

# **BACHELOR OF BUSINESS ADMINISTRATION (BBA)**

## **Business Law**

### **BBA-203**

#### **Unit- I**

##### **Introduction**

- 1) INDIAN CONTRACT ACT, 1872 governs law relating to contracts in India.
- 2) The Act was passed by British India and is based on the principles of English Common Law.
- 3) This Act is applicable to whole of India including Jammu and Kashmir.
- 4) The Act came into effect from 1st September, 1872 and applies to all contracts in India.

##### **Important Definitions under the Act –**

- 1) **Proposal** – Sec 2(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.
- 2) **Acceptance** – Sec 2(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. Person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee”.
- 3) **Agreement** – Sec 2(e) Every promise and every set of promises, forming the consideration for each other, is an agreement. In simple words, Agreement = Offer + Acceptance
- 4) **Void Agreement** – Sec 2(g) An agreement not enforceable by law is said to be void.
- 5) **Contract** – Sec 2(h) An agreement enforceable by law is called as contract. In simple words, Contract = Agreement + Enforceability
- 6) **Voidable Contract** – An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others.

##### **Is every agreement contract?**

- 1) No, every agreement is not a contract.
- 2) An agreement to become a contract must give rise to a legal obligation (duty)
- 3) An agreement can be
  - i) Social obligation:- a) An agreement giving rise to social obligation is not a contract.
  - b) Not covered under ICA, 1872 (Indian Contract Act, 1872)

example – a) An agreement between two persons to go together to the cinema, or for a walk, or for a dinner is an agreement of social nature and not covered under Indian Contract Act, 1872.

b) Domestic agreement between husband and wife is also not a contract.

ii) a) Agreement giving rise to legal obligation is a contract

b) Covered under ICA, 1872

4) Every contract is an agreement, but every agreement is not a contract

### What is a contract

A contract is an agreement between parties, creating mutual obligations that are enforceable by law. The basic elements required for the agreement to be a legally enforceable contract are: mutual assent, expressed by a valid offer and acceptance; adequate consideration; capacity; and legality.

- A written or spoken agreement intended to be enforceable by law.
- An agreement enforceable by law is a contract. [Section 2(h) ]
- A contract is an agreement made between two or more parties, which the law will enforce.
- Contract is a method through which individuals make law for themselves by creating rights and obligation *ex contractas*.

### Difference Between Agreement and Contract –

BASIS	AGREEMENT	CONTRACT
<b>Meaning</b>	When a proposal is accepted by the person to whom it is made, with requisite consideration, it is an agreement.	When an agreement is enforceable by law, it becomes a contract.
<b>Elements</b>	Offer and Acceptance	Agreement and Enforceability
<b>Defined in</b>	Section 2 (e)	Section 2 (h)
<b>In writing</b>	Not necessarily	Normally written and registered
<b>Legal obligation</b>	Does not creates legal obligation	Creates legal obligation
<b>One in other</b>	Every agreement need not be a contract.	All contracts are agreement
<b>Scope</b>	Wide	Narrow

### Essential elements of a valid contract

- 1) Two parties – There should be at least 2 parties for a contract.
- 2) Offer – There shall be an offer or proposal by one party
- 3) Acceptance – Offer made should be accepted by the other party

- 4) Lawful consideration – The agreement shall be supported by lawful consideration
  - 5) Lawful object – The object and consideration of the contract shall be legal
  - 6) Competent (capacity) to contract – Section 11
    - a) The parties to the contract shall be competent to contract
    - b) For a person to become competent to contract –
      - Such person should be major (18+)
      - Such person should be of sound mind (Section 12)
      - Such person should not be disqualified by law
  - 7) Free consent –
    - a) There shall be free consent between the parties to the contract
    - b) Consent is said to be free when the following elements are absent (Section 14)
      - Coercion (Section 15)
      - Undue influence (Section 16)
      - Fraud (Section 17)
      - Misrepresentation (Section 18)
  - 8) Intention to create legal relationships – The intention of the parties to a contract must be to create a legal relationship between them. Example: A husband promising his wife to buy her a ‘necklace’ on occasion of her birthday is not a contract.
  - 9) Possibility of performance – The agreement should be capable of being performed  
Example - if A promises B to bring rainfall through magic. Such agreement cannot be enforced
  - 10) Legal formalities – Legal formalities if any required for particular agreement such as registration, writing, they must be followed
- Business Law; Business law, also called commercial law or mercantile law, the body of rules, whether by [convention](#), agreement, or national or international legislation, governing the dealings between persons in commercial matters

## **What is a contract**

A contract is an agreement between parties, creating mutual obligations that are enforceable by law. The basic elements required for the agreement to be a legally enforceable contract are: mutual assent, expressed by a valid offer and acceptance; adequate consideration; capacity; and legality.

- A written or spoken agreement intended to be enforceable by law.
- An agreement enforceable by law is a contract. [Section 2(h) ]

- A contract is an agreement made between two or more parties, which the law will enforce.
- Contract is a method through which individuals make law for themselves by creating rights and obligation *ex contractas*.

## **Nature of Contract**

- The fabric of modern industrial society is woven around economic relationships.
- The relational integration and determination of mutual rights and obligations are dependent, to a great extent, on *ex contractum* terms.
- Contracts arising out of economic and social relationships.
- Such relations are either contractual or akin to a contract.

The market functions on the very premise of effective functioning of contractual relationship

## **Unlawful Agreement**

There are such agreements that are unlawful because they are against the law. These agreements may be to commit a crime or defraud or corrupt someone. The Indian Contract Act, 1872 provides no particular provision that describes which agreements are unlawful; the same can be understood by the judgments

An unlawful agreement is an agreement that is made up with an unlawful purpose or will conclude in an unlawful act. In general, an unlawful agreement opposes the law of the land and public policy. An unlawful agreement is always a void agreement. And this agreement is not enforceable in a court of law.

## **Void agreement**

An agreement to carry out an illegal act is an example of a void agreement. For example, an agreement between drug dealers and buyers is a void agreement simply because the terms of the contract are illegal. In such a case, neither party can go to court to enforce the contract.

-A void agreement is one which cannot be [enforced](#) by law . Sometimes an agreement which is enforceable by law, i.e., a contract, can become void. Void agreements are different from [voidable contracts](#), which are contracts that may be nullified.

A contract can also be void due to the impossibility of its performance.

An agreement may be void for any of the following reasons

- Made by incompetent parties (e.g., under the age of consent, incapacitated)
  - Has a material bilateral mistake ( Misunderstood the terms and conditions)
  - Has unlawful consideration (e.g., promise of sex)
  - Concerns an unlawful object (e.g., heroin)
  - Has no consideration on one side
  - Restricts a person from marrying or remarrying
  - Restricts trade (goods)
  - Restricts legal proceedings
  - Has material uncertain terms
  - Incorporates a wager, gamble, or bet
  - Contingent upon the happening of an impossible event
  - Requires the performance of impossible act.

### **Discharge of Contract**

The discharge of a contract is characterized as the end of an agreement or an arrangement made by a couple of parties, which results in the failure in performing or playing out the obligations referenced at the hour of making a contract with the acknowledgment of all the parties with free consent. Subsequently, the commitments might be legal or contractual or performance, or even operational.

### **The different methods by which a contract can be discharged are as follows:**

**1)Discharge of contract by breach of contract:** Breach of contract is concerned with the termination of the original contract due to the failure of performing obligations by either or all of the parties, which discourages each of the other parties. It relates to void or

terminating the original contract completely. These breaches of contracts may be either anticipatory or actual.

**2) Discharge of contract by accord and satisfaction:** Accord is an executor contract that helps to perform the existing duties at present to avoid the contractual discharge. On the other hand, based on the performance of the accord, the satisfaction of a contract will be considered, and one doesn't want to void the entire contract.

