	A allows B to regularly order goods on A's account; authority may be implied.
Agency by estoppel	Principal's representation makes a third party believe that another has authority; principal is prevented from denying it.	A allows B to appear as manager and suppliers deal on that basis.
Agency by holding out	A form of estoppel where principal by conduct holds out another as agent.	Company permits a person to negotiate contracts as its authorised officer.
Agency by necessity	Emergency authority to protect principal's interest when communication is impossible.	Carrier sells perishable goods to avoid total loss.
Agency by ratification	Principal later adopts an unauthorised act done on his behalf. Ratification relates back to the date of act.	B buys goods in A's name without authority; A later accepts the purchase.
Agency by operation of law	Law implies agency in special relationships or situations.	Partner is agent of firm for business purposes under partnership law.

Conditions for valid ratification

The act must have been done on behalf of the principal, not on the agent's own behalf.

The principal must have been in existence and competent at the time of the act and at the time of ratification.

Ratification must be with full knowledge of material facts.

The whole transaction must be ratified; principal cannot accept benefits and reject burdens.

The act must be lawful and capable of authorisation at the time it was done.

Case Law: Keighley, Maxsted & Co. v. Durant, House of Lords, 1901

Facts: An agent bought wheat in his own name though he intended it for another principal. The alleged principal later sought to ratify.

Issue: Can a principal ratify a contract where the agent did not contract as agent for him?

Held: Ratification failed because the agent had not purported to act on behalf of the principal. Ratification is possible only of an act done professedly for the principal.

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Case Law: Freeman & Lockyer v. Buckhurst Park Properties, 1964

Facts: A company allowed a person to act as managing director and enter contracts though he was not formally appointed.

Issue: Whether the company was bound by apparent authority.

Held: The company was bound because its conduct represented that the person had authority and the third party relied on that representation.

Answer conclusion

Agency may be created deliberately by authority, inferred from conduct, imposed by necessity, created by estoppel or completed later by ratification. In every case, the key question is authority to affect principal's legal position.

UNIT II - Question 4: State briefly the rights and duties of an agent towards his principal.

Duties of agent

Duty	Section	Explanation
Conduct business according to directions	211	Agent must follow principal's directions; in absence of directions, he must follow business custom.
Act with skill and diligence	212	Agent must conduct agency with reasonable skill, care and diligence expected in similar business.
Render accounts	213	Agent must render proper accounts on demand.
Communicate in difficulty	214	In cases of difficulty, agent must use reasonable diligence to communicate with principal and obtain instructions.
Not deal on own account without consent	215 and 216	Agent must not secretly buy from or sell to principal, nor make secret profit. Principal may repudiate transaction or claim benefit.
Pay sums received	218	Agent must pay to principal all sums received on principal's account, subject to deductions.
Protect interest on principal's death/insanity	209	Agency does not allow abandonment of principal's interests in such situations.

Rights of agent

Right	Section	Explanation
Right of retainer	217	Agent may retain out of sums received for principal all money due for advances, expenses and remuneration.
Right to remuneration	219 and 220	Agent is entitled to agreed remuneration after completion of act; misconduct may disentitle him.
Right of lien	221	Agent may retain principal's property received until commission, disbursements and services are paid, unless contract says otherwise.
Right to indemnity for lawful acts	222	Principal must indemnify agent against consequences of lawful acts done within authority.
Right to indemnity for acts done in good	223	Even where act causes injury to third

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faith		person, if done in good faith under principal's authority, indemnity may be available.
Right to compensation	225	Principal must compensate agent for injury caused by principal's neglect or want of skill.

Case Law: Pannalal Jankidas v. Mohanlal, Supreme Court of India, 1951

Facts: An agent failed to insure goods despite instruction, and loss occurred.

Issue: Whether agent was liable for not obeying principal's instruction.

Held: The agent was liable. The case clearly illustrates Sections 211 and 212: agent must follow directions and exercise reasonable diligence.

Case Law: Andrews v. Ramsay & Co., 1903

Facts: An agent secretly received commission from the opposite party in addition to remuneration from principal.

Issue: Can agent retain secret commission?

Held: The agent had to account for the secret profit. Agency is fiduciary, and secret profits are inconsistent with loyalty.

Memory hook

Agent's duties = obey, care, account, communicate, no secret profit, pay over. Agent's rights = remuneration, retainer, lien, indemnity, compensation.

UNIT III - Question 1: Define the term goods. Explain the different kinds of goods.

Statutory definition

Section 2(7), Sale of Goods Act, 1930

Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of land which are agreed to be severed before sale or under the contract of sale.

Goods are the subject matter of a contract of sale. Money and actionable claims are excluded because they are governed by different legal rules. Immovable property is also outside the Act, but things attached to land may become goods if agreed to be severed.

Kind of goods	Meaning	Example
Existing goods	Goods owned or possessed by the seller at the time of contract.	A car already in seller's showroom.
Specific goods	Goods identified and agreed upon at the time the contract is made.	A particular laptop bearing a serial number.
Ascertained goods	Goods identified after contract from a larger mass.	100 bags separated from a stock of 1,000 bags.
Unascertained goods	Goods not specifically identified at the time of contract.	100 bags of wheat out of a bulk, not yet separated.
Future goods	Goods to be manufactured, produced or acquired by seller after making the contract.	A crop to be grown next season.
Contingent goods	Goods whose acquisition depends on uncertain contingency.	Goods expected to arrive by a particular ship.

