



**renaissance**

college of commerce & management

B.Com I Year

Subject: Business Law

## SYLLABUS

**Class - B.Com I Years**

**Subject - Business Law**

| UNIT No. | TOPICS                                                                                                                                         |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------|
| 1        | Historical background of business laws in India, Indian contract act 1872- GENERAL LAWS                                                        |
| 2        | Contract relating to Indemnity and Guarantee                                                                                                   |
| 3        | Negotiable instrument Act 1881- General Introduction<br>Negotiable instrument (amendment) Act 2002, Indian partnership act -1932               |
| 4        | General introduction of Consumer Protection act 1986 and 2018, FEMA                                                                            |
| 5        | Competition Act 2002- Introduction, concept ,objectives, major provisions, 5 competition commission of India - composition power and functions |



## Unit-I

### Subject: Indian Contract Act

#### The Indian Contract Act 1872

The law of contract in India contained in Indian Contract Act 1872, which is based on English common Law. It extends to whole of India except the state of Jammu and Kashmir. It came into force on the first Sep. 1872. The Act lays down general principles governing all contracts, but not the rights and duties of the parties. The rights and duties are decided by the parties themselves.

#### Scheme of the Act: -

The scheme can be divided into two main groups:

1. General principles of the law of contract.
2. Specific kinds of contracts -
  - a. Indemnity and Guarantee
  - b. Contracts of Bailment and Pledge
  - c. Contract of Agency.

#### Meaning and Definition of an Agreement:

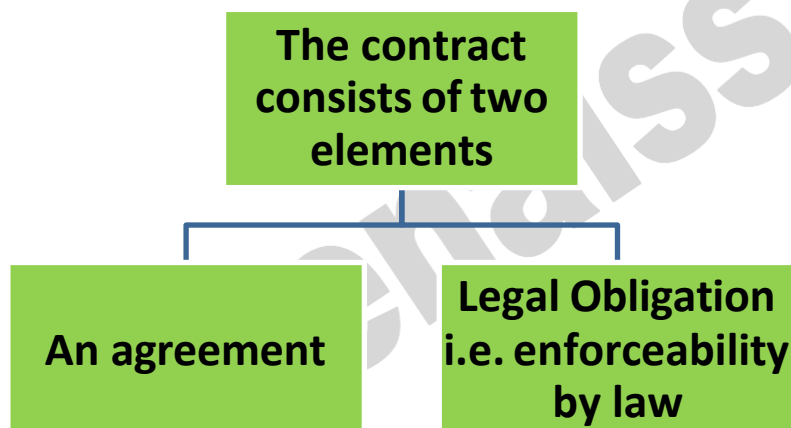
An Agreement consists of an offer by one party and its acceptance by other. In other words, an agreement comes into existence only when one party makes a proposal to the other party and that other party gives acceptance.

**Agreement = Proposal + Acceptance of proposal**

**According to Section 2(e) of Indian Contract Act 1872** "Every promise and every set of promises, forming the consideration for each other is an agreement."

#### Meaning and Definition of a Contract:

A contract is a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognize as duty. In other words, a contract is an agreement the object of which is to create a legal obligation.





**Contract = an Agreement + enforceability by law.**

**According to Section 2(h) of the Indian Contract Act 1872 "An agreement enforceable by law is a contract."**

**Essential Elements of a valid Contract:**

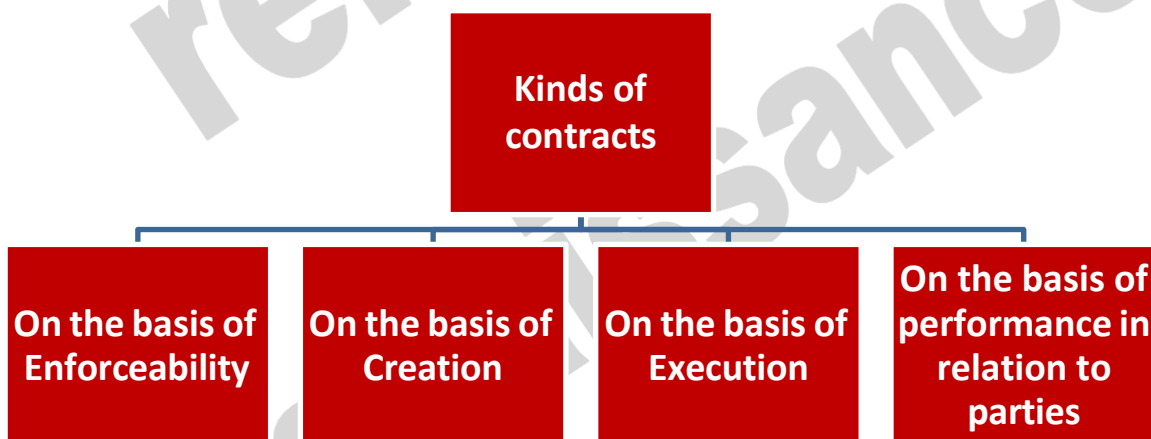


1. **Offer and Acceptance:** There must be a "lawful offer" and a "lawful acceptance" of the offer, thus resulting in an agreement.
2. **Intention to create legal relation:** There must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. Social agreements do not contemplate legal relations, and so they do not give rise to a contract.



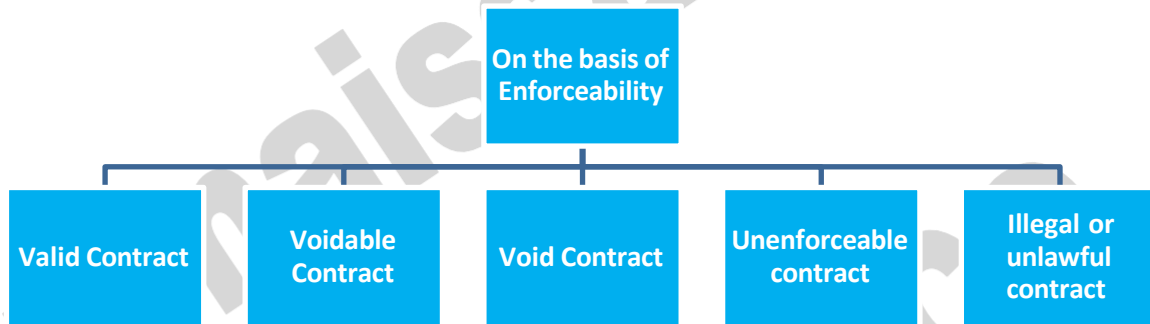
3. **Lawful Considerations:** An agreement is legally enforceable only when each of the parties to it, give something and get something. This something is the price for the promise and is called "Consideration". Only those considerations are valid which 'Lawful'
4. **Capacity of parties:** The parties to an agreement must be competent to contract, otherwise it cannot be enforced by a court. To be competent, the parties must be on majority age and of sound mind and must not be disqualified from contracting by any law to which they are subject.
5. **Free Consent:** "Consent" means that the parties must have agreed upon the same thing in the same sense. Consent is not enough for making a contract. That to must be free. It is said to be free when it is not caused by-
  1. Coercion, or (i) undue influence, or (iii) fraud, or (IV) misrepresentation, or (v) mistake.
6. **Lawful object:** For the formation of a valid contract, it is also necessary that the parties to an agreement must agree for a lawful object. The object must not be fraud or illegal or immoral or must not imply injury to the person or property of other.
7. **Writing and Registration:** Generally the contracts may be oral or written. But in special cases, it lays down that the agreement must be in writing or registered to be valid.
8. **Certainty:** Any agreement can be enforced if its meaning is certain or capable of being made certain agreements the meaning of which is not certain, are void.
9. **Possibility of performance:** The terms of the agreement must also be capable of performance physically as well as legally.
10. **Not expressly declared void:** The agreement must not have been expressly declared void under the act. There are some types of agreements which have been expressly declared to be void.

