

Commerce
B.Com Hons. (Part 2)
Paper-Business Law

Prof. (Dr.) Reyazuddin

Topic:---AGENCY CONTRACT

WHO IS AN AGENT?

An Agent is a person employed to
do any act for another

or

represent another in **dealing**
with third persons

RULES OF AGENCY

1. Whatever a person competent to contract may do himself, he may do through an agent.
 2. He, who does through another, does by himself.
- *Therefore, the acts of an agent are the acts of the principal (subject to certain conditions*)* **where personal skill is involved**.*

CONCEPT OF AGENCY

- It is only when a person acts as a representative of the other in business negotiations, that is to say, in the **creation, modification or termination of contractual obligations**, between that other and third persons, that he is an agent...

WHO IS A PRINCIPAL?

- The person for whom such act is done, or who is so represented, is called the principal.

WHO CAN BE A PRINCIPAL

- Any person who is of the **age of majority** according to the law to which he is subject, and who is of sound mind, may employ an agent.

WHO CAN BE AN AGENT

- As between the principal and third person, any person can become an agent, **even if he is not competent to contract** otherwise.
- If a person not competent to contract is appointed agent, principal is bound by his acts although such agent cannot be held liable by either the principal or third party.

TEST OF AGENCY

➤ ACTS OF AN AGENT ARE ACTS
OF THE PRINCIPAL

TEST OF AGENCY

1. Whether the person has the capacity to bind the principal & make him answerable to the third parties.
2. Whether he can create legal relationship between the principal & such third parties & thus establish a privity of contract between the principal & third parties.

Agent & Servant

- An agent has the authority to act on behalf of his principal and to create **contractual relations** between the **principal** & a **third party**.
- A principal has the **right to direct** what the agent has to do: but a master has not only the right, but also the **right to say how it is to be done.....**

Agent & Servant

- While the servant is paid by way of **salary or wages**, the agent receives **commission** on the basis of work done.
- A master is responsible for the wrong of his servant if it occurs in **the course of employment**. A principal is liable for his agent's wrong done within **the scope of authority**.

CONSIDERATION?

- No consideration is necessary to create an agency.

RELATIONSHIP OF A PRINCIPAL AND AGENT

- A contract of agency is one of good faith.
- The relationship is fiduciary.

KINDS OF AGENTS

➤ MERCANTILE:

- Brokers
- Commission Agents
- Bankers
- Factors

➤ NON MERCANTILE:

- Solicitors
- Insurance Agents*
- Wife*

Insurance Agent

- LIC has regulations on the appointment & functions of agents. An agent may be authorised by the Corporation to collect and remit renewal premiums under policies on such conditions as may be specified.
- Harshad J Shah V LIC (1997)
 - 3rd semi-annual Premium paid to agent-bearer cheque-encashed-but did not deposit even after grace period-meanwhile insured dies-agent deposits premium the next day-by then the policy had lapsed-in his appointment letter agent was not authorized to collect premium.

Wife as an agent

- There must be a domestic establishment for a wife to have an implied authority of the husband to buy articles of household necessity.
- Debenham V Mellon (1880)
 - Hotel manager's wife living with him in hotel incurring debt for clothes payment for which demanded from the husband-no domestic establishment; hence husband not liable

CREATION OF AGENCY

- EXPRESS: Word of mouth or in writing.
- IMPLIED: By inference from the circumstances of the case.
 - Agency by estoppel.
 - Agency by holding out.
 - Agent out of necessity.

Estoppel

➤ Pickering V Busk (1812)

- Purchaser of hemp-allows it to remain in custody of broker-ordinary business to buy and sell-broker sells it

➤ Kashinath Das V Nisakar Raut (1962)

- Landlord appoints tahsildar to manage agricultural lands-land let out to tenants on certain terms

Necessity

➤ Sims & Co V Midland Rly Co (1913)

- Butter consigned – delay in transit owing to strike – goods being perishable sold by the company

➤ Great N Rly Co V Swafield (1874)

- Horse consigned not received at the destination- arrangement for horse to be placed with stable keeper-company allowed to recover the charges of stable-keeper

Necessity

➤ Necessity arises only when:

1. Inability to communicate with principal

– Gwilliam V Twist (1895)

- Policeman thinking driver of bus is drunk orders him to discontinue driving-driver and conductor authorise a passerby to drive bus to company (defendant) yard quarter mile away-negligence of that person and injury is caused to plaintiff-Plaintiff's case failed as there was no necessity.

Necessity

➤ Necessity arises only when:

2. Act should be reasonably necessary

- Sachs v Milkos (1948)
- Furniture allowed to be kept free of charge in defendants house – three years later space required- two letters sent to last known address of plaintiff- No reply, so furniture sold- six years later plaintiff claimed the furniture
- Munro V Willmott (1949)
- Car left in yard without payment-conversion of yard into garage- unsuccessful efforts to communicate –car repaired and sold.

EXTENT OF AGENT'S AUTHORITY

1. Actual or real authority.
 1. Express.
 2. Implied.
2. Ostensible or apparent authority.
3. Authority in emergency.

Ostensible Authority

➤ Watteau v Fenwick (1893)

- Manager of hotel –cigar purchase.

➤ Kannelles v Locke (1919)

- Act of a complete imposter at a small hotel, where the plaintiff arrived one night.

• DESU v Basanti Devi (2000)

- Premium deducted from salary but not remitted to LIC. LIC contented that DESU was not its agent. For the employee, DESU was agent of LIC to collect premium.