Importance of classification

Classification matters because passing of property, risk, remedies and validity differ. Specific goods may pass according to intention and rules under Sections 18 to 24. In unascertained goods, property cannot pass until goods are ascertained. Future goods can only be subject of an agreement to sell, not present sale, because the seller does not yet own them.

Case Law: Varley v. Whipp, 1900

Facts: A buyer agreed to buy a reaping machine described as new and used only to cut a small area. The machine was old and did not match description.

Issue: Whether sale by description principles applied where buyer had not seen the goods.

Held: The buyer was not bound to accept goods not corresponding with description. The case shows why identification and description of goods are central.

Memory hook

Existing goods are present. Future goods are expected. Contingent goods depend on an event. Specific goods are pointed out. Unascertained goods are still floating in a bulk.

UNIT III - Question 2: Define contract of sale.

Section 4(1), Sale of Goods Act

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

A contract of sale is the foundation of commercial exchange in goods. It may be an immediate sale, where property in goods is transferred at once, or an agreement to sell, where transfer is to take place later or subject to a condition. The expression “property” means ownership, not merely possession.

Essential ideas in the definition

There must be two parties, seller and buyer. A person cannot buy his own goods.

The subject matter must be goods within Section 2(7).

There must be transfer or agreement to transfer property in goods. Transfer of mere possession is bailment, not sale.

The consideration must be price, meaning money consideration. If goods are exchanged for goods, it is barter, not sale.

The contract may be absolute or conditional.

General principles of the Indian Contract Act apply unless inconsistent with the Sale of Goods Act.

Sale and agreement to sell within Section 4

Where property in the goods is transferred from seller to buyer at the time of contract, the contract is a sale. Where transfer is to take place at a future time or subject to a condition, it is an agreement to sell. An agreement to sell becomes a sale when time elapses or conditions are fulfilled.

Case Law: State of Madras v. Gannon Dunkerley & Co., Supreme Court of India, 1958

Facts: The issue concerned whether a building works contract involved sale of goods for tax purposes.

Issue: Whether supply of materials in an indivisible works contract amounted to sale of goods under classical sale law.

Held: The Court explained that sale requires transfer of property in goods for money consideration; an indivisible works contract was not treated as a sale in the traditional sense. The case highlights the ingredients of sale.

Exam conclusion

A contract of sale is not merely delivery, use or custody. It is transfer or agreed transfer of ownership in goods for a price.

UNIT III - Question 3: What are the essential elements of contract of sale?

Essentials

Essential	Explanation
Two parties	There must be a buyer and a seller. Sale requires transfer from one person to another.
Goods	The subject matter must be goods as defined in Section 2(7).
Transfer of property	Ownership must pass or be agreed to pass. Mere possession is not enough.
Price	Consideration must be money. Part money and part goods may still be sale if money is substantial and parties so intend.
Contractual capacity and free consent	Parties must be competent and consent must be free under the Indian Contract Act.

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Lawful object	The sale must not be illegal, immoral, fraudulent or opposed to public policy.
Absolute or conditional	The contract may operate immediately or subject to conditions.
Form	A contract of sale may be written, oral or implied from conduct unless a special law requires otherwise.

Distinction from allied transactions

Transaction	Why it is not ordinary sale
Bailment	Only possession passes, not ownership.
Hire-purchase	Ownership passes only after payment of instalments and exercise/fulfilment of option, depending on contract.
Barter/exchange	Consideration is goods for goods, not price in money.
Gift	No price or consideration.
Mortgage/pledge	Goods are security; ownership may not pass as sale.

Case Law: Helby v. Matthews, 1895

Facts: Goods were taken under hire-purchase terms with option to buy but no obligation to buy.

Issue: Was the hirer a buyer so as to pass good title to another?

Held: The hirer was not a buyer because he was not bound to buy. The case helps distinguish sale from hire-purchase.

Memory hook

Sale = Goods + Price + Ownership transfer. Remove any one of these three and the transaction is usually something else.

UNIT III - Question 4: Define sale and agreement to sell and distinguish between them.

Section 4(3), Sale of Goods Act

Where under a contract of sale property in goods is transferred from seller to buyer, the contract is called a sale. Where transfer of property is to take place at a future time or subject to a condition thereafter to be fulfilled, the contract is called an agreement to sell.

Point	Sale	Agreement to sell
Nature	Executed contract.	Executory contract.
Transfer of ownership	Property passes immediately.	Property passes later or on fulfilment of condition.
Risk	Generally risk follows ownership unless otherwise agreed.	Risk usually remains with seller until property passes.
Remedy of seller	Seller may sue for price if buyer wrongfully refuses to pay.	Seller usually sues for damages for non-acceptance, unless price is otherwise payable.
Remedy of buyer	Buyer may sue for goods or conversion if seller wrongfully resells after property passed.	Buyer normally sues for damages for breach.
Insolvency of seller	Buyer as owner may claim goods from official receiver if property has passed.	Buyer may only prove as creditor if property has not passed.
Insolvency of buyer	Seller must deliver to buyer's representative if ownership passed, subject to unpaid seller's rights.	Seller can refuse delivery because ownership has not passed.
Type of goods	Can relate to existing and ascertained	Future or contingent goods can only be

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goods where property can pass.	agreement to sell initially.
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Case Law: Kursell v. Timber Operators, 1927

Facts: A contract concerned trees to be cut from land. Before severance, the seller lost rights over land.
 Issue: Whether property had passed to buyer.
 Held: Since the goods were not yet severed/ascertained as movable goods for the sale, the buyer did not acquire property. The case illustrates the difference between immediate sale and future transfer.