**3) Discharge of contract by the impossibility of performance:** In this case, the discharge of the contract happens without any interference from both of the parties. Despite the fact that everything is acceptable at the place of pain, certain unexpected and undetermined issues might occur, which decreases the chance of playing out or performing a contract. This includes a downturn for the market, catastrophic events, absence of legitimate reason, unfortunate episodes, and so on. In the Indian Contract Act, segment 59 plainly clarifies that assuming any of the reasons might prompt the difficulty of execution, and it is prudent to break the agreement.

**4) Discharge of contract by lapse of time:** According to the Limitation Act 1963, it is indicated that in case if the agreement can't be performed within the predetermined period, it might influence the other party and lead to the abrogation of the whole agreement. Then, at that point, it is treated as a contractual discharge of the agreement by a time-lapse.

**5) Discharge of contract by agreement:** If both of the individuals or parties in the agreement aren't willing to proceed with the agreement till the due date, then it is changed over to the next party, whether or not they might acknowledge the discharge of the agreement or contract by the understanding will occur. However, it happens in different circumstances. They are as follows:

**A: Waiver:** Waiver refers to the abandonment of right. In case any of the parties surrender their rights from the contract, which affects the other party, then it leads to the discharge of the contract by substitute agreement.

**B: Alteration:** It is another situation where the particulars of the agreement or contract will be changed either partially or totally with the assent of the two parties. Be that as it

may, the parties will not change, and they can appreciate new advantages, possibly they may less or more than the old agreement or contract.

**C: Rescission:** Here, both the parties agreed to modify certain rules and regulations in the contract with mutual understanding. It may lead to the cancellation of all the rules or may cancel partially.

**D: Novation:** Specifying the substitution of either a new contract in the place of the original contract or new members in the place of the old one, whether it may be a single person or both the parties, is known as novation, which is a part of the contractual discharge by substitution of agreement.

### **6) Discharge of contract by performance:**

The discharge of a contract occurs when both parties are refused to perform the obligations can be referred to as discharge by performance.

### **Breach of Contract**

- A breach of contract occurs when one party in a binding agreement fails to deliver according to the terms of the agreement.
- A breach of contract can happen in both a written contract and an oral contract.
- The parties involved in a breach of contract may resolve the issue among themselves or in a court of law.
- There are different types of contract breaches, including a minor or material breach and an actual or anticipatory breach.
- A breach of contract is not considered a crime or even tort and rarely results in extra monetary compensation

### **Remedies for Breach of Contract**

When a promise or agreement is broken by any of the parties we call it a breach of contract. So when either of the parties does not keep their end of the agreement or does not fulfil their obligation as per the terms of the contract, it is a breach of contract. There are a few remedies for breach of contract available to the wronged party.

When the contract is broken, the injured party has one or more of the following remedies:

**1] Rescission of Contract:** When one of the parties to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligations.

As per section 65 of the Indian [Contract Act](#), the party that rescinds the contract must restore any benefits he got under the said agreement. And section 75 states that the party that rescinds the contract is entitled to receive damages and/or compensation for such a [recession](#)

**2] Sue for Damages:** Section 73 clearly states that the party who has suffered, since the other party has broken promises, can claim compensation for loss or damages caused to them in the normal course of [business](#).

Such damages will not be payable if the loss is abnormal in nature, i.e. not in the ordinary course of business. There are two types of damages according to the Act,

- [Liquidated Damages](#): Sometimes the parties to a contract will agree to the amount payable in case of a breach. This is known as liquidated damages.
- Unliquidated Damages: Here the amount payable due to the breach of contract is assessed by the courts or any appropriate authorities.

**3] Sue for Specific Performance:** This means the party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the party carry out the agreement.

So if any of the parties fails to perform the contract, the court may order them to do so. This is a decree of specific performance and is granted instead of damages.

**4] Injunction :** An injunction is basically like a decree for specific performance but for a negative contract. An injunction is a court order restraining a person from doing a particular act.

So a court may grant an injunction to stop a party of a contract from doing something he promised not to do. In a prohibitory injunction, the court stops the [commission](#) of an act and in a mandatory injunction, it will stop the continuance of an act that is unlawful.

**5] Quantum Meruit:** Quantum meruit literally translates to “as much is earned”. At times when one party of the contract is prevented from finishing his performance of the contract by the other party, he can claim quantum meruit.

So he must be paid a reasonable remuneration for the part of the contract he has already performed. This could be the remuneration of the services he has provided or the value of the work he has already done.



## **What is a contract**

- A written or spoken agreement intended to be enforceable by law.
- An agreement enforceable by law is a contract. [Section 2(h) ]
- A contract is an agreement made between two or more parties, which the law will enforce.
- Contract is a method through which individuals make law for themselves by creating rights and obligation *ex contractas*
- Every agreement and promise enforceable at law is a contract. Pollock.
- A legally binding agreement between two or more persons by which rights are acquired by one or more to acts or forbearances on the part of the others. *Sir William Anson*.
- An agreement creating and defining obligations between the parties. *Salmond*

## **Nature of Contract**

- The fabric of modern industrial society is woven around economic relationships.
- The relational integration and determination of mutual rights and obligations are dependent, to a great extent, on *ex contractum* terms.
- Contracts arising out of economic and social relationships.
- Such relations are either contractual or akin to a contract.

The market functions on the very premise of effective functioning of contractual relationship

## **Proposal, Acceptance, Promise & Agreement**

- When a person signifies to another his willingness to do, or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. [Sec 2(a)]
- A proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes promise. [Sec 2(b)]

Every promise and every set of promises forming consideration for each other is a an agreement

**All agreements are contracts if –**

- they are made by the free consent of the parties,
- competent to contract,
- for a lawful consideration and,
- with a lawful object, and
- are not expressly declared to be void

**Classification of Contracts**

**On basis of Formation**

- Express Contract
- Implied contract -
- Quasi Contract

**On basis of Performance**

- Executed Contract
- Executory Contract

On basis of Validity

- Voidable Contracts
- Void agreement
- Void Contract
- Valid Contract
- Illegal Agreements
- Unenforceable contract (technical defects)

**Essential Elements of Contract**

- Offer
- Acceptance
- Consensus ad idem = Meeting of minds
- Legal enforceability
- Lawful consideration
- Capacity of parties
- Free consent
- Lawful object
- Agreement not declared void
- Certainty and possibility of performance
- Legal formalities

### **Essential Elements of Contract**

**1. Offer and acceptance:** In a contract there must be at least two parties one of them making the offer and the other accepting it. There must thus be an offer by one party and its acceptance by the other. The offer when accepted becomes agreement.

**2. Legal relationship:** Parties to a contract must intend to constitute legal relationship. It arises when the parties know that if any one of them fails to fulfil his part of the promise, he would be liable for the failure of the contract. If there is no intention to create legal relationship, there is no contract between parties. Agreements of a social or domestic nature which do not contemplate a legal relationship are not contracts.

**3. Consensus ad idem:** The parties to an agreement must have the mutual consent i.e. they must agree upon the same thing and in the same sense. This means that there must be consensus ad idem (i.e. meeting of minds).

**4. Competency of parties:** The parties to an agreement must be competent to contract. In other words, they must be capable of entering into contract.

**5. Free consent:** Another essential of a valid contract is the consent of parties, which should be free. Under Sec. 13, “Two or more parties are said to consent, when they agree upon the same thing in the same sense.” Under Sec. 14, the consent is said to be free, when it is not induced by any of the following:- (i) coercion, (ii) misrepresentation, (iii) fraud, (iv) undue influence, or (v) mistake

**6. Lawful consideration:**

Consideration is known as ‘something in return’. It is also essential for the validity of a contract. A promise to do something or to give something without anything in return would not be enforceable at law and, therefore, would not be valid.

**7. Lawful objects:** According to Sec. 10, an agreement may become a valid-contract only, if it is for a lawful consideration and lawful object. According to Sec. 23, the following considerations and objects are not lawful:-

- (i) If it is forbidden by law;
- (ii) If it is against the provisions of any other law;
- (iii) If it is fraudulent;
- (iv) If it damages somebody’s person or property; or
- (v) If it is in the opinion of court, immoral or against the public policy.