#### Kinds or classification of Contracts:-



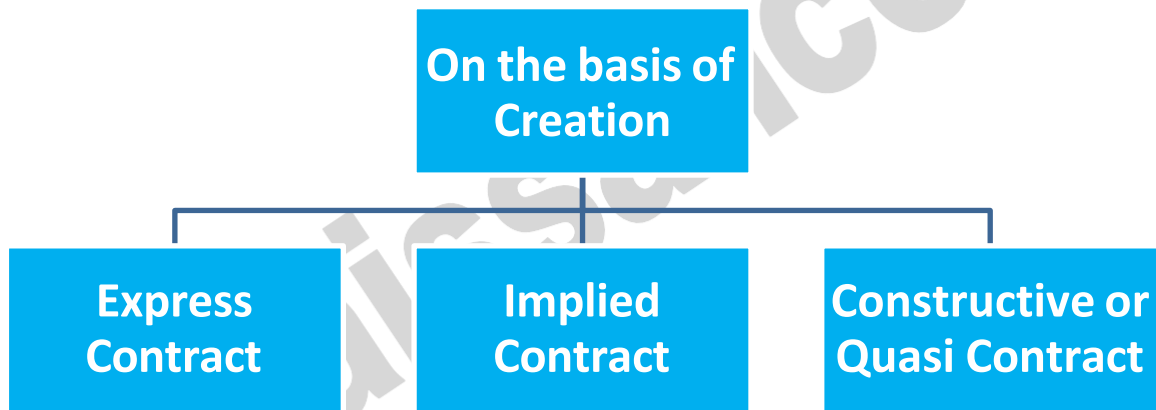


**A. On the basis of Enforceability**



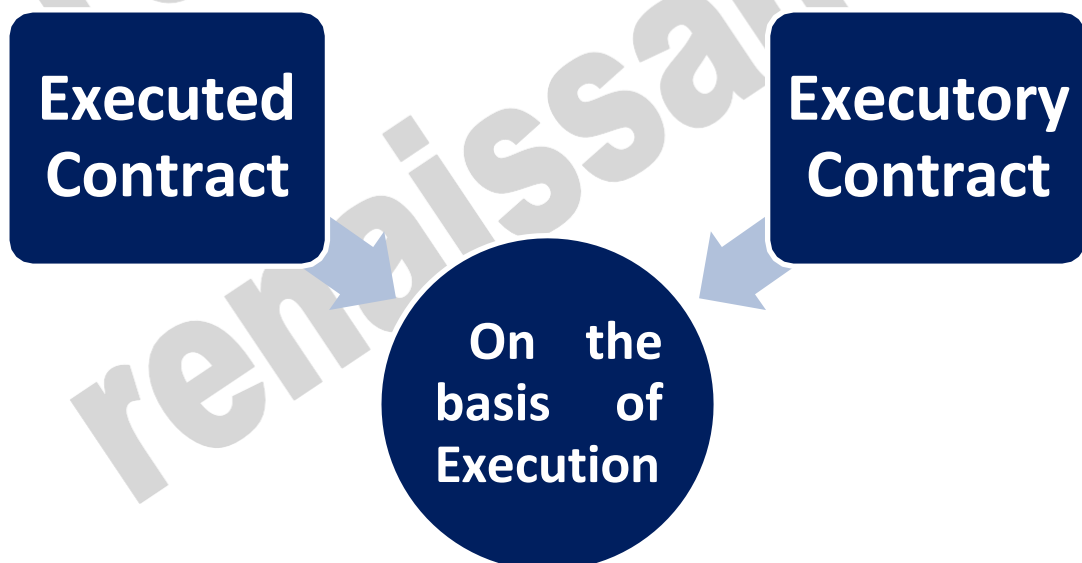
1. **Valid Contract:** A valid contract is an agreement enforceable by law. An agreement becomes enforceable by law when all the essential elements of a valid contract (as per section 10 of the act) are present.
2. **Voidable Contract:** "An agreement which is enforceable by law at the option of one or more of the parties, but not at the option of one or more of the other, is a voidable contract."
3. **Void Contract:** Void means not binding in law. It is valid at the time of making it but becomes void subsequently due to change in circumstances.  
**Void Agreement:** "An agreement not enforceable by law is said to be void" Thus a void agreement does not give rise to any legal consequences and is void *ab initio*.
4. **Unenforceable contract:** It is one which is valid in it, but is not capable of being enforced in a court of law because of some technical defect such as absence of writing, registration requisite stamp.
5. **Illegal or unlawful contract:** An agreement which is expressly or impliedly prohibited or forbidden by law. It is *void ab initio*.

**B. On the basis of Creation:**



1. **Express Contract:** It is one in which parties make oral written declaration of the terms and conditions of the contract.
2. **Implied Contract:** It is one in which evidence of contract is gathered from acts and conduct of the parties and not from written or spoken words of parties.
3. **Constructive or Quasi Contract:** It is not a contract made intentionally by the parties by exchange of promises. It is a contract imposed by the law. The basis of this contract is that no one can be allowed to enrich himself at the cost of the other.
- 4.

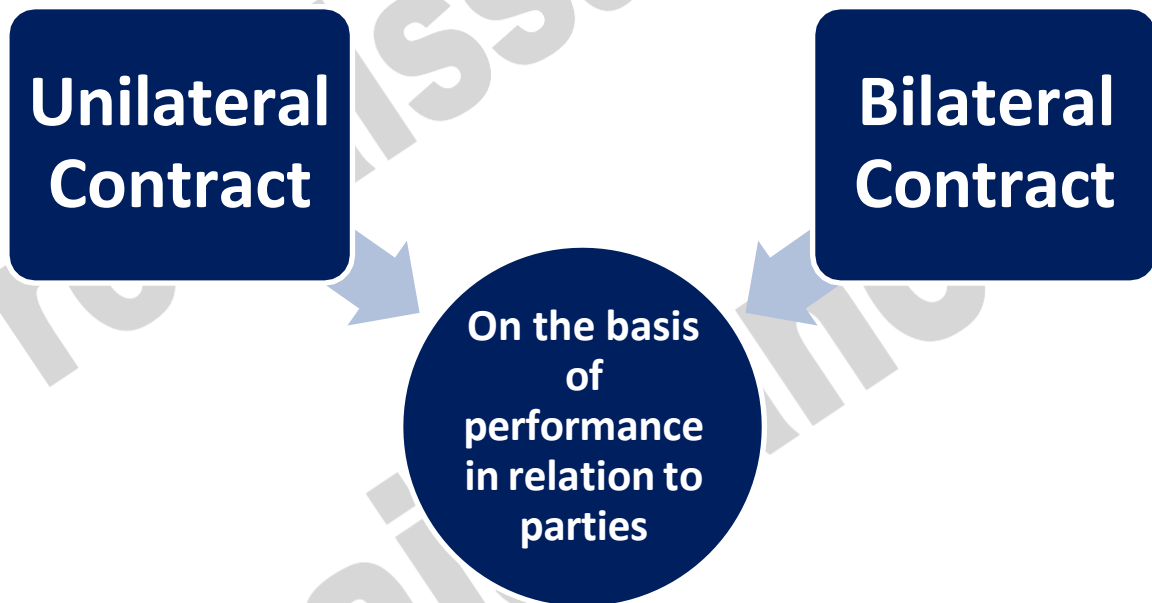
C. On the basis of Execution





1. **Executed Contract:** When both the parties to a contract have completely performed their share of obligations and nothing remains to be done by either party under the contract.
2. **Executory Contract:** When either parties have still to perform their share of obligation in to or there remains something to be done under the contract on both sides.

#### D. On the basis of performance in relation to parties



1. **Unilateral Contract:** When one party has to perform his obligation, and the other party has performed his obligation at the time of formation of the contract or before it. This is why it is also called one-sided contract.
2. **Bilateral Contract:** When the obligations of both the parties are outstanding at the time of formation of contract. It is similar to Executory contract. It is also called contract with executory consideration.

#### Capacities of Parties

##### **Meaning of Capacity to Contract**

*Capacity or competence to contract means legal capacity of parties to enter into a contract. In other words, it is the capacity of parties to enter into a legally binding contract.*

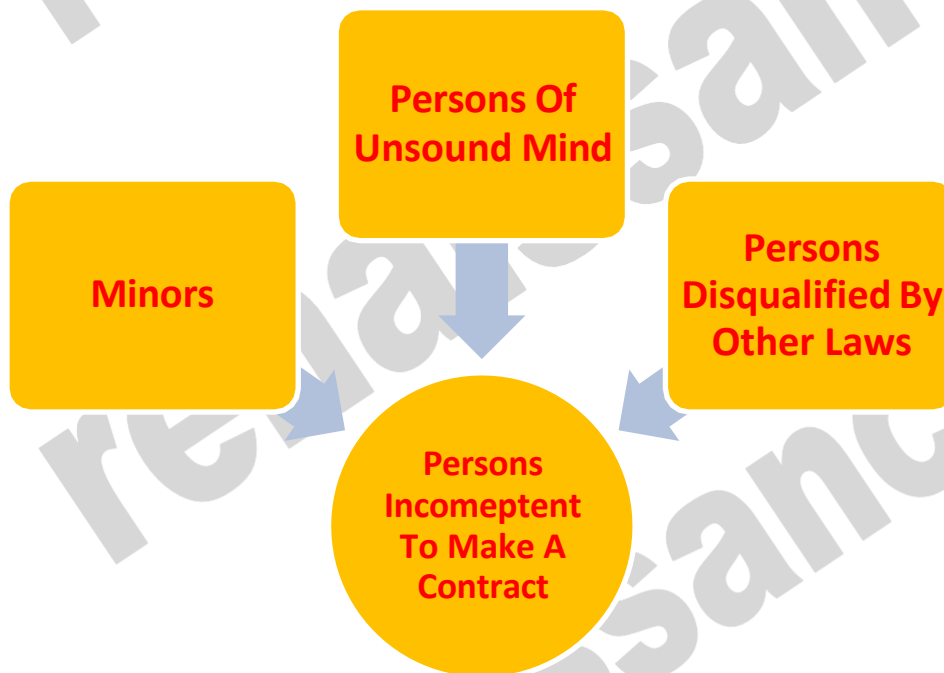


***Who are Competent to Contract?***

***Every person is legally competent to contract if he fulfills the following three condition :***

- i. He has attained the age of majority;***
- ii. He is of sound mind; and.***
- iii. He is not disqualified from contracting by any other law to which he is subject***

Who are not competent to contract?



**1) MINORS**

Any person, who has not attained the age of majority prescribed by law, is known as minor.