Exam conclusion

Sale creates ownership now; agreement to sell creates a right to obtain ownership later. This difference decides risk, remedies and insolvency consequences.

UNIT III - Question 5: What is the difference between sale and agreement of sale?

This question is substantially the same as the previous question. In examination, it should be answered as “sale versus agreement to sell” under Section 4 of the Sale of Goods Act. The safest structure is to define both and then write consequences.

Practical consequence	Sale	Agreement to sell
Ownership	Buyer becomes owner immediately.	Buyer is not yet owner.
Seller's resale	May amount to breach and conversion if property already passed.	Seller's resale gives buyer claim for damages, unless specific performance is available.
Buyer's default	Seller may sue for price where property passed and price is payable.	Seller generally sues for damages.
Destruction of goods	If risk passed, buyer may bear loss.	Seller usually bears loss until property passes.
Future goods	Cannot be present sale.	Appropriate form for future goods.

Writing tip

Do not merely repeat definitions. Add legal consequences: transfer of property, risk, remedies, insolvency and resale. That converts a short answer into a strong 10-mark answer.

UNIT III - Question 6: What is the difference between condition and warranty?

Definitions

Section 12, Sale of Goods Act

A stipulation essential to the main purpose of the contract is a condition. A stipulation collateral to the main purpose is a warranty. Breach of condition gives right to repudiate and claim damages; breach of warranty gives right to claim damages only, not to reject goods.

Point	Condition	Warranty
Importance	Essential to main purpose.	Collateral or subsidiary.
Effect of breach	Buyer may reject goods, repudiate	Buyer can claim damages but generally

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Treatment by buyer	contract and claim damages. Buyer may waive condition or elect to treat breach as warranty.	cannot reject goods. Warranty cannot be elevated into condition by buyer alone.
Example	Goods must match description in a sale by description.	A minor assurance about packaging, not central to purpose.
Legal result	Goes to root of contract.	Does not go to root of contract.

Implied conditions and warranties

Implied condition as to title under Section 14(a).

Implied warranty of quiet possession and freedom from encumbrance under Section 14(b) and (c).

Implied condition that goods correspond with description under Section 15.

Implied condition as to fitness for particular purpose under Section 16(1), where buyer relies on seller's skill and seller deals in such goods.

Implied condition as to merchantable quality under Section 16(2), subject to examination and defects revealed by examination.

Implied conditions in sale by sample under Section 17.

Case Law: Poussard v. Spiers and Pond, 1876

Facts: An opera singer failed to appear for opening performances, which were central to the contract.

Issue: Was the term a condition?

Held: The breach went to the root of the contract; repudiation was allowed. It illustrates condition as essential term.

Case Law: Bettini v. Gye, 1876

Facts: A singer failed to attend rehearsals but was available for main performances.

Issue: Was the rehearsal clause a condition?

Held: It was treated as warranty; damages were available but repudiation was not justified. It illustrates collateral stipulation.

Case Law: Grant v. Australian Knitting Mills, Privy Council, 1936

Facts: A buyer purchased woollen underwear which contained excess sulphites and caused dermatitis.

Issue: Whether there was breach of implied condition of fitness.

Held: The seller/manufacturer was liable because the goods were not reasonably fit for their usual purpose when buyer relied on seller's skill.

Memory hook

Condition = core promise. Warranty = supporting promise. Breach of condition breaks the contract; breach of warranty bends it and gives damages.

UNIT III - Question 7: Explain the doctrine of caveat emptor and state the exceptions to it.

Meaning

Caveat emptor means “let the buyer beware”. The traditional rule is that the buyer must examine goods and satisfy himself regarding their suitability. If he buys goods without proper inquiry, he cannot later complain merely because the goods are unsuitable for his hidden purpose.

Section 16, Sale of Goods Act

Subject to the Act, there is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale, except in the situations recognised by Section 16 and other provisions.

Exceptions

Exception	Explanation	Example
Fitness for particular purpose	If buyer makes purpose known and relies on seller's skill or judgment, and seller deals in such goods, condition of fitness is implied.	Buyer asks chemist for medicine for a stated purpose.
Merchantable quality	Where goods are bought by description from a seller dealing in such goods, goods must be of merchantable quality, subject to defects revealed by examination.	New shoes must be reasonably wearable.
Sale by description	Goods must correspond with description under Section 15.	“Basmati rice” must actually be basmati rice.
Sale by sample	Bulk must correspond with sample and buyer must have reasonable opportunity to compare.	Cloth supplied in bulk must match sample shown.
Fraud or active concealment	Seller cannot rely on caveat emptor if he conceals defects or commits fraud.	Painting over cracks in a machine to hide defects.
Usage of trade	Implied conditions or warranties may arise by trade usage.	Commercial custom regarding purity, packing or grade.
Dangerous goods	Seller may be liable where he fails to warn about known dangers.	Explosive or poisonous goods sold without warning.