**Elements of Offer**

- It must be made by one person to another person.
- It must be an expression of readiness or willingness to do or to abstain from doing something.
- It must be made with a view to obtain the consent of that other person.
- Terms of offer must be definite, unambiguous and certain.
- Offer must be communicated.
- Offer not to contain a term the non-compliance of which may amount to acceptance.

- A statement of price is not an offer.

### **Types of Offer**

- Express Offer – by words written or spoken.
- Implied Offer – By conduct or circumstances.
- Specific Offer- Made to a specified or definite person.
- General Offer- Made to public at large

### **Capacity to contract**

- Every person is competent to contract who-
- Is of the age of majority according to the law to which he is subject.
- Is of sound mind.
- Is not disqualified from contracting by any law to which he is subject. (Sec 11)

### **Minor**

- Any person who is not of the age of majority is a minor. In India, 18 years is the age of majority. Below the age of 18 years does not have the capacity to enter into a contract. A contract or agreement with a minor is null from the beginning, and no one can sue them. The State provides the Minors with civil and criminal immunities. In addition to that, it takes custody of the well being and the property of the minor. These immunities do not let the minors to enter into a contract. But if a minor enters into a contract knowing his incapability, then such a contract shall work independently of any contract

#### **Rules relating to Agreement with Minor Parties**

- 1) A contract with a minor is void and, hence, no obligations can ever arise on him thereunder.
- 2) The minor party cannot ratify the contract upon attaining majority unless a law specifically allows this.

3) No court can allow specific performance of a contract with minors because it is void altogether.

4) The Partnership Act also prohibits minors from becoming partners in a firm. They can, however, receive the benefits of [partnership](#) and ratify the same upon attaining majority.

5) The rule of estoppel under evidence law does not apply to minors under contractual obligations. In other words, even if a minor forms a contract claiming majority age, legal obligations cannot arise against him.

6) Parents or guardians of minors can name them in contracts only if it benefits them. But even in this case, the minor cannot be personally liable.

### **Free Consent**

- Consent means an act of approval or assenting to an offer.
- Two or more persons are said to consent when they agree upon the same thing in the same sense.
- Consent involves ad idem i.e. identity of mind about the subject matter of contract.
- A mere consent is not enough, it should be free and voluntary.
- Not to be caused by any vitiating factors given u/s 14.

### **Section 14**

- Consent is said to be free when it is not caused by –
  - a) Coercion.
  - b) Undue influence.
  - c) Fraud.
  - d) Misrepresentation.

#### **e) Mistake.**

The contract is said to be voidable at the option of the party whose consent was not free. [Sec. 19]

### **Performance of Contract**

The performance of a contract is the carrying out of promises made by the parties. It can be done in several ways, including through action or inaction. For a contract to be valid, both parties must perform their obligations as laid out in the contract as agreed.

- Performance of a contract is a mode of discharge of the contract.
- Performance of contract takes place when the parties to the contract fulfill their respective obligations under the contract.
- The parties to a contract must either perform or offer to perform their respective promises,
- unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.[Sec 37]

# BBA II SEM

## Business Law

### Unit-II

BY- Namrata Thakur



# Difference between Agreement and Contract

<b>Basis</b>	<b>Agreement</b>	<b>Contract</b>
<b>Meaning</b>	The meaning of agreement can be understood as an acceptance of an offer given by one party to another.	A contract can be defined as an agreement that is enforced by law.
<b>Definition</b>	Section 2(e) of the Indian Contract Act, 1872 defines an agreement as, “Every promise and every set of promises, forming the consideration for each other, is an agreement.”	Section 2(h) of the Indian Contract Act, 1872 defines a contract as, “an agreement enforceable through the law.”
<b>Elements</b>	Agreement = Offer + Acceptance	Contract = Agreement + Enforceable by Law
<b>Written Form</b>	The agreement can not necessarily be in written form.	A contract is normally written and registered.

## Scope

An agreement has a wider scope than a contract.

A contract has a narrower scope as compared to an agreement.

## Risk

It involves a higher risk factor because it is not enforceable by law.

A contract is abided by the law, so it ensures a low-risk factor.

## One in Another

All agreements cannot be considered a contract.

All contracts can be considered an agreement.

## Legal Obligation

An agreement does not create a legal obligation.

Contracts are meant to create a legal obligation.

## Consideration

Agreements can be formed without consideration.

There should be some consideration to form a contract.

# Exceptions for agreement without consideration

**1. Natural Love and Affection section 25(1).** It is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other. For ex. Property to child.

## **Essentials:-**

- a) The agreement must be in writing.
- b) It must be registered under the law for the time being.
- c) It must be on account of natural love and affection.

**2. Promise to compensate for something done voluntarily section 25(2).** It is promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do.

**Essential:**

- a) The act must have already been done
- b) It must have been done voluntarily.
- c) It must be done for the promisor or something which the promisor was legally bound to do.
- d) The promisor must be in existence at the time when the act is done.

**3. Promise to pay a time-barred Debt Section 25(3).:-** It is a promise made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

# Unlawful Agreement

- There are such agreements that are unlawful because they are against the law. These agreements may be to commit a crime or defraud or corrupt someone. The Indian Contract Act, 1872 provides no particular provision that describes which agreements are unlawful; the same can be understood by the judgments
- An unlawful agreement is an agreement that is made up with an unlawful purpose or will conclude in an unlawful act. In general, an unlawful agreement opposes the law of the land and public policy. An unlawful agreement is always a void agreement. And this agreement is not enforceable in a court of law.

# Void agreement

-An agreement to carry out an illegal act is an example of a void agreement. For example, an agreement between drug dealers and buyers is a void agreement simply because the terms of the contract are illegal. In such a case, neither party can go to court to enforce the contract.

-A **void agreement** is one which cannot be enforced by law . Sometimes an agreement which is enforceable by law, i.e., a contract, can become **void**. Void agreements are different from voidable contracts, which are contracts that may be nullified.

-A **contract can also be void** due to the impossibility of its performance.

# An agreement may be void for any of the following reasons

- Made by incompetent parties (e.g., under the age of consent, incapacitated)
- Has a material bilateral mistake ( Misunderstood the terms and conditions)
- Has unlawful consideration (e.g., promise of sex)
- Concerns an unlawful object (e.g., heroin)
- Has no consideration on one side
- Restricts a person from marrying or remarrying
- Restricts trade (goods & services)
- Restricts legal proceedings
- Has material uncertain terms
- Incorporates a wager, gamble, or bet
- Contingent upon the happening of an impossible event
- Requires the performance of impossible act.



# Void Contracts – Causes

- 1. incompetence:** There are many ways in which a contract can become void. If one party is incompetent, they legally become unable to agree to a contract. This can include one of the people entering into the contract while being incapacitated or unable to make a proper judgment.
- 2. Inclusion of an unlawful object or consideration:** The contract can also be considered void if an unlawful object or consideration is involved in the agreement. This can include the promise of sex, an illicit substance, or anything else causing one or both parties to break the law.
- 3. Impossibility of performance:** Another common reason for a void contract is the impossibility of performance. It occurs when any aspect of the contract becomes impossible to carry out by one of the parties.



# Discharge of Contract

The discharge of a contract is characterized as the end of an agreement or an arrangement made by a couple of parties, which results in the failure in performing or playing out the obligations referenced at the hour of making a contract with the acknowledgment of all the parties with free consent. Subsequently, the commitments might be legal or contractual or performance, or even operational.

- ❖ When the parties to the contract fulfill their obligation, the contract is to be executed.
- ❖ Discharge of contract implies termination of the contractual obligation.

# Modes of Discharge of Contract

**1. Discharge by performance:** Discharge takes place when the parties meet their obligation within the time and in the manner prescribed in the contract.