Section 3 of the Indian Majority Act prescribes the age limit for majority and says a minor is a person who has not completed eighteen years of age. But the same Act also mentions that in the following two cases a person attains majority only after he completes his age of twenty one years :

- (i) Where a Court has appointed guardian of a minor's person or property or both (under the Guardians and Wards Act, 1890); or
- (ii) Where the minor's property has been placed under the superintendence of a Court of wards.

**2) PERSONS OF UNSOUND MIND**



A person is said to be of sound mind for the purpose of making a contract (a) if he is capable of understanding the contract at the time of making it, and (b) if he is capable of making a rational judgment as to the effect upon his interests.

Types of Persons of Unsound Mind and their Contracts:

1. Idiot
2. Lunatic
3. Delirious persons
4. Drunken or intoxicated persons
5. Hypnotized persons
6. Mental decay

### 3) PERSONS DISQUALIFIED BY OTHER LAWS

There are certain persons who are disqualified from contracting by the other laws of our country. They are as under:

1. Alien enemy
2. Foreign sovereigns, diplomatic staff etc.
3. Corporations and companies
4. Insolvents
5. Convicts

#### Rules /effects as to or Nature of Minor's Agreements

1. **Void ab-initio:** - Minor's agreement is absolutely void from very beginning, i.e. void ab- initio. It is nullity in the eye of law. An agreement with minor, therefore, can never be enforced by law.
2. **Minor can be a promise or beneficiary:** - A minor can enforce such agreements in which he is a beneficiary or promise and does not create any obligation on his part.
3. **No ratification:-** A minor cannot be ratify even after attaining the age majority because void agreement cannot be ratified.
4. **Restitution/ Compensation possible:** - If a minor has received benefits under an agreement from the other party, the Court may require the minor to restore the benefit (so far as may be), to the other party at the time of rescission of the agreement. The minor may be asked to restore the benefit to the extent he or his estate has been benefited.
5. **Contract by parent/ guardian/ manager:** - A minor's parent/ guardian/ manager can enter into contract on behalf of the minor provided:
  - i. The parent/ guardian/ manager acts within the scope of his authority; and
  - ii. The contract is for the benefit of the minor.
6. **No liability of parents:** - The parents (guardian) of a minor are not liable for agreements made by their minor ward. However, they can be held liable if the minor makes agreement as their authorized.
7. **Minor as an agent:** - A minor is not entitled to employ an agent; he can be an agent himself for someone else. As an agent he can represent the principal, and bind him for his acts done in the course of agency. But the minor is not responsible to the principal for his acts.
8. **Minor and insolvency:** - A minor cannot be declared insolvent because he is not competent to contract.
9. **Minor as joint Promisor:** - A minor can be a joint promisor with a major, but the minor cannot be held liable under the promise to the promises as well as to his co-promisor. But the major promise cannot escape liability. The major joint promisor can be forced to perform the promise.



10. **Minor shareholder:** - A minor can become a shareholder or member of a company if (a) the shares are fully paid up and (b) the articles of association do not prohibit so.
11. **Liability for necessities of life:** - A minor is incompetent to contract. A minor, therefore, is not personally liable for the payment of price of necessities of life supplied to him or to his legal dependents. However, the person who has furnished such supplies is entitled to be reimbursed from the property of the minor.
12. **Minor Partner:** - According to the Partnership Act, 1932, a minor cannot make a contract of partnership though he may be admitted to its benefits with the consent of all the partners. A minor partner cannot be made personally liable for any obligation of the firm, but his share in the firm's property can be made liable.
13. **No estoppels against minor:** - The term 'estoppels' means prevention of a claim. When a minor enter into contract, representing that he is a major, but in reality he is not, then later on he can plead his minority as a defence and cannot be estopped (prevent) from doing so.

### Definition of Consideration

Consideration is one of the essential elements of a valid contract. The term "Consideration" means something in return i.e. quid -pro-quo. Consideration must result in a benefit to the promiser, & a detriment or loss to the promisee or a detriment to both. Without consideration a contract is void or nude i.e. nudum pactum

#### **Section 2(d) of the Indian Contract act, 1872 defines Consideration as follows:**

*" When, at the desire of the promiser ,the promisee or any other person has done or abstained from doing, or does or abstains from doing ,or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise."*

#### **ESSENTIAL ELEMENTS OF A VALID CONSIDERATION:-**



- 1 • It must move at the desire of the promisor
- 2 • It may move from the promisee or any other person
- 3 • It may be Past , Present or Future
- 4 • It must be of some value
- 5 • It must be real & not illusory
- 6 • Must be Something other than the promisor's Existing obligation
- 7 • It must not be illegal, immoral or opposed to public policy

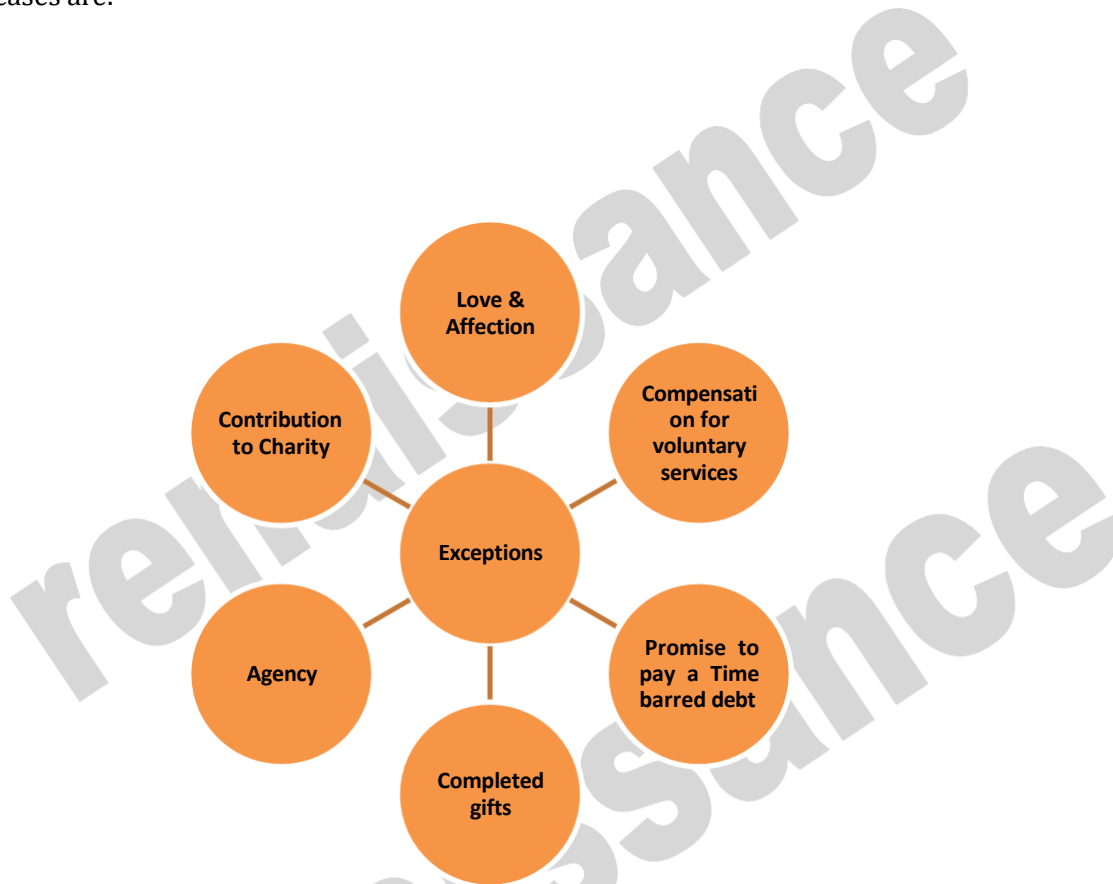
- **It must move at the desire of the promisor:** Consideration must have been done at the desire or request of the promisor & not at the desire of a third party or without the desire of the promisor.
- **It may move from the promisee or any other person:** An act constituting consideration may be done by the promisee himself or any other person. Thus, it is immaterial who furnishes the consideration & therefore may move from the promisee or any other person. This means that **even a stranger to the consideration can sue on a contract, provided he is a party to the contract (Case Chinayya V/s Ramayya)**
- **It may be Past , Present or Future:**
  - Past Consideration: The consideration which has already move before the formation of agreement.
  - Present consideration: The consideration which moves simultaneously with the promise.
  - Future Consideration: The consideration which is to be moved after the formation of agreement.
- **It must be of some value:** The consideration need not be adequate to the promise but it must be of some value in the eye of the law.
- **It must be real & not illusory:** Ex. A promise to put life into the B's dead wife & B promises to pay Rs 10,000. This agreement is void because consideration is physically impossible to perform.
- **Must be Something other than the promisor's Existing obligation:** Consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.
- **It must not be illegal, immoral or opposed to public policy.**

**A CONTRACT WITHOUT CONSIDERATION IS VOID**

The general rule is "**An Agreement made without consideration is void**". Sec 25 & 185 deals with the **Exceptions** to this rule.



These cases are:



**1) Love & Affection:** A written & registered agreement based on natural love & affection between near relatives is enforceable even if it is without consideration.

Ex: X, for natural love & affection, promises to give his son, Y, Rs 1000. X puts his promise to Y in writing & registers it. This is a contract.