Case Law: Priest v. Last, 1903

Facts: A buyer bought a hot-water bottle from a chemist; it burst and injured his wife.

Issue: Whether the buyer relied on seller's skill for fitness.

Held: The seller was liable because the goods were bought for a known ordinary purpose from a dealer, implying fitness.

Case Law: Baldry v. Marshall, 1925

Facts: Buyer told dealer he wanted a car suitable for touring; dealer recommended a Bugatti which was unsuitable.

Issue: Whether reliance on seller's skill created implied condition.

Held: The buyer succeeded because he relied on the seller's skill and judgment for the particular purpose.

Case Law: Ward v. Hobbs, 1878

Facts: Pigs sold at auction were infected; seller did not expressly warrant quality.

Issue: Whether mere silence imposed liability.

Held: The court applied caveat emptor in absence of fraud or implied term, showing the buyer's duty to beware in ordinary cases.

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Exam conclusion

Modern sale law does not abolish caveat emptor, but it cuts it down substantially where the buyer relies on seller's skill, buys by description/sample, faces fraud, or is protected by implied conditions.

UNIT IV - Question 1: Briefly explain the rule enunciated in the maxim Nemo dat quod non habet.

Meaning of the maxim

Nemo dat quod non habet means “no one can give what he does not have”. In sale of goods, it means that a seller who has no title to goods cannot normally transfer a better title to the buyer. The true owner’s title is protected even against an innocent buyer.

Section 27, Sale of Goods Act

Where goods are sold by a person who is not the owner and who does not sell under the authority or with the consent of the owner, the buyer acquires no better title than the seller had, unless the owner is by conduct precluded from denying the seller’s authority.

Rationale

The rule protects ownership. If a thief or unauthorised possessor could pass good title, ownership would be insecure. At the same time, commerce requires protection of bona fide buyers in certain situations. Therefore, the Act recognises exceptions where the original owner’s conduct, commercial convenience or statutory policy justifies transfer of good title.

Major exceptions

Exception	Provision / principle	Effect
Estoppel by owner	Section 27	If owner by conduct makes buyer believe seller has authority, owner cannot deny it.
Sale by mercantile agent	Proviso to Section 27	Buyer gets good title if mercantile agent sells in ordinary course with owner’s consent to possession and buyer acts in good faith without notice.
Sale by one of joint owners	Section 28	Buyer in good faith may get good title from joint owner in sole possession with permission.
Sale under voidable contract	Section 29	If seller obtained goods under voidable contract not rescinded at time of sale, good-faith buyer gets good title.
Seller in possession after sale	Section 30(1)	Buyer from seller in possession may get good title if he acts in good faith and without notice of earlier sale.
Buyer in possession before ownership	Section 30(2)	Good-faith transferee from buyer in possession may get good title.
Unpaid seller’s resale	Section 54	Valid resale in certain circumstances passes title to new buyer.
Sale by finder or pawnee	Indian Contract Act Sections 169 and 176	Finder or pawnee may sell in limited statutory circumstances.

Case Law: Rowland v. Divall, 1923

Facts: A buyer purchased a car which later turned out to be stolen. The true owner recovered it.

Issue: Did the buyer get title and was there failure of consideration?

Held: The buyer got no title because the seller had none. He could recover the price because there was total failure of consideration.

Case Law: Bishopsgate Motor Finance Corp. v. Transport Brakes Ltd., 1949

Facts: A person without title purported to deal with a vehicle, and finance parties claimed rights.

Issue: Could a non-owner transfer good title?

Held: The court applied nemo dat: no better title can pass unless the case fits a recognised exception.

Memory hook

Nemo dat is the ownership rule. Exceptions are the commerce rule. First ask: did seller own? If not, ask: does any statutory exception protect the buyer?

UNIT IV - Question 2: Define delivery. Discuss the rules relating to delivery in the Sale of Goods Act.

Section 2(2), Sale of Goods Act

Delivery means voluntary transfer of possession from one person to another.

Delivery is performance of the seller's duty to put the buyer in possession. It may occur by actual handing over, by doing something that has the effect of putting goods in buyer's control, or by acknowledgement by a third party holding goods.

Rules relating to delivery

Rule	Provision / principle	Explanation
Delivery and payment are concurrent conditions	Section 32	Unless otherwise agreed, seller must be ready to deliver and buyer must be ready to pay at the same time.
Mode of delivery	Section 33	Delivery may be by doing anything which parties agree shall be treated as delivery or which puts goods in possession of buyer or authorised person.
Effect of part delivery	Section 34	Part delivery in progress of whole delivery may operate as delivery of whole, but part delivery with intention to sever does not.
Buyer to apply for delivery	Section 35	Apart from express contract, seller is not bound to deliver until buyer applies for delivery.
Place of delivery	Section 36	Goods are delivered at place agreed; failing agreement, goods sold are delivered where they are at sale, and future goods where manufactured or produced.
Time of delivery	Section 36	If no time fixed, delivery must be within reasonable time.
Goods in possession of third party	Section 36	No delivery by seller unless third party acknowledges to buyer that he holds goods on buyer's behalf.
Expenses	Section 36	Expenses of putting goods into deliverable state are borne by seller unless otherwise agreed.
Wrong quantity	Section 37	Buyer may reject short delivery, excess delivery or mixed delivery, subject to acceptance and contract.
Instalment delivery	Section 38	Buyer need not accept instalments unless agreed; breach of instalment

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		contract depends on terms and circumstances.
Delivery to carrier	Section 39	Delivery to carrier for transmission to buyer is prima facie delivery to buyer, subject to proper contract with carrier and notice for insurance where necessary.