For ex. A makes contract to sell his house to B for Rs. 20,00,000. here, when B pays Rs. 20,00,000 and takes possession of the house, the contract is deemed to be complete because both the parties have fulfilled their promises.

## 2. Discharge by Mutual Consent or Agreement :

- ❖ A contract is made by the consent or agreement of the parties to it. It can likewise be terminated by the agreement of the parties to the contract.
- ❖ A contract may be terminated by mutual consent in the following ways:

## (i) Novation

- When both parties, by mutual consent, agree to make a new contract to replace the existing one between the parties, it is called as Novation.
- In this process, the new contract is substituted for an existing contract.
- Novation can take place between the parties to an existing contract or between one of the parties to an existing contract and a third party.

For ex. A makes an agreement with B to supply him 500 quintals of rice at Rs. 900 per quintal on a certain date. Before the date of delivery, B proposed to buy 800 quintals of wheat from A at Rs. 250 per quintal instead of rice, to which A agrees. This would amount to a novation of the contract between the two.

## (ii) Alteration

- Alteration means change in terms of original contract by mutual consent. When it is done by the consent of the parties, the parties are lawfully bound to the performance of the altered contract, and the original contract is discharged.
- Alteration can be regarding time, place, quantity or price, etc.
- For ex: A promises to supply 3000 meters of certain cloth at 10 per meter to B within 3 months. Later A and B make an alteration in the contract to the effect that A will supply 200 meters of a superior quality of cloth at another price within 4 months. This alteration discharges the old contract between the two.

## (iii) Remission or Waiver

- According to section 63 of Indian contract Act, Acceptance of a lesser or delayed fulfilment of a promise by the promisee is called a remission or waiver.
- For ex: A owes B 25000. B is in acute shortage of money and decides to accept 20,000 from A at the time and place, agreed in discharge of whole debt.

# 3. Discharge by Impossibility of performance

- Section 56 makes it clear that if an agreement contains impossible act, it is void ab initio. Any such agreement is deemed to be void.
- For ex: If A makes an agreement with B to find a lost treasure by magic, it will be a void agreement.
- But there could be cases where the performance of a contract is possible and practical when it is made, but later becomes impossible or unlawful because of the occurrence of some event over which the promisor has no control. Such a situation is called supervening impossibility. The abrogation of a contract because of impossibility of performance is also termed as the Doctrine of Frustration.
- The following are the situations where such impossibility can occur.

## (i) Destruction of subject matter:

- When the subject matter of a contract is destroyed after the contract is made, and neither of the parties to the contract can be blamed for its destruction, the contract becomes void.
- In the case of Taylor vs. Coldwell, a theatre was booked for a musical performance, but there was a fire and it was completely destroyed . The court held the contract to be void and released the promisor from performing.



## (ii) Change of law :

- If a person makes a contract to perform an act which is within the law when the contract is made but later becomes unlawful because of a change in law the contract is discharged.
- For ex. A makes a contract to supply a particular variety of wood from a forest to B. After the contract is made, a new law prohibits the cutting of wood from the forest. The contract is deemed to be void.

## (iii) Non- occurrence of an event

- If the contract is based on the occurrence of a event, the non-occurrence of such event will make the contract void.
- In the case of krell vs. Henry, Henry rented a room for two days from krell for witnessing the coronation procession of king Edward VII. Krell know the purpose for which the room was rented . The procession was cancelled because of the king being sick. The court excused Henry from paying the rent because it held that the basis of renting the room was the procession, and cancellation discharge the contract.

## (iv) Personal incapacity or death

- When the execution of a contract is dependent on the personal skill or qualification of a party, the contract is discharged on the incapacity or death of the party.

## (v) **Outbreak of war:**

- All contracts made with an alien enemy during war time are void.
- Even when the parties make the contract when the relations between the countries are friendly, the outbreak of war makes the performance of the contract impossible.

## 4. Discharge by Lapse of Time

- If contract is to be performed within a specified time, each party to it must perform his promise within the stipulated time. On the completion of the stipulated time, the contract is discharged.
- For ex. If a debtor does not pay his debt by the agreed date, the creditor must file a suit within three years . If he does not sue within that period, he loses the legal right to claim the debt, and the debtor is not lawfully bound to pay.

## 5. Discharge by operation of law

- A contract may be discharged by the operation of law
  - i) By merger:
  - ii) By unauthorised alteration:
  - iii) By insolvency:

# (i) Discharge by Merger

- When an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract a merger is said to take place.

For ex. When the lesser of an immovable property become the legal owner of the property the lease deed is terminated.

- For a merger to take place, the following conditions need to be met:
  - The parties to the contract must be the same
  - There must be no change in the basic ingredient of the contract.
  - The right under the contract must be different. One right should be superior and the other inferior.

## (ii) Discharge by Unauthorised Alteration:

- When a material alteration is made in the terms of the terms of the original contract by one party without the knowledge and consent of the other, the contract is discharged and can be avoided.
- For ex: The rate of interest is altered in a written document.

**(iii) Discharge by Insolvency:** If a debtors is declared insolvent under the provision of law, he is absolved of all obligations under the contract, and the contract terminates.

## 6. Discharge by Breach of contract

- According to section 39, if a party to a contract, without a valid or lawful reason, refuses to perform his obligation under the contract, the other party has the right to repudiate the contract.
- (i) Actual breach:
  - If a party to a contract fails to perform his obligation under the contract in the stipulated time or refuses to perform such obligation, then such breach of contract is called actual breach.
  - For ex. Harish promises to deliver a horse to shyam on 19<sup>april</sup>. On the appointed day, he refuse to deliver the horse. It is a case of actual brach.



## (ii) Anticipatory or Constructive breach:

- If A party to a contract, before the stipulated time of his performance, by word of mouth or by behaviour, makes known his intention not to perform his promise, it is deemed to be anticipatory or actual breach of contract.
- For ex. If Harish informs Shyam before 19 April of his intention not to deliver the horse and sells the horse to Ashok before that date, it will be a case of anticipatory and constructive breach of contract on the part of Harish.



In a situation of anticipatory or constructive breach of contract, the aggrieved party has the right to

- Assume the anticipatory breach to be an actual breach of contract and sue for breach of promise.
- Not to assume the anticipatory breach to be an actual breach and wait for the performance of contract on the stipulated date, and sue for breach of promise if the promisor fails to perform.

# The different methods by which a contract can be discharged are as follows:

**1) Discharge of contract by breach of contract:** Breach of contract is concerned with the termination of the original contract due to the failure of performing obligations by either or all of the parties, which discourages each of the other parties. It relates to void or terminating the original contract completely. These breaches of contracts may be either anticipatory or actual.

**2) Discharge of contract by accord and satisfaction:** Accord is an executor contract that helps to perform the existing duties at present to avoid the contractual discharge. On the other hand, based on the performance of the accord, the satisfaction of a contract will be considered, and one doesn't want to void the entire contract.

**3) Discharge of contract by the impossibility of performance:** In this case, the discharge of the contract happens without any interference from both of the parties. Despite the fact that everything is acceptable at the place of pain, certain unexpected and undetermined issues might occur, which decreases the chance of playing out or performing a contract. This includes a downturn for the market, catastrophic events, absence of legitimate reason, unfortunate episodes, and so on. In the Indian Contract Act, segment 59 plainly clarifies that assuming any of the reasons might prompt the difficulty of execution, and it is prudent to break the agreement.

**4) Discharge of contract by lapse of time:** According to the Limitation Act 1963, it is indicated that in case if the agreement can't be performed within the predetermined period, it might influence the other party and lead to the abrogation of the whole agreement. Then, at that point, it is treated as a contractual discharge of the agreement by a time-lapse.

**5) Discharge of contract by agreement:** If both of the individuals or parties in the agreement aren't willing to proceed with the agreement till the due date, then it is changed over to the next party, whether or not they might acknowledge the discharge of the agreement or contract by the understanding will occur. However, it happens in different circumstances. They are as follows:

**A: Waiver:** Waiver refers to the abandonment of right. In case any of the parties surrender their rights from the contract, which affects the other party, then it leads to the discharge of the contract by substitute agreement.