**2) Compensation for voluntary services:** A promise to compensate wholly or partly, a person who has already voluntarily done something for the promisor, is enforceable even without consideration.

Ex: A finds B's purse & gives it to him. B promises to give Rs 50 to A. This is a contract.

**3) Promise to pay a Time barred debt:** A promise by a Debtor to pay a time-barred debt if it is made in writing & is signed by the debtor or by his agent is enforceable.

**4) Completed gifts:** There need not be consideration in case of completed gifts.

**5) Agency:** No consideration is necessary to create an Agency.

**6) Contribution to Charity**

### STRANGER TO A CONTRACT

Though a stranger to consideration can use because the consideration can be furnished or supplied by any person whether he is the promises or not, but a stranger to a contract cannot sue because of the absence of privity of contract (i.e. relationship subsisting between the parties to a contract).

**Free Consent**

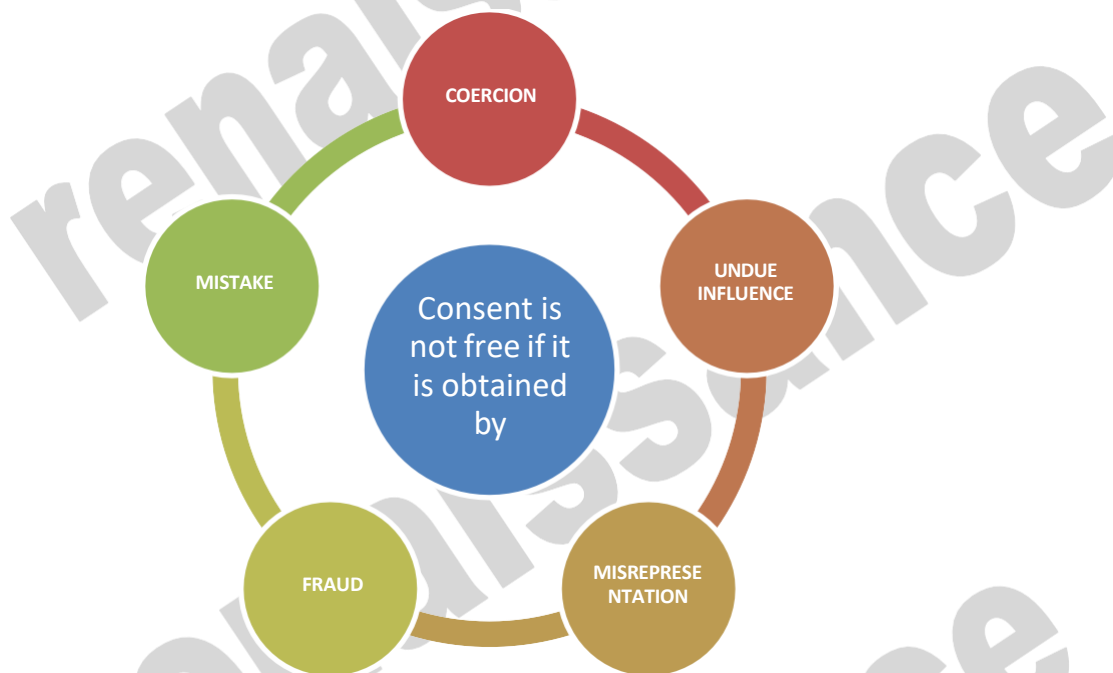


## MEANING OF CONSENT

Two or more persons are said to consent when they agree upon the same thing in the same sense at the same time.

## MEANING OF FREE CONSENT

Sec. 14 describes the cases when the consent is not free. It lays down that consent is not free if it is caused by coercion, undue influence, fraud, misrepresentation, etc. if the consent is not free, the agreement is avoidable at the option of the party whose consent was not free.



### 1) COERCION

Coercion simply means forcing a person to enter into a contract. Sec. 15 defines coercion as, "Committing or threatening to commit, any act forbidden by the Indian Penal Code, or unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever with the intention of causing any person to enter into an agreement".

#### The essential elements of coercion are

- (1) Committing or threatening to commit any act forbidden by Indian Penal Code.
- (2) Unlawful detaining or threatening to detain any property.
- (3) The act of coercion may be directed at any person and not necessarily at the other party to the agreement.
- (4) The act of coercion must be done with the object of inducing or compelling any person to enter into an agreement.

### 2) UNDUE INFLUENCE : It is kind of moral coercion.



Sec. 16(1) defines undue influence as, "A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of other and uses that position to obtain an unfair advantage over the other".

- (a) Where he holds a real or apparent authority over the other e.g., in the relationship between master and servant.
- (b) Where he stands in fiduciary relation to the other. It implies a relationship of mutual trust and confidence.
- (c) Where a contract is made with a person whose mental capacity is affected by reason of age, illness, or mental or bodily distress.

Any innocent or unintentional false statement or assertion of fact made by one party to the other during the course of negotiation of a contract is called a misrepresentation.

### 3) MISREPRESENTATION

As per Sec. 18, misrepresentation is a wrong statement of fact made innocently, i.e., without any intention to deceive the other party. It may be caused.

- (1) By positive statement.
- (2) By breach of duty.
- (3) By mistake regarding the subject matter of the agreement.

#### Essential of misrepresentation

- (1) There must be a representation or omission of a material fact.
- (2) The representation or omission of duty must be made with a view to inducing the other party to enter into contract.
- (3) The representation or omission of duty must have induced the party to enter into contract.
- (4) The representation must be wrong but the party making the representation should not know that it is wrong.

### 4) FRAUD

Fraud is the intentional misrepresentation or concealment of material facts of an agreement by a party to or by his agent with an intention to deceive and induce the other party to enter into an agreement.

Sec. 17 defines fraud as, any of the following acts committed by a party to a contract (or with his convenience or by his agent) with intention to deceive another party thereto (or his agent) or to induce him to enter into the contract.

- (1) The suggestion that a fact is true when it is not true by a person who does not believe it to be true.
- (2) The active concealment of the fact by a person having knowledge or belief of the fact.
- (3) A promise made without any intention to perform it.
- (4) Any other act fitted to deceive.
- (5) Any such act or omission as the law specifically declares to be fraudulent.

### 5) MISTAKE

Acc. To Sec. 20 mistake means erroneous belief concerning some fact. The parties are said to consent when they agree upon the same thing in the same sense. If they do not agree upon the agreement in the same sense, there will be no contract.

When the consent of one or both the parties to a contract is caused by misconception or erroneous belief, the contract is said to be induced by mistake.

#### Mistake may be of following types:

- (1) Mistake of law,
  - (a) Mistake of law of the country.
  - (b) Mistake of foreign law.
  - (c) Mistake of private rights of the parties
- (2) Mistake of fact,



- (A) Bilateral Mistake :
  - (1) Mistake as to subject matter :
    - (a) Mistake regarding existence
    - (b) Mistake regarding identity
    - (c) Mistake regarding title.
    - (d) Mistake regarding price
    - (e) Mistake regarding quality
    - (f) Mistake regarding quantity
  - (2) Mistake as to the possibility of performance
    - (a) Physical impossibility
    - (b) Legal impossibility
- (B) **Unilateral Mistake** :
  - (1) Mistake as to identity of the person contracted with.
  - (2) Mistake as to the nature of contract.

### Distinction between an Agreement and a Contract

| Basis of distinction                   | Agreement                                                                                    | Contract                                                             |
|----------------------------------------|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| <b>1. Definition</b>                   | Every promise and every set of promises forming consideration for each other is an agreement | An agreement enforceable by law is a contract.                       |
| <b>2. Creation</b>                     | An agreement is created by acceptance of an offer.                                           | Agreement and its enforceability together create a contract.         |
| <b>3. legal rights and obligations</b> | An agreement may not create legal rights and obligations of the parties                      | A contract creates legal rights and obligation between the parties.  |
| <b>4. Necessity</b>                    | No contract is required to make an agreement.                                                | Valid agreement is necessary for making a contract.                  |
| <b>5. Legally binding</b>              | An agreement is not a concluding or legally binding contract.                                | A contract is a concluding or legally binding on the parties.        |
| <b>6. Concept</b>                      | Agreement is a wider concept and includes contracts.                                         | Contract is a narrow concept and it is only a specific of agreement. |

### DISTINCTION BETWEEN VOID AGREEMENT AND VOID CONTRACT

| Basis of distinction             | Void Agreement                                                                   | Void Contract                                                                                              |
|----------------------------------|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| <b>1. Definition</b>             | An agreement not enforceable by law is said to be void. [Sec. 2(g)]              | A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable [Sec. 2(j)] |
| <b>2. Time when becomes void</b> | It is void from very beginning.                                                  | It becomes void subsequently due to change in law or change in circumstances.                              |
| <b>3. Restitution</b>            | Generally no restitution is granted, however, the Court may on equitable grounds | Restitution may be granted when the contract is discovered to be void or becomes void.                     |



|                                  |                                                                                                                                                                                                            |                                                                                                                                                          |
|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                  | grant restitution in case of fraud or misrepresentation by minors.                                                                                                                                         |                                                                                                                                                          |
| <b>4. Description in the Act</b> | Such agreement have been mentioned as void in the Act. Agreements without consideration, agreements with lawful object or consideration and some other agreements have expressly been declared to be void. | There is no mention of cases of void contracts in the Act. They are created by circumstances and law Courts decide whether they have become void or not. |