Case Law: Kaliaperumal Pillai v. Visalakshmi Ammal

Facts: Although a bailment case, it is useful for delivery principle because the court stressed that delivery means transfer of possession or control.

Issue: Why is transfer of possession important?

Held: Without transfer of possession/control, delivery is incomplete. In sale too, delivery is voluntary transfer of possession.

Exam conclusion

Delivery is not always physical handing over. It is legally effective transfer of possession, governed by agreement, place, time, quantity and mode rules.

UNIT IV - Question 3: Write the different modes of delivery.

Modes

Mode	Meaning	Example
Actual delivery	Physical transfer of possession of goods to buyer or his authorised agent.	Seller hands over a mobile phone to buyer.
Symbolic delivery	Delivery of a symbol or means of control over goods.	Handing over keys of a warehouse or delivery order.
Constructive delivery	Change in legal possession without physical movement.	Warehouseman acknowledges that he now holds goods on behalf of buyer.
Delivery to carrier	Goods handed to carrier for transmission to buyer, generally treated as delivery to buyer.	Seller delivers goods to railway/transporter for buyer.
Part delivery	Delivery of part which may operate as delivery of whole if made in progress of whole delivery.	Some bags are delivered as beginning of entire consignment.
Delivery by attornment	Third party already holding goods acknowledges holding them for buyer.	Bailee of seller agrees to hold goods for buyer.

Section 33 practical meaning

Delivery may be made by any act which has the effect of putting the goods in the possession of the buyer or of a person authorised to hold them on his behalf. Therefore, the law looks at control and intention, not merely physical movement.

Memory hook

Actual = goods move. Symbolic = key/document moves. Constructive = legal control moves.

UNIT IV - Question 4: What are the rights of unpaid seller against buyer?

Who is unpaid seller?

Section 45, Sale of Goods Act

A seller is unpaid when the whole price has not been paid or tendered, or when a bill of exchange or other negotiable instrument received as conditional payment has been dishonoured.

Rights against the buyer personally

Right	Section	When available
Suit for price	55	Where property has passed and buyer wrongfully neglects or refuses to pay; also where price is payable on a certain day irrespective of delivery.
Damages for non-acceptance	56	Where buyer wrongfully neglects or refuses to accept and pay for goods.
Interest and special damages	61	Court may award interest or special damages according to law and circumstances.

These rights are personal remedies against the buyer. They are different from rights against the goods such as lien, stoppage in transit and resale. If the buyer is solvent, personal action may be effective. If the buyer is insolvent, rights against goods become more important.

Connection with rights against goods

The unpaid seller may simultaneously or alternatively rely on rights against goods where conditions are satisfied: lien under Sections 47 to 49, stoppage in transit under Sections 50 to 52 and resale under Section 54. However, the present question specifically asks rights against buyer, so suit for price and damages must be emphasised.

Case Law: Martindale v. Smith, 1841

Facts: Buyer failed to pay for goods under a sale transaction.

Issue: Could the seller sue for price where property had passed?

Held: The principle affirmed is that where property has passed and price is due, seller can sue for price rather than merely damages.

Exam conclusion

Against buyer personally, unpaid seller sues for price, damages for non-acceptance and interest/special damages.

Against goods, he uses lien, stoppage in transit and resale.

UNIT IV - Question 5: Who is an unpaid seller? What are his rights according to the Sale of Goods Act?

Definition

Section 45

Unpaid seller includes a seller to whom whole price has not been paid or tendered, and a seller who received a negotiable instrument as conditional payment but the instrument has been dishonoured. The term also includes an agent of the seller such as consignor or agent who has himself paid or is directly responsible for the price.

Rights of unpaid seller

Category	Right	Sections	Explanation
Against goods	Lien	47 to 49	Right to retain possession until price is paid in cases where goods are sold without credit, credit expired, or buyer becomes insolvent.
Against goods	Stoppage in transit	50 to 52	If buyer becomes insolvent and goods are in transit, seller may stop them and resume possession.
Against goods	Resale	54	Seller may resell in certain cases, especially perishable goods, notice to buyer, or express reservation of resale right.
Against buyer	Suit for price	55	Where price is due and property has passed, or price payable on fixed day.
Against buyer	Damages for non-acceptance	56	Where buyer wrongfully refuses to accept and pay.
Against buyer	Interest/special damages	61	Supplementary relief depending on facts.

Lien explained

Lien is available only while seller has possession. It is lost when goods are delivered to carrier without reserving disposal right, when buyer or agent lawfully obtains possession, or when lien is waived. Part delivery may or may not defeat lien depending on intention.

Stoppage in transit explained

This right arises only when buyer is insolvent and goods are still in transit. Transit begins when goods are delivered to carrier for transmission to buyer and ends when buyer or his agent obtains delivery. It is a powerful right because seller can prevent goods from reaching an insolvent buyer.

Resale explained

Resale may be made where goods are perishable, where notice of resale is given and buyer does not pay within reasonable time, or where seller expressly reserved right of resale. Valid resale transfers good title to the new buyer.