**B: Alteration:** It is another situation where the particulars of the agreement or contract will be changed either partially or totally with the assent of the two parties. Be that as it may, the parties will not change, and they can appreciate new advantages, possibly they may less or more than the old agreement or contract.

**C: Rescission:** Here, both the parties agreed to modify certain rules and regulations in the contract with mutual understanding. It may lead to the cancellation of all the rules or may cancel partially.

**D: Novation:** Specifying the substitution of either a new contract in the place of the original contract or new members in the place of the old one, whether it may be a single person or both the parties, is known as novation, which is a part of the contractual discharge by substitution of agreement.

### **6) Discharge of contract by performance:**

The discharge of a contract occurs when both parties are refused to perform the obligations can be referred to as discharge by performance.

# Breach of Contract

- A breach of contract occurs when one party in a binding agreement fails to deliver according to the terms of the agreement.
- A breach of contract can happen in both a written contract and an oral contract.
- The parties involved in a breach of contract may resolve the issue among themselves or in a court of law.
- There are different types of contract breaches, including a minor or material breach and an actual or anticipatory breach.
- A breach of contract is not considered a crime or even tort and rarely results in extra monetary compensation

# Remedies for Breach of Contract

- When a promise or agreement is broken by any of the parties we call it a breach of contract. So when either of the parties does not keep their end of the agreement or does not fulfill their obligation as per the terms of the contract, it is a breach of contract. There are a few remedies for breach of contract available to the wronged party.



# When the contract is broken, the injured party has one or more of the following remedies:

1] **Rescission of Contract:** When one of the parties to a contract does not fulfill his obligations, then the other party can rescind the contract and refuse the performance of his obligations.

As per section 65 of the Indian Contract Act, the party that rescinds the contract must restore any benefits he got under the said agreement. And section 75 states that the party that rescinds the contract is entitled to receive damages and/or compensation for such a recession

2] **Sue for Damages:** Section 73 clearly states that the party who has suffered, since the other party has broken promises, can claim compensation for loss or damages caused to them in the normal course of business.

Such damages will not be payable if the loss is abnormal in nature, i.e. not in the ordinary course of business. There are two types of damages according to the Act,

Liquidated Damages: Sometimes the parties to a contract will agree to the amount payable in case of a breach. This is known as liquidated damages.

Unliquidated Damages: Here the amount payable due to the breach of contract is assessed by the courts or any appropriate authorities.



**3] Sue for Specific Performance:** This means the party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the party carry out the agreement.

So if any of the parties fails to perform the contract, the court may order them to do so. This is a decree of specific performance and is granted instead of damages.

**4] Injunction :** An injunction is basically like a decree for specific performance but for a negative contract. An injunction is a court order restraining a person from doing a particular act.

So a court may grant an injunction to stop a party of a contract from doing something he promised not to do. In a prohibitory injunction, the court stops the commission of an act and in a mandatory injunction, it will stop the continuance of an act that is unlawful.

**5] Quantum Meruit:** Quantum meruit literally translates to “as much is earned”. At times when one party of the contract is prevented from finishing his performance of the contract by the other party, he can claim quantum meruit.

So he must be paid a reasonable remuneration for the part of the contract he has already performed. This could be the remuneration of the services he has provided or the value of the work he has already done.



Thank You

# BBA II SEM

# Business Law

# Unit -III

By- Namrata Thakur

# Bailment



## Bailment

*['bāl-mənt]*

The contractual transfer of assets or property from a bailor to a bailee for a certain period of time.

# Contract of Bailment (Section 148)

- The word bailment is derived from the French word ‘bailor’, which means to deliver.
- A contract of bailment is a contract in which one person deliver some goods to another for some purpose and when the purpose is accomplished, the goods are returned or otherwise disposed of according to the directions of the person delivering them.

# Examples

- Ram delivers a piece of cloth to a tailor to be stitched into a coat. Here there is contract of bailment, between ram and the tailor. Ram is “bailor”, and the tailor is the bailee, and the purpose of delivering the cloth is to get a coat stitched. The tailor will return the cloth to ram after stitching.
- If Ram gives his phone for repair to a shopkeeper.

# Characteristics of Bailment

1. Bailment is a contract
2. Bailment is of movable goods
3. Bailment involves transfer for possession of good
4. The transfer under bailment is temporary
5. The goods must be delivered to the other person
6. The bailor has the right to the return of goods.

# 1) Bailment is a contract

- A bailment is a contract, created by an agreement between the bailor and the bailee, which implies that there is a proposal by one party and is accepted by the other.
- It must have all the essential elements of a valid contract.



## 2) Bailments is of movable goods

- A contract of bailment can only be made for movable goods.
- Such contract cannot be made for an immovable property like land or building.

### 3) Bailment involves transfer of possession of goods

- A contract of bailment necessarily involves delivery of possession of goods by the bailor to the bailee. If there is no such transfer, there is no bailment. Such delivery can be actual constructive or token.

## 4) The transfer under bailment is temporary

- The transfer of rights to goods under a contract of bailment must be for a specific objective for a temporary period.
- The objective must not be a permanent transfer, which amounts a sale of goods.

## 5) The goods must be delivered to the other person

- In a contract of bailment, it is important that the goods are delivered to the bailee.
- **Case of Ram vs, the state of MP**

In this case, person placed his baggage on the roof of bus and the baggage was lost. The court held that it was not the case of bailment since the baggage was not delivered by one person to another.

## 6) The bailor has the right to the return of goods

- A contract of bailment stipulates that the goods will be returned to the bailor after the accomplishment of purpose. If the goods are not returned to the bailor, then it is not a bailment.

# Types of contract Bailment

1. From Reward point of view
  - a) Bailment for reward or non- gratuitous bailment
  - b) Gratuitous bailment
2. From Object point of view
  - a) Bailment for use
  - b) Bailment for safe custody
  - c) Bailment for carriage
  - d) Bailment for alteration in shape
  - e) Bailment for repair
  - f) Bailment for pawn or pledge

# 1. a) Bailment for reward or non-gratuitous bailment

- When some charge is specified for a bailment or a consideration passes between the bailor and the bailee, it is termed as a bailment for reward.
- Charge for hiring a locker in a bank, charge for repairing some gadgets are examples where there is a reward for the bailee for keeping or doing something for the bailor.

## b) Gratuitous bailment

- In gratuitous bailment, no consideration passes between the bailor and the bailee.
- Example, if A lends his bicycle to his friend B. he doesn't expect to be paid for it, and it will be a case of gratuitous bailment.



## 2. (a) Bailment for use

- When the owner of an item, of his free will gives the item to another for his use, the contract is one of bailment for use.
- Example, If A lends his camera for a month for the use of B who is going on a holiday, it will be a contract of bailment for use.

## (b) Bailment for safe custody

- When the bailor hands over an item to the bailee for safe keeping. It is a contract of bailment for safe custody.
- Example, if Ram keeps his valuables with Mohan for safety it will be a case of bailment for safe custody.

## (c) Bailment for carriage

- When a transport company is given charge of goods for transportation from one place to another, it is termed a bailment of carriage.
- Example, Giving custody of goods to railways, transport companies or shipping companies are contract of bailment for carriage.

## (d) Bailment for alteration in shape

- When one person hands over an item to the other with the object of getting the shape of the item altered, it is a contract of bailment for alteration in shape.
- Example, Giving a piece of cloth to the tailor for stitching.

## (e) Bailment for repair

- If an item is handed over to a person for repair, it is termed as bailment for repair.
- Example, Giving a piece of furniture to the carpenter for repair.

## (f) Bailment for Pawn or Pledge

- When a debtor hands over a valuable to the creditor as a security for a loan, it is called bailment for pawn or pledge.
- Example , if A hands over his gold watch to B for the security of a loan given by B, it will be a bailment for pawn or pledge.