## DISTINCTION BETWEEN VOID AGREEMENT AND VOIDABLE CONTRACT

| Basis of distinction         | Void Agreement                                                                                                                                                                                                     | Voidable Contract                                                                                                                                                                                                                            |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. Definition</b>         | An agreement not enforceable by law is said to be void.                                                                                                                                                            | A contract enforceable by law at the option of the aggrieved party, is a voidable contract.                                                                                                                                                  |
| <b>2. Period of validity</b> | It is void from the beginning i.e. void ab initio                                                                                                                                                                  | It is valid till it is avoided by the aggrieved party to the contract.                                                                                                                                                                       |
| <b>3. Legal existence</b>    | It is nullity, hence, does not exist in the eye of law.                                                                                                                                                            | It has its existence in the eye of law till it is repudiated.                                                                                                                                                                                |
| <b>4. Change in status</b>   | Status of void agreement does not change with the change in circumstances.                                                                                                                                         | Status of such contract change when the aggrieved party elects to avoid it within a reasonable time. It becomes void when the aggrieved party elects to rescind it.                                                                          |
| <b>5. Causes</b>             | Any agreement is void when it is made with incompetent parties or for unlawful objects and consideration, or without consideration, or without consideration or it is expressly declared to be void under the law. | A contract is voidable when the consent of the party is caused by coercion or undue influence or fraud or misrepresentation.                                                                                                                 |
| <b>6. Transfer of title</b>  | The party obtaining goods under void agreement cannot transfer a good title to the third party.                                                                                                                    | The party obtaining goods under voidable agreement can transfer a good title to the third party if the third party obtains it in good faith and for consideration and the aggrieved party has not avoided the contract before such transfer. |
| <b>7. Restitution</b>        | Parties do not have right to restore the benefits passed on to the other unless the parties were unaware of the impossibility of performance at the time of agreement or the party to the agreement was minor.     | Generally, right restitution is available if the party elects to avoid the contract.                                                                                                                                                         |
| <b>8. Damages</b>            | No party as a right to get compensation for damages because such agreement has no legal effect.                                                                                                                    | If a party rightfully rescinds (i.e. puts and end) the contract, he can claim compensation, he can claim compensation of damages sustained by him due to non-fulfilment of the promise.                                                      |

## DISTINCTION BETWEEN VOID AND VOIDABLE CONTRACT

| Basis of | Void Contract | Voidable Contract |
|----------|---------------|-------------------|
|----------|---------------|-------------------|



| distinction                  |                                                                                                 |                                                                                                                                                                                                       |
|------------------------------|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. Definition</b>         | A contract which ceases to be enforceable by law become void, when it ceases to be enforceable. | A contract which is enforceable by law at the option of the aggrieved party is a voidable contract.                                                                                                   |
| <b>2. Period of validity</b> | It remains valid till it does not cease to be enforceable.                                      | It remains valid if the aggrieved party does not elect to avoid it within a reasonable time.                                                                                                          |
| <b>3. Will of the party</b>  | Its validity is not affected by the will of any party. It is decided by the Law Court.          | Its validity is affected by the will of the aggrieved party. Aggrieved party has option to treat it either binding or repudiate it.                                                                   |
| <b>4. Causes</b>             | Contracts become void due to change in circumstances or in the law of land.                     | Contract is voidable when the consent of the party is caused by coercion, undue influence, fraud or misrepresentation. Sometimes, it may be voidable under the provisions of the Secs. 39, 53 and 55. |

### **DISTINCTION BETWEEN VOID AND ILLEGAL AGREEMENT**

| Basis of distinction                     | Void Agreement                                                                                                                                     | Illegal Agreement                                                           |
|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| <b>1. Definition</b>                     | An agreement not enforceable by law is void.                                                                                                       | An agreement which is expressly or impliedly prohibited by law, is illegal. |
| <b>2. Effect on collateral agreement</b> | The agreement collateral to the void agreement is not necessarily void.                                                                            | The agreement collateral to an illegal agreement is always void.            |
| <b>3. Scope</b>                          | All void agreements need not necessarily be illegal agreements. Hence, the scope is wider than that of the illegal agreements.                     | All ill agreements are void.                                                |
| <b>4. Restitution</b>                    | The Court may grant restitution of money advanced if is minor or if the parties were unaware of the impossibility of performance of the agreement. | Restitution of money is not granted in case of an illegal agreement.        |

### **DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE**

| Basis of distinction | Coercion                                                                                                                                                                                                            | Undue influence                                                                                                                                                                                                                                          |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. Definition</b> | Coercions the committing or threatening to commit, any act forbidden by the I.P.C. or unlawful detaining or threatening to detain any property with the intention of causing any person to enter into an agreement. | Undue influence is an influence which arises where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. |
| <b>2. Relations</b>  | In case of coercion, relation between the parities is immaterial.                                                                                                                                                   | In case of undue influence, in the relation between the parties the parties must be such that one of them is in a position to dominate the will of other.                                                                                                |
| <b>3. Intention</b>  | Coercion is applied with the intention of causing any person to enter into an agreement.                                                                                                                            | It is exerted with the intention to obtain an unfair advantage over the other party.                                                                                                                                                                     |
| <b>4. Nature of</b>  | It involves physical force.                                                                                                                                                                                         | It involves moral force.                                                                                                                                                                                                                                 |



**renaissance**

college of commerce & management

B.Com I Year

Subject: Business Law

|                        |                                                                                            |                                                                                                                                                          |
|------------------------|--------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>force</b>           |                                                                                            |                                                                                                                                                          |
| <b>5. Kind of act</b>  | It involves criminal act.                                                                  | It does not involve criminal act.                                                                                                                        |
| <b>6. Direction</b>    | The coercion may be directed against any person including a stranger.                      | Under influence is used against the weaker party only.                                                                                                   |
| <b>7. Who exercise</b> | It can be exercised by any person. Even a stranger to contract can exercise it.            | It is employed by the person who is in a position to dominate the will of the other.                                                                     |
| <b>8. Remedies</b>     | A contract caused by coercion, may be avoided by the aggrieved party's contract. [Sec. 19] | In case of undue influence, the aggrieved party may avoid the contract or the Court, may set aside the contract absolutely or conditionally. [Sec. 19 A] |

**DISTINCTION BETWEEN FRAUD AND MISREPRESENTATION**

| Basis of distinction          | Fraud                                                                                                                                             | Misrepresentation                                                                                                                   |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. Meaning</b>             | A fraud is an intentional misrepresentation or concealment of material fact to induce the other party to enter into a contract.                   | An innocent or unintentional misrepresentation of material facts by one party to induce the other party to enter into a contract.   |
| <b>2. Intention</b>           | Fraud is committed with an intention to deceive.                                                                                                  | There is no such intention.                                                                                                         |
| <b>3. Belief in the facts</b> | The person committing a fraudulent act does not believe it to be true.                                                                            | The person making misrepresentation believes in its facts to be true.                                                               |
| <b>4. Suit for damage</b>     | The aggrieved party has the right to sue the other party for damages.                                                                             | The aggrieved party cannot sue for damages.                                                                                         |
| <b>5. Defence</b>             | A party cannot set up a defense that the aggrieved party had means of discovering the truth except in case of fraud by concealment or by silence. | In case of misrepresentation, the other party always sets up a defense that the aggrieved party had means of discovering the truth. |

**DISTINCTION BETWEEN CONTINGENT CONTRACT AND WAGERING AGREEMENT**

| Basis of distinction                     | Contingent contract                                                                                                                                                                | Wagering agreement                                                                                                                                          |
|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. Meaning</b>                        | A contingent contract is a contract in which the promisor undertakes to perform the contract upon the happening or non-happening of an event, which is collateral to the contract. | A wagering agreement is one in which one person agrees to pay a certain amount of money to the other on the happening or non-happening of a specific event. |
| <b>2. Nature of event</b>                | The event is collateral to the contract, i.e., not a part of the promise or consideration of the contract.                                                                         | Event is the sole determining factor.                                                                                                                       |
| <b>3. Reciprocal promise</b>             | There is no reciprocal promise in a contingent contract.                                                                                                                           | The wagering agreement consists of reciprocal promises.                                                                                                     |
| <b>4. Interest in the subject matter</b> | The parties are interested in the subject-matter of such contracts. Therefore, the happening or non-happening of the event is material for them.                                   | The parties to a wagering agreement have no other interest in the subject-matter of the agreement except the winning or losing the money at stake.          |
| <b>5. Validity</b>                       | A contingent contract is a valid contract.                                                                                                                                         | A wagering agreement is a void agreement. In the State of Maharashtra and Gujarat, it is illegal.                                                           |
| <b>6. Nature of contract</b>             | All contingent contracts are not wagering agreements because all contingent contracts are not void.                                                                                | All wagering agreements are contingent agreements because their performance is dependent upon uncertain future events.                                      |



## **Business Laws**

Many business laws in India precede the nation's independence in 1947. For example, the Indian Contract Act of 1872 is still in force, albeit specific contracts, for example, partnerships and the sale of merchandise are presently covered by newer laws. The Partnership Act of 1932 covering partnership firms in India. Business laws regulating chartered accountants and cost accountants were passed in 1949 and 1959, respectively. The Banking Regulation Act of 1949 continues to control private banking companies and manage banks in India. In 2012, it was modified by the Banking Law (Amendments) Act. Under these amendments, the Reserve Bank of India (RBI) was given the power to restrict voting rights and shares obtaining in a bank. The RBI established the Depositor Education and Awareness Fund. Banks are presently able to issue both equity and preference shares under RBI guidelines.