Memory hook

Unpaid seller's rights against goods: L-S-R = Lien, Stoppage, Resale. Against buyer: Price, Damages, Interest.

UNIT IV - Question 6: Explain the rights and duties of the buyer.

Rights of buyer

Right	Provision / principle	Explanation
Right to delivery	31 and general contract	Seller must deliver goods according to contract.
Right to reject wrong quantity	37	Buyer may reject short delivery, excess delivery or mixed goods, subject to acceptance.
Right not to accept instalments unless agreed	38	Buyer cannot be forced to accept instalment delivery unless contract permits.
Right to examine goods	41	Buyer is not deemed to accept until he

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		has reasonable opportunity to examine goods to see whether they conform to contract.
Right to reject for breach of condition	12 and related sections	If condition is broken, buyer may reject goods unless he waives or is deemed to treat breach as warranty.
Right to damages for non-delivery	57	If seller wrongfully neglects/refuses to deliver, buyer may sue for damages.
Right to specific performance	58	Court may order specific performance for specific or ascertained goods where appropriate.
Right for breach of warranty	59	Buyer may set up breach in diminution of price or sue for damages.

Duties of buyer

Duty	Provision / principle	Explanation
Duty to accept and pay	31	Buyer must accept goods and pay price according to contract.
Duty to apply for delivery	35	Unless otherwise agreed, seller need not deliver until buyer applies.
Duty to take delivery within reasonable time	44	If buyer neglects/refuses to take delivery, he may be liable for loss and reasonable charge for care and custody.
Duty not to wrongfully reject	General principle	Wrongful refusal may make buyer liable for damages for non-acceptance under Section 56.
Duty to pay interest where applicable	61	Interest may be payable according to contract or court order.

Case Law: Beale v. Taylor, 1967

Facts: A car was sold as a particular model, but it was made from two cars and did not match description.

Issue: Could the buyer reject for breach of description?

Held: The buyer could reject because goods did not correspond with description. This illustrates buyer's right to receive conforming goods.

Answer conclusion

The buyer's rights ensure that he receives the contracted goods; his duties ensure that the seller receives price and cooperation. Sale of goods law balances delivery and payment as concurrent obligations.

UNIT V - Question 1: Define partnership. What are the essential elements of partnership?

Section 4, Indian Partnership Act, 1932

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership are individually called partners and collectively a firm.

Essential elements

Element	Explanation
Agreement	Partnership arises from contract, not status. There must be agreement, express or implied.
Association of persons	There must be at least two persons. A person cannot be partner with himself.
Business	There must be business, meaning continuous or organised commercial activity; a single adventure may also qualify if carried as business.
Sharing of profits	Agreement to share profits is essential, though sharing profits alone is not conclusive proof of partnership.
Mutual agency	Business must be carried on by all or any of them acting for all. This is the true test: each partner is both principal and agent.
Lawful object	Business must be lawful.

True test of partnership

The decisive test is not merely profit sharing but mutual agency. A lender, servant or widow receiving profit share may not be a partner if he cannot bind the firm and the business is not carried on on his behalf. Section 6 requires regard to the real relation between parties shown by all relevant facts.

Case Law: Cox v. Hickman, House of Lords, 1860

Facts: A firm assigned its business to trustees for creditors. Creditors were to receive profits towards repayment. A question arose whether those creditors became partners and liable on bills.

Issue: Is sharing profits by itself enough to create partnership?

Held: The House of Lords held that profit sharing alone is not conclusive. The real test is whether the business is carried on by persons acting as agents for the alleged partners. The creditors were not partners merely because they received profits.

Case Law: Dulichand Laxminarayan v. Commissioner of Income Tax, Supreme Court of India, 1956

Facts: A firm purported to enter partnership with another firm.

Issue: Can a firm as such be a partner?

Held: The Court held that a firm is not a legal person separate from partners under the Partnership Act; partnership is between persons. The case clarifies the nature of a firm.

Memory hook

Partnership = Agreement + Business + Profit sharing + Mutual agency. The last element is the heartbeat.

UNIT V - Question 2: What are the different kinds of partnership?

Kinds of partnership

Kind	Meaning	Example
Partnership at will	No fixed duration and no provision for determination. It may be dissolved by notice.	A and B carry on trading without fixed term.
Particular partnership	Formed for a particular adventure or undertaking.	A and B partner to construct one building or import one consignment.
Fixed-term partnership	Partnership for a fixed period.	Partnership for five years.
General partnership	Partners carry on continuing business generally.	A firm of merchants carrying regular business.
Limited Liability Partnership	Separate legal entity under LLP Act, 2008 with limited liability and agreement-based governance.	Professional services LLP.

Kinds of partners

Kind of partner	Meaning
Active/working partner	Takes part in conduct of business.
Sleeping/dormant partner	Shares profits but does not actively participate; still liable to third parties unless properly retired/limited by law.
Nominal partner	Lends name without real interest, but may be liable by holding out.
Partner in profits only	Shares profits but not losses inter se; still may be liable to third parties as partner.
Partner by estoppel/holding out	Not a real partner internally, but liable to third parties who gave credit relying on representation.
Minor admitted to benefits	Not a full partner, but admitted to benefits with consent of all partners under Section 30.
Incoming partner	Person introduced as partner under Section 31.
Outgoing/retiring partner	Partner who ceases to be partner under Section 32 or other mode.