# Types of Delivery

1) **Actual Delivery:** When the goods are actually delivered in physical terms, it is said to be an actual delivery, like giving the cloth to a tailor for stitching. An actual delivery is a visible and physical delivery.

2) **Constructive Delivery:** Such delivery may be made by doing something which has effect of putting the goods in the possession of the intended bailee or any person authorised to hold them on his behalf.

**For ex.,** If Vipin buys a radio, and leaves it with the seller so that he can get a cabinet made, it will be a constructive delivery, because Vipin has not physically been delivered the radio by the seller. The seller will be the bailee.



## (3) Token Delivery

- In token or symbolic delivery, the goods are not delivered to the bailee- only an act is performed that transfers the goods to the bailee or his authorised agent i.e., the possession of goods is transferred to the bailee.
- For ex. Handing over the key to a godown to load goods in a truck.

# Is Deposit in Bank a Bailment

- No because the bank does not guarantee to return the money in the form it was deposited-it guarantees to return the value of money that was deposited.
- In other words, the relationship between a client and a bank is one of a creditor and a debtor, and not of a bailor and a bailee.

# Case of Ram vs Sita

- It was held in this case that the money deposited in current , saving or other accounts in a bank is not bailment because the relationship between the bank and the depositor is one of a debtor and a creditor.
- On the other hand, if a person keeps some valuables i.e. jewellery in a bank locker for safe custody, it is a case of bailment.



# Contract of Pledge

# Contract of Pledge

( Section 172 of Indian Contract Act, 1872)


- According to section 172, the bailment of goods as security for payment of a debt or performance of a promise is called ‘pledge.
- The bailor is, in this case, called the ‘pawnor or pledge and the bailee is called the pawnee or ‘pledgee

# Parties to Pledge or Pawn

- Pledge ( sec 172): The person who delivers goods as security for payment of a debt or performance of a promise is called pledger. He is also known as a Pawner.
- Pledgee (sec 172) : The person to whom goods are delivered as security for a payment of a debt or performance of a promise is called Pledgee. He is also known as Pawnee.

# Example

- Ram delivers his jewellery to sita as security for a loan of Rs. 3,00,000. this is a contract of pledge. Ram is the pawnor and sita is the pawnee.

- 
- If the purpose of bailment is to provide security for the payment of a loan or the performance of a promise, then such bailment is called a pledge.
  - In a contract of pledge, the pawnor delivers the goods to the pawnee. Such delivery may be actual or constructive, but it can only be of movable property. A pledge for immovable property is called '**mortgage**'.



# Essentials of valid Pledge

- 1) Pledge is only of movable goods
- 2) Pledge involves judicial possession of goods
- 3) Pledge involves transfer of possession
- 4) Pledge can only be of a saleable commodity
- 5) Pledge involves return of goods.

# 1) Pledge is only of movable goods

- Moveable goods are any movable item, like valuables or jewellery, shares of companies, documents or government securities. Immovable property is beyond the scope of a pledge.

## 2) Pledge involves judicial possession of goods

- Only a person who is the lawful owner of a movable property can pledge such property. Mere possession of goods does not give the possession a right to pledge such goods.
- For ex. An employee who is in possession of some goods of the employer cannot pledge the goods he possesses because he does not have judicial possession of the goods.

### 3) Pledge involves transfer of possession

- In a contract of pledge, the goods pledged must be transferred from the pawnor (Pledge) to the pawnee (Pledgee). The transfer can be actual or constructive, but a pledge cannot be without a transfer.

## 4) Pledge can only be of a saleable commodity

- This is an essential feature of a contract of pledge. The main reason for this is that, if the pawnor is not able to clear his debt, the pawnee can recover the amount of the loan by selling the goods that have been pledge to him.. Therefore, anything that is not saleable cannot be pledged.

## 5) Pledge involves return of goods

- When the object of the pledge is accomplished, or after a stipulated time, the pawnee returns the goods in his possession to the pawnor, and the contract is terminated.

# Rights of Pawnor or Pledger

- 1) **Rights to get back the goods pledged** :- According to section 160 and 161, on the performance of the promise at the stipulated time or on payment of the debt, the pawnor has the right to get back the goods pledged with the pawnee.

## 2) Right to increase or profit

- According to section 163, if there is any increase in the value of, or profit from, the goods in pledge, the pawnor has the right to such increase or profit.
- For example , the pledge was that of certain shares of a company and during the period of pledge, the company issued bonus shares. It was held that these increase belonged to the pawner.



### 3) Right to compensation

- If the goods under pledge are not taken care of, or are not used rightly, and are damaged or deteriorated because of it, the pawnor has the right to claim compensation for such damage or loss.

## 4. Right to get profit in case of sale

- According to section 176, in the case of default on the part of pawnor, if the goods under pledge are sold by the pawnee and the amount received from such sale exceeds the amount of loan plus interest payable, the pawnor has the right to get back the surplus.

# 5. Right to Redeem

- According to section 177, if there is a time limit fixed for the repayment of a loan or the performance of a promise, and the pawnor makes a default in doing that,



**Agent**

# Definition of an Agent

- According to section 182 of the Indian contract act, 1872 “An agent is a person employed to do an act for another or represent another in dealings with third person”.
- The person for whom such act is done or who is represented, is called the ‘Principal’.

# Classification of Agent

1. Special/ Particular Agent
2. General Agent
3. Non- mercantile Agent
4. Mercantile Agent
5. Sub- agent

# Special/ Particular Agent

- Special Agent has only authority to do some particular act or represent his principle in some particular transaction.
- For ex. Special agent appointed to sell a property.
- A special agent does not represent the principle and is not liable to him, for any deal other than for which he is appointed.

# General Agent

- General agent is appointed to do all acts pertaining to a business or industry.
- A general agent for a textile business would be authorised to do all acts concerning such business.



# Non-mercantile Agent

- An agent operates on behalf of the principle I doing such acts which are not concerned with business but are connected to the right and obligations of the principle.
- For ex. A law agent advise his principals on legal matters, or an estate agent is concerned with matters of immovable property.
- A wife is also a non-mercantile agent of the husband.

# Mercantile Agent

- An agent who represents the principle in commercial transactions is called a mercantile agent.
- Mercantile agent are of many types.
- **Types of Mercantile agent**
  - Factor
  - Broker
  - Auctioneer
  - Commission agent
  - Del credere agent
  - Banker

# Sub- Agent

- An agent derives his authority directly from the principle.
- A sub agent is a person who does his work under the control of the agent.
- He derives his authority from the agent. He also gets remuneration from him.

**BBA II SEM  
BUSINESS LAW**

**UNIT - IV**

**By- Namrata Thakur**

# What is GST?

The goods and services tax (GST) is an indirect federal sales tax that is applied to the cost of certain goods and services. The business adds the GST to the price of the product, and a customer who buys the product pays the sales price inclusive of the GST.

# IMPORTANCE OF GST

**1.Unified Market:** GST transforms India into a common national market by dismantling state-level entry taxes and barriers. This boosts inter-state trade, reduces logistics inefficiencies, and enhances business efficiency.

**2.Enhanced Competitiveness:** GST streamlines the taxation system across states, creating a level playing field for businesses across regions. This promotes healthy competition, boosts manufacturing, and encourages businesses to optimise their supply chains.

# IMPORTANCE OF GST

**3. Higher Compliance:** The technology-driven GST system encourages higher compliance rates among taxpayers. With online filing and transparent processes, it becomes more difficult for businesses to evade taxes.

**5. Improved Input Tax Credit:** GST allows businesses to claim an input tax credit on taxes paid at earlier supply chain stages. This mechanism reduces the tax burden on businesses and prevents tax cascading.

**6. Boost to Economic Growth:** By promoting efficiency, reducing tax barriers, and enhancing trade, GST contributes to economic growth. It attracts investment, creates jobs, and stimulates overall economic activity.