While India is often criticized for complex regulations, it is essential to keep in mind that that in some cases, these laws are simpler than those of the U.S. Furthermore, most regulations are consistent the nation over, and attorneys in India can practice in any state. Filing lawsuits is seldom productive in most commercial disputes since legal disputes can delay for quite a long time and collection can take even longer. For large deals, binding third-nation discretion can be the best method to resolve disputes.

After India's economic development in the 21st century, the Ministry of Corporate Affairs endorsed the Competition Act of 2002 and the Limited Liability Act in 2008. These promote sustainable competition in markets, preclude against competitive business practices, and protect consumer interests while ensuring free trade.

The Parliament of India passes and amends regulations for the two businesses and investors. Notwithstanding arrangements from the Companies Act of 1956, the Companies Act of 2013 features arrangements regarding mergers and acquisitions, board room decision-making, related gathering transactions, corporate social responsibility, and shareholding. The act was additionally modified through the Companies Act of 2015 which abolished the procedural regular seal, declarations for the commencement of businesses, and minimum settled up capital requirements. The amendment likewise relaxed governing-related gathering transactions while limiting access to strategic corporate resolutions in India.

As a member of the International Labor Organization, India offers security for employees. These include the Payment of Wages Act of 1936, the Industrial Employment Act of 1946, the Industrial Disputes Act of 1947, the Payment of Bonus Act of 1965, and the 1972 Payment of Gratuity Act. Protections include yearly bonuses of 8.33% and separation fees of around 15 days per year of employment. Other labor laws, for example, the Building and Other Construction Workers Acts of 1996 and the Workmen's Compensation Act of 1923 (amended in 2000) are in effect. Passed in 1926, the Trade Unions Act deals with the registration, rights, liabilities, and responsibilities of trade associations. The Industrial Disputes Act of 1946 regulates trade associations and matters between industrial employers and employees.

Business laws in India include consumer protection. The Consumer Protection Act, 1986 mandates Consumer Dispute Redressal Forums at neighborhood and public levels. Older laws, for example, the Standards of Weights and Measures Act of 1956, ensure reasonable competition in the market and free progression of the correct information from providers of merchandise and enterprises to consumers.

Due to the development of trade, the Indian government passed the Foreign Trade (Development and Regulation) Act of 1992 to facilitate imports and augment exports. The serving Exports from India Scheme (SEIS) substituted the Served from India Scheme. The SEIS extends the responsibility-free prescription to Indian service



providers and provides notified services in a specified mode outside the nation. Under the Export Promotion Capital Goods Scheme, the export commitment requires six times the obligation saved on imported capital products; in the case of neighbourhood sourcing of capital merchandise, the export commitment is reduced by 25%. Beyond merchandise and enterprises, the Foreign Exchange Management Act of 1999 regulates foreign exchange transactions including investments abroad.

As a founding member of the World Trade Organization in 1995, India has updated business laws in terms of copyrights, patents, and trademarks to meet the Agreement on Trade-Related Aspects of Intellectual Property Rights. Indian companies and the federal government honour worldwide IP rights. However, because music copyrights are different in India, both Indian and Western IP owners in the entertainment industry have suffered due to computerized theft. Even thus, there are few IP-related disputes outside of several celebrated pharmaceutical industry cases. In 2013, India's Supreme Court refused Novartis an extension to update its cancer drug Glivec due to "evergreening" charges.

E-commerce and online growth of companies prompt India to create regulations to cover cyber law and security agreements, for example, the techno legal regulating provisions in the Companies Act of 2013. The Information Technology Act of 2000 is the essential law for e-commerce regulation in India. In 2008, the IT Act was an amendment to provide clear legal recognition of digital transactions.

## DISCHARGE OF CONTRACT

When the rights and obligations arising out of a contract are extinguished, the contract is said to be discharged or terminated.

A contract may be discharged by any of the following ways

|                                      |                                 |                                                           |                  |                     |                       |
|--------------------------------------|---------------------------------|-----------------------------------------------------------|------------------|---------------------|-----------------------|
| By performance – Actual or Attempted | By mutual consent or agreement. | By subsequent or supervening impossibility or illegality. | By lapse of time | By operation of law | By breach of contract |
|--------------------------------------|---------------------------------|-----------------------------------------------------------|------------------|---------------------|-----------------------|



## 1. Discharge by Performance-

Performance of a contract is the most popular manner of discharge of a contract. The performance may be either Actual performance or Attempted performance.

**A. Actual performance:-**When each party fulfils his obligations arising out of the contract within the time and in a manner prescribed, it is called the actual performance and the contract comes to an end.

**B. Attempted performance or Tender:-**When the promisor offers to perform his obligation, but is unable to do so because the promisee does not accept the performance, it is called " **Attempted Performance**" or "**tender**". Thus tender is not actual performance but is only an offer to perform the obligation under the contract. **A valid tender of performance is equivalent to performance.**

**Essentials of a valid tender:-**if it fulfils the following conditions:-

1. It must be unconditional. If A who is a debtor of company B, offers to pay if shares are allotted to him at par. IT is not a tender.
2. It must be made at proper time and place:- A is tenant of B. H offers him rent at a marriage party. B is not bound to accept as tender is not made at a proper place.
3. It must be of the whole obligation contracted for and not only of the part:- e.g. deciding of his own to pay in the installments and offering the first installment was held invalid tender as it was not of the whole amount due.
4. If the tender related to the delivery of goods, it must give a reasonable opportunity to the promisee for inspection of goods so that he may be sure that the goods tendered are of contract description.
5. It must be made by a person who is in a position and is willing to perform the promise.
6. It must be made to the proper person i.e. the promisee or his authorized person.
7. If there are several joint promisees, an offer to any one of them is a valid tender (but the actual payment must be made to all joint promisees, and not to any one of them.)
8. In case of tender of money, exact amount should be tendered in the legal tender money.

**Effect of refusal to accept a valid tender:** The effect of refusal to accept a properly made "**offer of performance**" is that the contract is deemed to have been performed by the promisor. And the promisee can be sued for breach of contract. Thus we can say that "**a valid tender discharges the contract.**"

## 2. Discharge by Mutual Consent or Agreement:

A contract is created by means of an agreement, it may also be discharged by another agreement between the same parties.-

**A. Novation:** "Novation occurs when a new contract is substituted for an existing contract, either between the same parties or between different parties, the consideration mutually being the discharge of the old contract." If the parties are same, then small changes in the in the terms of contract is called "alteration" and not "Novation". For being "Novation", the changes must be of significant nature.

Novation cannot be compulsory, it can only be with the mutual consent of all the parties.

**B. Alteration:-**It means that change of one or more of the material terms of a contract. A material alteration is one which alters the legal effect of the contract. e.g. change in the amount of money, change in the rate of interest etc.

**Note** that a material alteration made in a contract by one party without the consent of the other will make the whole contract void and no person can maintain an action upon it.

**C. Rescission.** A contract may be discharged before the date of performance, by agreement between the parties to the effect that it shall no longer bind them. Such an agreement amounts to "**Rescission**" or cancellation of the contract, the consideration being the abandonment by the respective parties of their rights under the contract. Example A promises to deliver some goods to B on say 14<sup>th</sup> Nov. 2006. But before



the date of performance i.e. 14<sup>th</sup> Nov. 2006, A and B mutually agree that the contract will not be performed. The contract stand discharged by rescission.

If there is non performance of a contract by both the parties for a long time without complaint, it amounts to an implied rescission.

Note: In rescission, the existing contract is cancelled by mutual consent without substituting a new contract in its place.

**D. Remission.** It is defined as "Acceptance of lesser amount than what was contracted for or a lesser fulfillment of the promise made"

**E. Waiver.** It means deliberate giving up of a right which a party is entitled to under a contract whereupon the other party to the contract is released from his obligation. Example A promises to stitch a Shirt for B if B sings a song in A's party and accepting it B sings a song in A's party. Then later on B says there is no need to stitch shirt for me, to which A gives his consent. Thus the contract is terminated.

### **3. Discharge by Subsequent or Supervening Impossibility or Illegality.**

**Impossibility at the time of contract.** If you contract for something impossible, the agreement is void *ab initio* the promisor knows about the impossibility after using reasonable efforts, the promisor is bound to compensate the promisee for any loss he may suffer because of non performance of the promise, even if the agreement being void *ab initio*

**Subsequent impossibility.** Impossibility is found out after the contract is made, "A contract to do an act which, after making the contract, becomes impossible or unlawful, becomes void when the act becomes impossible or unlawful."

Conditions for It...

- (i) the act should have become impossible.
- (ii) The impossibility should be by reason of some event which the promisor could not prevent.
- (iii) the impossibility should not be self induced by the promisor or due to negligence.