Exam tip

If the question asks "kinds of partnership", write partnership at will, particular partnership and fixed/general partnership. To enrich the answer, add kinds of partners separately.

UNIT V - Question 3: What are the rights and liabilities of a minor who has been admitted to the benefits of partnership?

Section 30, Indian Partnership Act

A minor cannot become a full partner because he is not competent to contract, but with consent of all partners he may be admitted to the benefits of partnership.

Rights of minor admitted to benefits

Right to agreed share of property and profits of the firm.

Right to access, inspect and copy accounts of the firm, but not all books in the same manner as full partner.

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Right to sue for accounts or payment of his share, but ordinarily only when severing his connection with the firm.

Right to elect on attaining majority whether to become partner or not.

Liabilities during minority

Minor's share in the property and profits of the firm is liable for acts of the firm.

The minor is not personally liable for firm debts during minority. His private estate is protected.

He cannot be made personally liable merely because he received benefits of partnership.

Position on attaining majority

Within six months of attaining majority or obtaining knowledge that he had been admitted to benefits, whichever is later, the minor must give public notice whether he elects to become partner. If he fails to give notice, he becomes partner after expiry of six months.

If he elects to become partner	If he elects not to become partner
He becomes personally liable to third parties for acts of the firm from the date he was admitted to benefits. His share in property and profits remains as before unless altered by agreement.	His rights and liabilities continue up to date of public notice. His share is not liable for acts after notice. He may sue for his share and accounts.

Case Law: Sanyasi Charan Mandal v. Krishnadhan Banerji, Privy Council, 1922

Facts: Questions arose regarding the status and liability of a minor connected with a partnership arrangement.

Issue: Can a minor be a full partner?

Held: A minor cannot be a full partner because partnership is founded on contract. He may only be admitted to benefits according to law.

Memory hook

Minor gets benefits, not burdens. His share may be liable, but he is not personally liable during minority.

UNIT V - Question 4: Write short notes on the doctrine of holding out.

Section 28, Indian Partnership Act

Anyone who by words spoken or written, or by conduct, represents himself or knowingly permits himself to be represented as a partner in a firm, is liable as a partner to anyone who, on the faith of such representation, gives credit to the firm.

Essentials

There must be representation that the person is a partner.

Representation may be by words, writing, conduct or knowingly permitting another to make such representation.

The third party must have knowledge of the representation.

The third party must give credit to the firm on the faith of that representation.

Liability is towards such third party, not necessarily between alleged partner and real partners internally.

Nature and rationale

Holding out is based on estoppel. If a person allows the world to believe that he is a partner and third parties give credit relying on that belief, he cannot later deny liability. The doctrine protects commercial credit and prevents misleading conduct.

Exceptions and limits

Mere continued use of a deceased partner's name after death does not by itself make his estate liable for acts after death.

A person is not liable if the third party did not know of the representation or did not rely on it.

Holding out creates liability to third parties; it does not automatically create full partnership rights inter se.

Case Law: Martyn v. Gray, 1863

Facts: A person represented or allowed himself to be represented in a manner suggesting partnership, and credit was extended.

Issue: Whether liability can arise without actual partnership agreement.

Held: The court applied holding out: a person who represents himself as partner may be liable to those who act on that representation.

Case Law: Scarf v. Jardine, House of Lords, 1882

Facts: After change in firm, a creditor had to elect whether to hold old firm or new firm liable.

Issue: How does representation and election affect partnership liability?

Held: The case illustrates that liability by representation depends on the creditor's knowledge, reliance and election against the liable persons.

Memory hook

Holding out = "You looked like a partner, credit was given because of that, so you are liable like a partner."

UNIT V - Question 5: What do you mean by incoming and outgoing partners? What are the rights and obligations of a retiring partner?

Incoming partner

Section 31

Subject to contract between partners and Section 30, no person shall be introduced as partner without consent of all existing partners. An incoming partner is not liable for acts of the firm done before he became partner, unless he agrees otherwise.

Outgoing or retiring partner

Section 32

A partner may retire with consent of all partners, in accordance with express agreement, or in partnership at will by giving notice to all other partners of intention to retire.

Rights of retiring partner

Right to receive his share in firm property and settlement of accounts according to partnership agreement and Sections 46 to 48 where relevant.

Right to be indemnified against future liabilities if continuing partners agree to take over liabilities.

Right to carry on competing business after retirement, subject to valid restraint agreement and rules of goodwill.

Right to share subsequent profits attributable to use of his share of firm property if accounts are not finally settled, or interest as provided by law/principle.

Right to public notice of retirement to protect against future liability.

Obligations and liabilities of retiring partner

Liability for acts before retirement continues unless discharged by agreement between retiring partner, remaining partners and creditors.

Liability for acts after retirement continues towards third parties who had dealings with firm unless public notice of retirement is given.

No public notice is necessary to persons who had no dealings with the firm, but public notice is necessary to cut off apparent authority for those who knew him as partner.

He must not misuse firm name, property or goodwill contrary to agreement.

Case Law: Tower Cabinet Co. Ltd. v. Ingram, 1949

Facts: A retired partner's name remained on firm stationery without his knowledge and a contract was made after retirement.

Issue: Was the retired partner liable by holding out?