# GST Advantage & Disadvantage

GST advantages	GST disadvantages
A single, unified, simplified tax system with GST implementation	Digitalisation and the challenge of new technology adoption
Benefits of ITC claims for increased cash flow	Rising operational expenses and cost of software licencing
Reduced scope of tax evasion	Difficulty in comprehending GST structure
Ease in transportation and movement of goods within states (logistics)	Fines and penalties upon non-compliances
Creating a single, nationwide market for fair competition	Compliance, administrative, and operational challenges



# Impact of GST on the Indian economy

1. Elimination of the confusion surrounding the number of indirect taxes that were required to be paid by the taxpayers. This also involves the removal of the cascading effect of taxes.
2. GST aims to increase the number of taxpayers in the nation, which will help in the development of the nation's economy.
3. The promotion of a corruption-free nation and diminishing tax evasion rates are also counted as objectives of GST.

## Positive Impact of GST on the Indian economy

- 1. Simplified tax structure:** Single tax and easier calculations of the same have made GST provide India with a simple tax structure. The buyer upon paying for the product purchased, gets a clear idea as to what amount of tax he has paid.
- 2. Support for small and medium enterprises:** It is to be noted that the GST amount to be paid depends on the annual turnover and size of the firm. This has been a reward for small and medium enterprises.
- 3. More funds for production:** GST has been successful in reducing the total taxable income, thereby adding to more funds for production.
- 4. Enhanced operations throughout India:** There has been a boost in operation throughout India because of the single unified tax system making it easier for goods transportation across India.
- 5. Increased volume of export:** Reduction in customs duty on goods have facilitated a rise in the volume of export. Production units have also been saving money while producing goods following the introduction of GST.

# Negative impact of GST on the Indian economy

- 1. Negative impact on the common man:** GST being an indirect tax is recovered by means of rising the selling price. This in turn affects middle and lower-middle-class people and therefore has a negative impact on the common man.
- 2. Negative impact of GST on the market:** In general, firms continue to face issues with input tax credit systems thereby failing to manage working capital requirements in an effective way. This is what led to GST having a negative impact on the market.
- 3. Negative impact of GST on unemployment:** Following the implementation of GST (July-2017), the unemployment rate had risen from 3.39 to 6.06 % during the period July 2017 to February 2018 in India. With business building being easier, self-employment is on rise but only for those who can afford it.

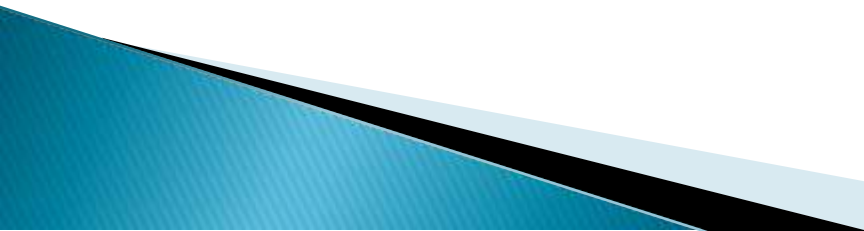
Thank you

**BBA II**  
**Business Law**  
**Unit – V**

**By– Namrata Thakur**



# Unpaid Seller: Meaning

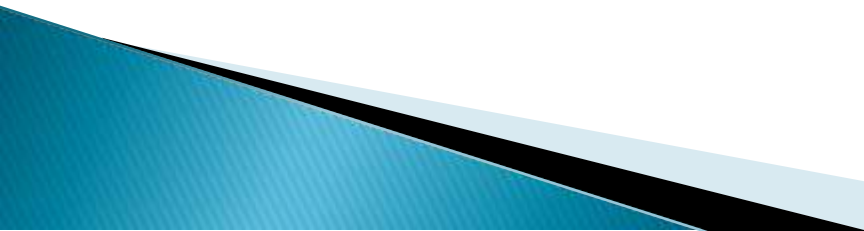
- ▶ A person who has sold goods to another person but has not been paid for the goods, or been paid partially, is called an unpaid seller.
  - ▶ For ex: A purchase goods worth Rs.20,000 from B. The ownership has already been transferred to A. But A has not paid whole price or paid Rs.15,000 to B. Here B is an unpaid seller.
- 

# Definition of Unpaid seller (Section 45 of the sale of goods)

An unpaid seller is one:

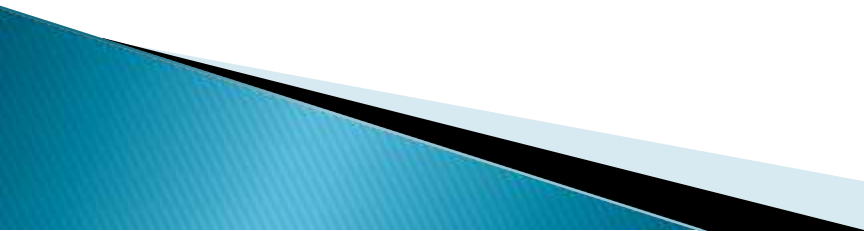
- ❖ Who has not been paid the price of the goods he has supplied, or has been partially paid for the goods.
- ❖ Who has been given a negotiable instrument like a bill of exchange that has been dishonoured. It is immaterial whether the seller is directly involved in the transition, or he is acting through his agent.

# Rights of an Unpaid Seller

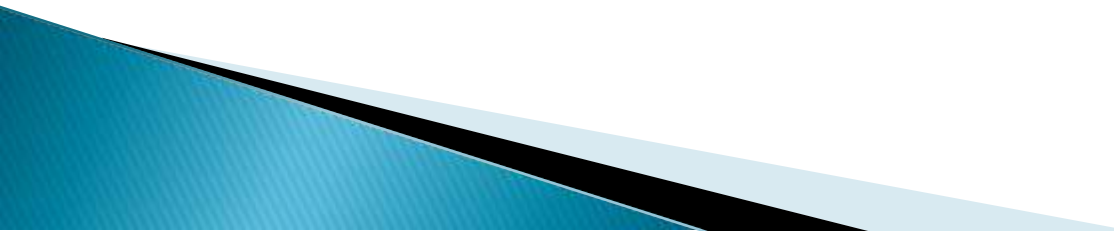
- ▶ The unpaid seller has the following rights
    1. Rights Against the goods
    2. Rights Against the buyer of goods
- 



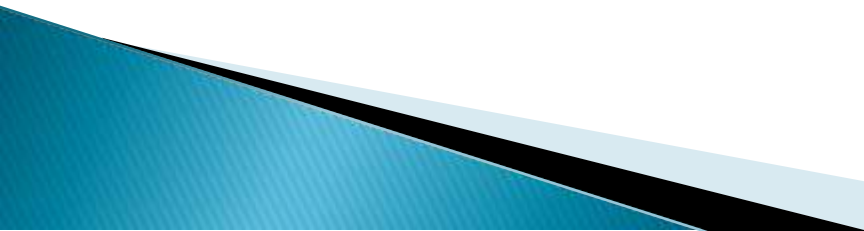
# Rights Against the goods(Section 46)

- ▶ When the buyer has not paid the full or partial price of goods supplied to him, then the seller who has transferred the ownership of goods to the buyer has the following rights with regard to the goods.
    - a) Rights of lien
    - b) Rights of stoppage of goods in transit
    - c) Rights of re-sale
- 

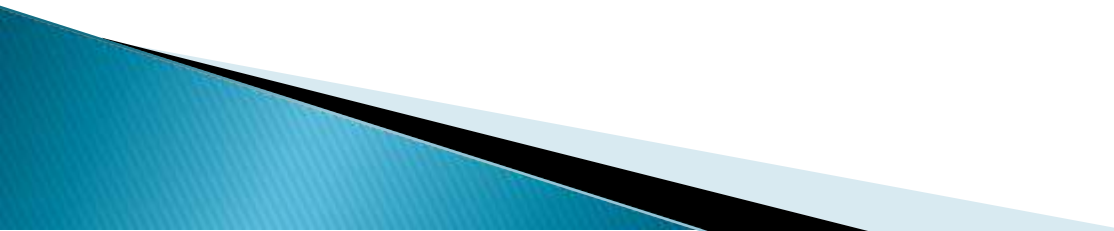
## a) Rights of lien (Section 47–49)