To be impossible, it is sufficient that it becomes impracticable or extremely hazardous or useless from the point of view of the object and purpose which the parties had in view,

If the performance of a contract becomes impossible by reason of supervening impossibility or illegality of the act, it is logical to absolve the parties from further performance of it as they never did promise to perform an impossibility.

### **4. DISCHARGE BY LAPSE OF TIME.**

In some circumstances, the laps of time may also discharge a contracts, e.g. the period of limitation for simple contracts is three years the under limitation Act and therefore on default by a debtor, if the creditor does not file a suit of recovery against him within three years of default, the debt becomes time barred and the creditor will not get the help of the law. This in effect discharges the contract. 'Where times is of essence', if the contract is not performed on time, the contract comes to an end, and the party not at fault need not perform his obligation and may sue the other party for damages.

### **5. DISCHARGE BY OPERATION OF LAW: -**

A contract is discharged by operation of law in the following cases:-

**(A) Death:** Sometimes a contract is of a person nature and involves personal skills, of promiser, of promisor, In such cases the contract is discharged on the death of the promisor. In such cases the contract is discharged on the death of the promisor.

**(B) Insolvency:** When a person is adjudged insolvent he is released from his all liabilities in current order of adjudication. His rights (Assets) and liabilities are transferred to the official assignee or official receiver, on the case may be.

**(C) Merger of rights:** Sometimes, inferior right of a person under the some or other contract, in such a case the inferior, right is vanished and is not required to be enforced, For example an ordinary debt can be merged. In to rights, of ownership in such case the inferior right need not to be enforced because this right have merge in to a superior right of mortgage or ownership.



**renaissance**

college of commerce & management

**(D) Loss of evidence of contract:-**

There the evidence of the existence of the contract is lost or vanished. The contract is discharged for example document of contract is lost or destroyed and not other evidence is available the contract is discharged.

**6.DISCHARGE BY BREACH OF CONTRACT:-**

A contract is sometimes discharged, by its breach generally, Breach of contract means refused. Or future of any one party to perform his contractual obligation under the contract specifically a breach of contract occurs when a party to a contract does any of the other following things.

- (1) Fails or refuses to perform his obligation under the contract.
- (2) Disable himself from performing his part of the contract.
- (3) Make the performance of contract impossible by his own acts.



**renaissance**

college of commerce & management

---

## UNIT-II

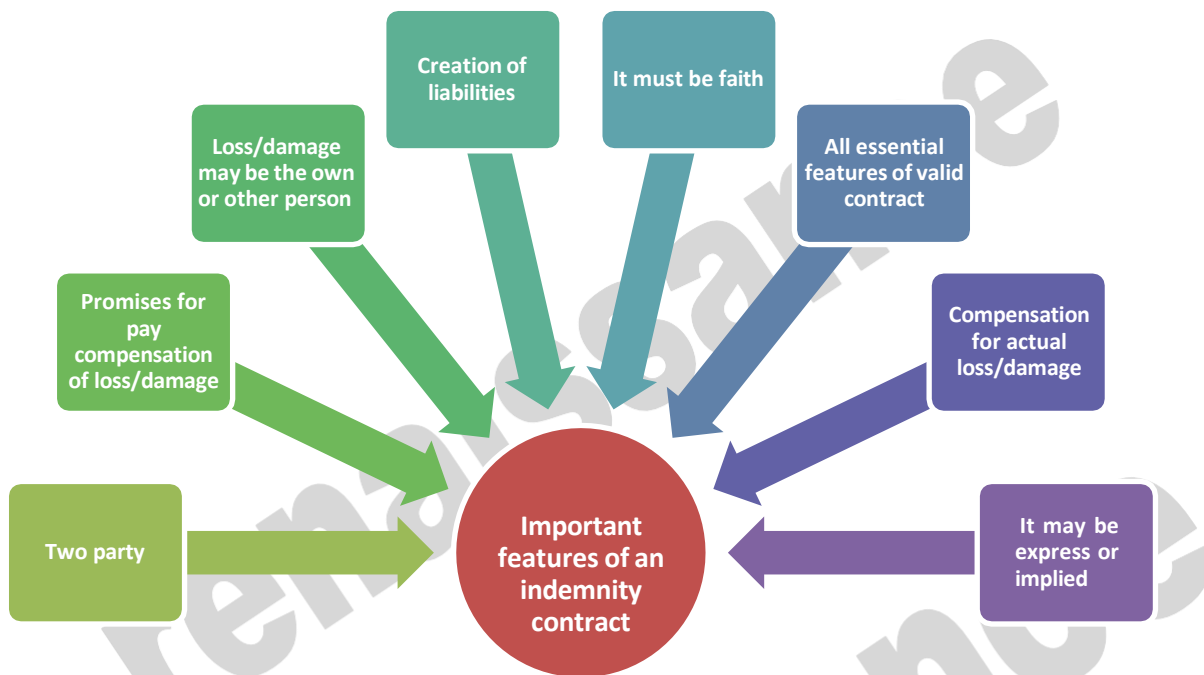
### **INDEMNITY AND GUARANTEE CONTROL**

The contract of indemnity and guarantee are special kinds of contracts. These contract are therefore also required to fulfill all the essential of a valid contract.

**Indemnity Contract:** *Indemnity contract is a type of contingent contract. The term 'Indemnity' Simply means 'Making Somebody Safe' or 'Paying Somebody back'.*

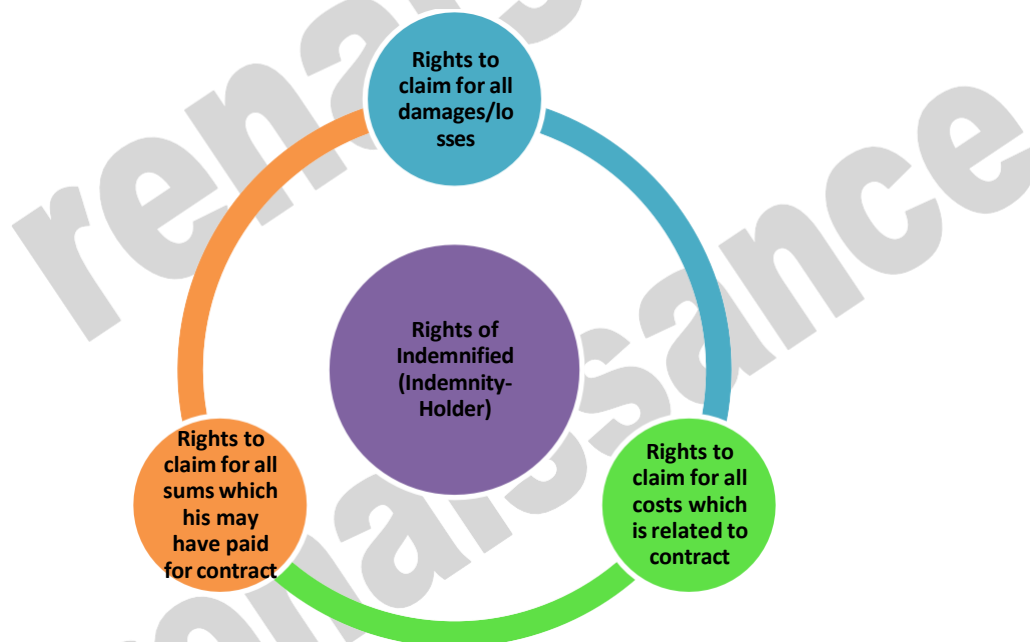
**Section 124** of contract Act defines that "A contract by which one party. Promises to save the other from loss caused to him by the conduct of the promise himself by the conduct of any other person, is called a contract of indemnity".

The party who gives indemnity or who promises to compensate for or to make good the loss, is called. Indemnifier and the party for whose protection or safety the indemnity is given or the party whose loss is made good is called 'Indemnified' or 'indemnity holder'.

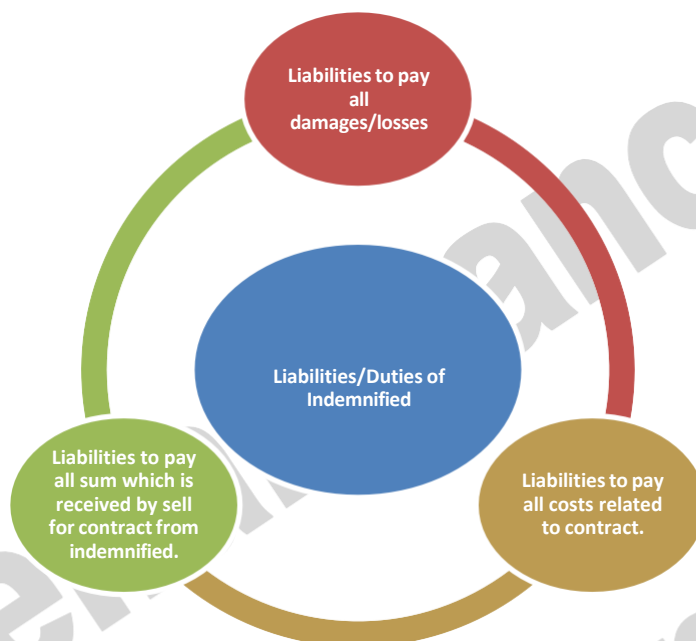


Loss/damage may be caused by some event, or accident, or some natural phenomenon or disaster.