Held: He was not liable because he had not knowingly permitted representation after retirement. The case shows the importance of representation and notice.

Memory hook

Incoming partner: consent and no past liability unless agreed. Retiring partner: past liability continues, future liability stops by public notice.

UNIT V - Question 6: What is meant by dissolution of firm and dissolution of partnership? Write the differences between them.

Meaning

Section 39

The dissolution of partnership between all the partners of a firm is called dissolution of the firm.

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Dissolution of partnership means change in the relationship of partners, such as retirement, admission, death, insolvency or change in constitution, where the firm may continue. Dissolution of firm means complete break-up of the firm as between all partners and winding up of business.

Point	Dissolution of partnership	Dissolution of firm
Meaning	Change in relation among some partners.	End of partnership between all partners.
Business continuity	Business may continue with remaining/reconstituted partners.	Business normally stops except for winding up.
Scope	Wider and may include reconstitution.	Narrower but more final: complete dissolution.
Accounts	Accounts may be settled only with outgoing partner.	Full winding up and settlement of accounts of firm.
Example	A retires, B and C continue business.	A, B and C close the firm entirely.
Statutory section	Concept arises from partnership relation and provisions on incoming/outgoing partners.	Section 39 specifically defines dissolution of firm.

Consequences of dissolution of firm

Partners' authority continues only so far as necessary to wind up affairs and complete unfinished transactions.

Firm assets are applied in payment of firm debts and liabilities.

Surplus is distributed among partners according to rights.

Public notice is important to prevent liability for post-dissolution acts under Section 45.

Exam conclusion

Every dissolution of firm is dissolution of partnership, but every dissolution of partnership is not dissolution of firm. Reconstitution changes the firm; dissolution of firm ends it.

UNIT V - Question 7: Explain the different modes by which a firm can be dissolved.

Modes under Indian Partnership Act

Mode	Section	Explanation
By agreement	40	A firm may be dissolved with consent of all partners or according to contract between partners.
Compulsory dissolution	41	Firm is dissolved if all partners, or all except one, are adjudicated insolvent; or if business becomes unlawful.
On happening of contingencies	42	Subject to contract, firm is dissolved by expiry of fixed term, completion of adventure, death of partner, or insolvency of partner.
By notice in partnership at will	43	Any partner may dissolve by giving notice in writing to all other partners of intention to dissolve.
By court	44	Court may dissolve on grounds such as insanity, permanent incapacity, misconduct, persistent breach, transfer of whole interest, business carried at loss, or just and equitable ground.

Dissolution by court explained

Judicial dissolution is discretionary. The court looks at whether it has become impossible, unfair or commercially unreasonable to continue the partnership. Misconduct must affect business. Persistent breach includes repeated violation of partnership agreement or conduct making it impracticable to carry on business with the partner. The just and equitable clause is wide and covers deadlock, loss of substratum or destruction of mutual confidence.

Rights after dissolution

Section 46 gives partners right to have business wound up and property applied to firm debts.

Section 47 continues authority of partners for winding up and completing unfinished transactions.

Section 48 lays down mode of settlement of accounts.

Section 50 prevents partners from earning secret personal profits from firm transactions after dissolution.

Case Law: Re Yenidje Tobacco Co. Ltd., 1916

Facts: Though a company case, two equal shareholders/directors were in complete deadlock similar to partnership breakdown.

Issue: Can deadlock justify winding up on just and equitable ground?

Held: The court ordered winding up. The principle is often used by analogy to show that where mutual confidence is destroyed, dissolution may be just and equitable.

Memory hook

Dissolution modes: Agreement, Compulsion, Contingency, Notice, Court. Remember A-C-C-N-C.

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Quick statutory revision table

Area	Key sections to remember
Indemnity	ICA Sections 124 and 125
Guarantee	ICA Sections 126 to 147, especially 126, 127, 128, 129, 130, 131, 133 to 141, 145 to 147
Bailment	ICA Sections 148 to 171, 180 and 181
Pledge	ICA Sections 172 to 179
Agency	ICA Sections 182 to 238
Sale of Goods	SOGA Sections 2(7), 4, 12 to 17, 18 to 30, 31 to 44, 45 to 61
Partnership	IPA Sections 4, 6, 18 to 30, 31 to 35, 39 to 55, 69

Selected cases used

Gajanan Moreshwar Parelkar v. Moreshwar Madan Mantri - indemnity liability can be enforced once liability becomes absolute.

Adamson v. Jarvis - implied indemnity where auctioneer acts on instructions and suffers loss.

Cox v. Hickman - mutual agency, not mere profit sharing, is the true test of partnership.

Dulichand Laxminarayan v. CIT - firm is not a separate legal person under Partnership Act in the same way as a company.

Keighley Maxsted & Co. v. Durant - ratification requires act done professedly on behalf of principal.

Pannalal Jankidas v. Mohanlal - agent must obey instructions and exercise due care.

Rowland v. Divall - nemo dat; seller without title cannot pass title.

Grant v. Australian Knitting Mills - implied condition of fitness/quality.

Priest v. Last and Baldry v. Marshall - reliance on seller's skill as exception to caveat emptor.

Brandao v. Barnett - banker's general lien.

Final study method

First read the blue statutory boxes, then the comparison tables, then the case-law boxes. In the last revision, reproduce only headings from memory. If headings come, the full answer can be built in the exam.