- ▶ Lien is the right to retain possession of goods until payment in respect of them is paid.
  - ▶ According to section 47, if the seller of goods has not been paid, and the ownership of goods has been transferred to the buyer but the goods are in the possession of the seller, the seller has the right to retain the goods till he receives the price of goods from the buyer.
- 

# The seller has this right in the following circumstances

- i) When the goods have not been sold on credit.
  - ii) When the payment has not been on the promised date, if the goods were sold on credit.
  - iii) When the buyer has become an insolvent.
- 

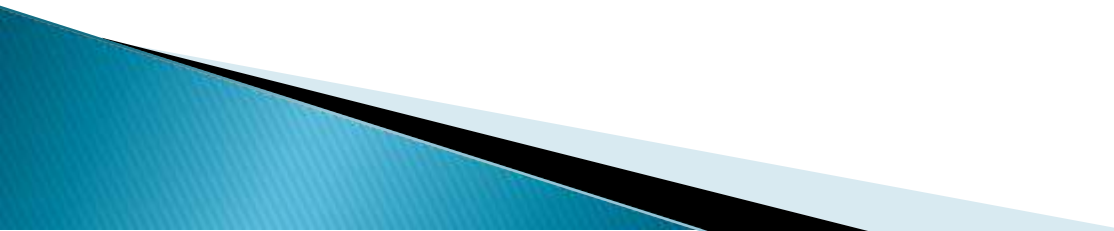
# Termination of lien

- ▶ According to section 49 the lien of an unpaid seller terminates in following circumstances.
    - i) When the seller delivers the goods to a carrier for the purpose of transmission to the buyer.
    - ii) When the buyer or his agent lawfully obtains the possession of goods.
    - iii) When the seller has waived his lien on the goods.
- 

## b) Rights of stoppage of goods in transit (Section 50–52)

- ▶ According to section 50, when the seller has delivered the goods to a carrier for transmission to the buyer and the goods are in transit, if he receives information that the buyer has become insolvent, the seller has the right to stop the goods In transit and retain their possession till such time as he is not paid the price of goods.

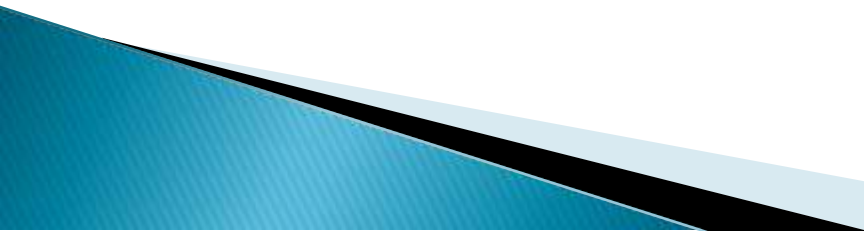
The seller has the right of stoppage of goods in transit in the following circumstances:

- i) The seller must be unpaid.
  - ii) When the buyer has become insolvent before paying for the goods.
  - iii) When the goods are in transit.
  - iv) The property must have passed from the seller to the buyer.
- 

# Duration of transit

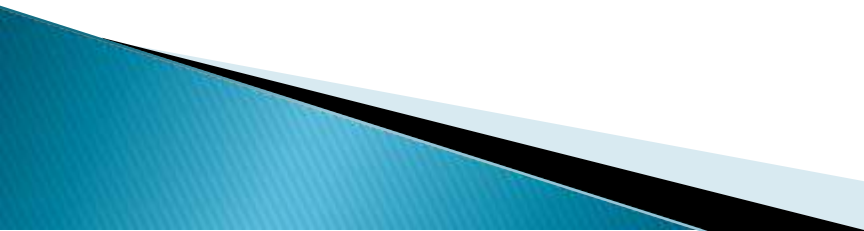
- ▶ According to section 51, when the seller has delivered the goods to the carrier for transmission to the buyer, until the goods are received by the buyer or his agent is the duration of transit.

# The carrier may hold the goods

- i) As sellers agent. In this case, there is no transit because the goods are under the seller's lien.
  - ii) As buyer's agent. In this case the seller cannot exercise his right of stoppage in transit because the buyer has acquired possession.
  - iii) As an independent contractor. In this case the seller has and can exercise the right of stoppage in transit, It is not necessary that the goods should be actually moving.
- 



# The transit comes to an end in the following cases:

- i) If the buyer or his agent obtains delivery of the goods before their arrival at the appointed destination.
  - ii) If after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds them on his behalf.
  - iii) In case the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent.
- 

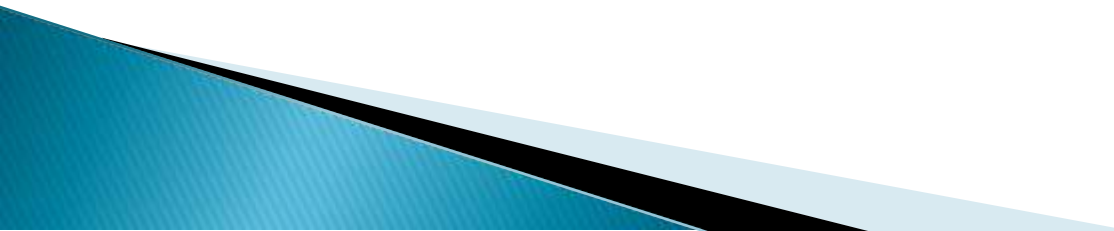
## c) Right of Re-sale (Section 54)

- ▶ An unpaid seller has the right to re-sell the goods.
- ▶ Section 54 defines the general rules for the re-sale of goods by an unpaid seller. The major rules are as under:
  - i) The unpaid seller may re-sell the goods if the goods are perishable(milk).

ii) When the unpaid seller has acquired the possession of goods by virtue of lien or stoppage in transit, and has given notice to the buyer of his intention to re-sell the goods, and If the buyer does not pay for the goods, the unpaid seller can re-sell the goods. The seller is also entitled to claim from the buyer any loss that he may suffer In re-selling the goods, the defaulting buyer has no claim on such profit.

iii) When the seller has expressly reserved a right of re-sale, in case the buyer makes default.



- When an unpaid seller plans to re-sell the goods, he is obliged by law to give one last opportunity to the buyer by informing him of his intention to do so.
  - If the unpaid seller does not inform the buyer of his intention to re-sell the goods and is put to a loss in the re-sale, he cannot later claim such loss from the defaulting buyer.
- 

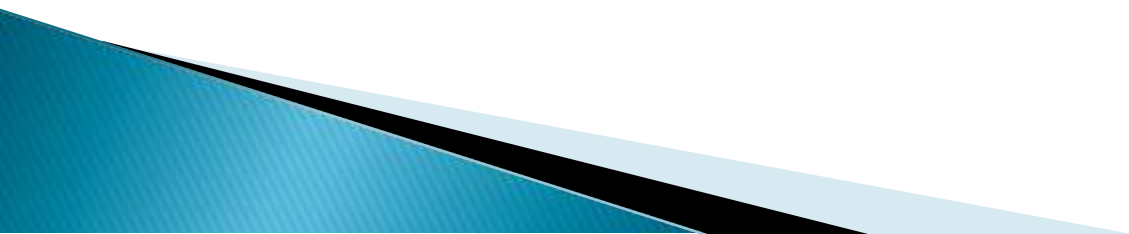
## (2) Rights Against the buyer of goods

- ▶ An unpaid seller has the following rights against the buyer:

a)









## d) Sit for interest(Section 61)

- ▶ According to section 61, the unpaid seller has the right to be paid interest by the buyer for any delay in making the payment. Such interest is affective from the date when the price is payable.
  - ▶ If the goods are sold on credit, interest will run from the expiry of the credit.
- 