### **Rights of Indemnified (Indemnity-Holder) –**



### **Liabilities/Duties of Indemnified –**



## Guarantee Contract

The object of the contract of guarantee is to enable. A person to obtain an employment, or a loan, or some goods or service on credit,

**According to section 126 of the 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."

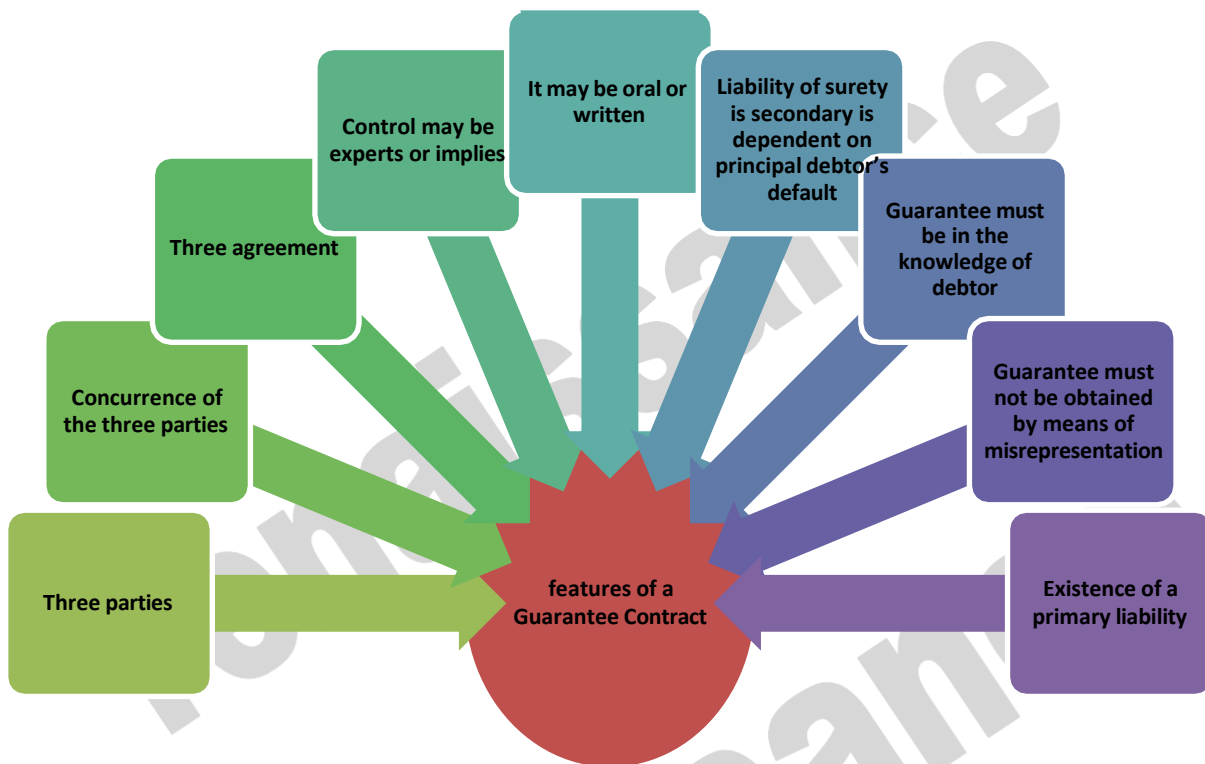
The person who gives the guarantee is called the '**Surety**' or '**guarantor**' & the person in respect of whose default the guarantee is given is called the **principal debtor** or he is the party on whose behalf. Guarantee is given and the person to whom the guarantee is given is called the '**Creditor**'.

**Essential features of a Guarantee Contract –**



**renaissance**

college of commerce & management





## DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND GUARANTEE

| S.No. | Different Basis           | Indemnity Contract                                                         | Guarantee Contract                                                                                                                   |
|-------|---------------------------|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| 1.    | Nature of Contract        | Promises to save the other from loss.                                      | One party promises to discharge the liability of the third party in case of his default.                                             |
| 2.    | No. of Parties            | Only two parties are there                                                 | There are three parties.                                                                                                             |
| 3.    | No. of contracts          | There is only one contract                                                 | There are three contract between debtors, creditors and surety.                                                                      |
| 4.    | Nature of Liability       | The liability of the indemnifier is primary and independent.               | The liability of the surety is secondary and dependent.                                                                              |
| 5.    | Arising of Liability      | Indemnifier's liability arises only on the happening of a contingency.     | Arises only after the default of debtor in payment.                                                                                  |
| 6.    | Existence of debt or duty | There is no existence debt or duty in this contract.                       | There is always some existing debt or duty in this contract.                                                                         |
| 7.    | Request by the debtor     | It is not necessary for the indemnifier to act at the request indemnified. | The surety generally gives guarantee to the request of the debtor.                                                                   |
| 8.    | Right to sue              | The indemnifier cannot sue the third party for loss in his own name.       | It surely has discharged. The debt after the default of the principal debtor, he becomes entitled to sue the debtor in his own name. |

### Kinds of Guarantee -





1. **Specific or Simple Guarantee:** When a guarantee is given in respect to a single debt or specific transaction is to come to an end when the guarantee debt is paid or the promise is duly performed. It is called a specific or simple guarantee.
2. **Continuing guarantee:** Section 129, of the contract Act defines a guarantee which towards to a series of transaction, is called a continuing guarantee, thus, a continuing guarantee is not confined to a single transaction but keeps on moving to several transaction continuously.

**Revocation of Guarantee** – Revocation of guarantee means cancellation of guarantee already accrued, it may be noted that the specific guarantee cannot be revoked if the liability has already secured. However a continuing guarantee can be revoked and on the revocation of such a guarantee. The liability of the surety or guarantor comes to an end for the future transaction. The surety continues to be liable for the transactions which have taken place up to the time of revocation. A continuing guarantee may be revoked in any of the following ways-

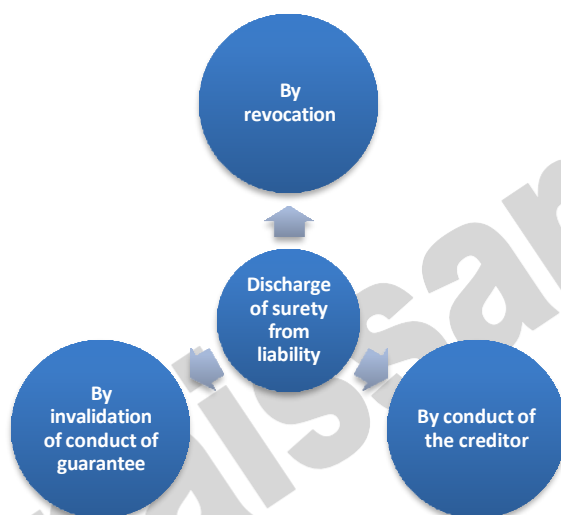
**A Guarantee may be revoked in any of the following ways-**

1. *By notice of revocation.*
2. *By death of surety.*
3. *By discharge of surety in various circumstances*
  - A. *By novation (Sec.62)*
  - B. *By variance in terms (Sec. 133)*
  - C. *By release/discharge of principal Debtor (Sec.-134)*
  - D. *When the creditor events in to an agreement with the principal debtors (Sec.13..)*
  - E. *By creditor act or omission impairing surety's eventual remedy (Sec. 139)*
  - F. *By loss of security "(Sec. 141)*
  - G. *By invalidation of contract (Sec.142,143,144)*

**Nature and Extent of Surety's Liability –**

1. The liability of surety is co- extensive.
2. The liability of surety arises the same moment when default is made by the principal debtor.
3. The surety is free to restrict limit his liability.
4. Sometimes the surety is liable though the principal debtors is not liable.
5. If there is a condition precedent for the surety's liability; the surety will be liable, only when that condition is fulfilled first.
6. In a continuing guarantee liability of surety extends to a series of transaction over a period of time.
7. The surety will not be liable if the creditor has obtained guarantee either by misrepresenting a material fact regarding the transaction or by keeping silence to material circumstances.
8. A discharge of principal debtor by operation of law does not discharge the surety from liability.

**Discharge of surety from liability -**



The following are the modes or circumstances under which a surety is discharge from his liability –

1. **By revocation**
  - a) Notice by surety
  - b) Death of surety
  - c) Notation.
2. **By conduct of the creditor**
  - a) Variance (change) in terms of the contract
  - b) Release or discharge of the principal debtor.
  - c) Certain arrangements made by the creditors with the principal debtors without the consent of surety,
  - d) Creditors act or omission impairing surety's eventual (ultimate) remedy.
  - e) Loss of security.
3. **By invalidation of conduct of guarantee**
  - a) Guarantee obtained by misrepresentations
  - b) Guarantee obtained by concealment
  - c) Failure of co-surety to join a surety

## RIGHTS OF SURETY

**Right against  
the Principal  
debtor**

**Right against  
the Creditor**

**Right against  
the Co-Sureties**

### I. Right against the Principal debtor



**renaissance**

college of commerce & management

---

1. Right of subrogation

2. Right of indemnity

**II. Right against the Creditor**

1. Right to security

2. Right to claim set off

**III. Right against the Co-Sureties**

1. Equal contribution

2. Liability of co-securities bond in different sums

3. Right to share benefits of securities.