- When an agent has incurred obligations to third persons on behalf of his principal, the principal is bound by such obligations
- Terence Correya v MUL (2005)
 - Booking of car with dealer-draft drawn on MUL-balance to be paid on delivery of car-dealership revoked-no car delivered-MUL contends that amount received from customer through dealer was duly credited in the account of the dealer-cars supplied to dealer-dealer responsible to deliver such cars to individual customer.

RIGHTS OF AN AGENT

1. Right of retainer until he is paid in full.
2. Right of remuneration.
 - Green V Bartlett (1863)
 - Agent appointed to sell house -Auction to find purchaser for a house fails-person attending auction takes address of principal-purchases house without intervention of agent-since, the bargain was direct result of agent's effort, he was held entitled to commission

RIGHTS OF AN AGENT

3. Right of lien. (in addition to 1, above).
 - Confers no authority on the agent to sell or otherwise dispose of the property without the consent of the owner
4. Right of indemnification against the consequences of lawful acts.
5. Right of indemnification against the consequences of acts done in good faith.
6. Right of compensation.

DUTIES OF AN AGENT

1. Work according to the directions given by the Principal.

— Pannalal Jankidas V Mohanlal (1951)

- Agent purchases goods on behalf of principal-stored in godown pending their dispatch-did not follow instructions of principal to insure them-goods lost in explosion in Bombay harbor – Govt paid 50% in respect of uninsured merchandise-rest to be borne by agent

2. Carry out the work with reasonable care skill and diligence...

DUTIES OF AN AGENT

3. Render proper accounts.
4. Communicate with Principal in case of difficulty.
5. Not to deal on his own account
6. Pay Principal all sums received on his account.
7. Protect and preserve interests of Principal in case of death or insolvency.
8. Not to use information against the Principal

DUTIES OF AN AGENT

9. Not to make any secret profit.

10. Not to put himself in a position where interest and duty conflict.

– De Busche V Alt (1878)

- Ship for sale through agent for £ 90,000-purchased by agent himself without disclosing to Principal-Sold later £ 160,000 to Japanese prince-agent was asked to account for the profit.

11. Not to delegate Authority.

CAN AN AGENT DELEGATE AUTHORITY?

- A person to whom authority has been given cannot delegate that authority to another. (Reason being; when the Principal appoints a particular agent to act on his behalf, he relies upon the agent's skill, integrity & competence.)

WHEN CAN A SUB - AGENT BE APPOINTED?

1. When there is a custom of trade.
2. Nature of work is such that a sub-agent must be appointed.
3. Express or implied permission.
4. Ministerial acts (clerical or routine work).
5. Emergency.

SUBSTITUTED AGENT

- When an agent has an express or implied authority of his principal to name a person to act for him and the agent has accordingly named a person, such a person is not a sub-agent, but he becomes an agent for the principal in respect of the business entrusted to him.

RIGHTS & DUTIES OF PRINCIPAL

- Duties of the Agent become the rights of the Principal
- Rights of the Agent become the duties of the Principal

TERMINATION OF AGENCY

1. By Principal revoking the Agent's Authority.
2. By the Agent renouncing the business of agency.
3. Either the Principal or Agent dying or becoming of unsound mind.
4. When Principal is adjudged insolvent....

IRREVOCABLE AGENCY

WHEN:

- The agency is coupled with interest (the interest of the agent exists at the time of the creation of agency).
- The agent has incurred a personal liability.
- The agent has partly exercised his authority.

Thank you

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Topic:--Bailment

Bailment

- Delivery of goods by one person to another
- For some purpose
- Upon a contract that they shall be returned or disposed off according to the directions of the person delivering them

Bailment

- Delivery of possession (not mere custody)
 - Actual delivery
 - Reaves V Capper (1838)
 - Coat taken by waiter without being asked
 - Kalliaperumal Pillai V Visalakshmi (1938)
 - Melting of jewels-half made jewels handed over to lady every evening-kept in box in the goldsmiths room-key of box in possession of lady-jewels stolen one night.
 - Constructive delivery
 - N R Srinivas Iyer V New India Insurance Company (1983)
 - Car involved in accident-delivered on behalf of insurers to garage for repairs-Insurance company is bailee and garage is sub-bailee-both held responsible for the loss of car in a fire on the premises.

Bailment

- Delivery upon contract
 - In the Indian context, delivery of goods should be made for some purpose and upon a contract that when the purpose is accomplished the goods shall be returned to the bailor.
 - It follows that if a person's goods go into the possession of another without contract, there is no bailment
 - Ram Gulam V Government of UP (1950)
 - Theft-recovery of ornaments by police – disappearance from police custody- State not responsible
 - English law recognises bailment without contract
 - This view has been accepted by the Supreme Court
 - Basava K D Patil V State of Mysore (1977)
 - Theft-recovery of ornaments by police – disappearance from police custody- State held responsible

Bailment

- Goods to be returned to the bailor (or a third party if bailor so directs)
 - Bailment of goods is always made for some purpose and is subject to the condition that when the purpose is accomplished the goods will be returned to the bailor or disposed of according to his mandate.

Duties of Bailor

- Duty of Gratuitous Bailor
 - The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware.
- Duty of Bailor for reward
 - The bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.
 - Reed V Dean (1949)
 - Plaintiff hired motor-launch from defendant for picnic on the river Thames-caught fire-fire fighting equipment on board was out of order-defendant held liable for injury and loss.

Duties of Bailee

- Duty of reasonable care*:
 - In all cases of bailment**, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances take, of his own goods of the same bulk, quality and value as the goods bailed.
 - *Care which the nature and quality of the articles requires
 - **Whether gratuitous or for reward

Duty of reasonable care

- R. S. Deboo v M. V. Hindlekar, 1995.
 - Clothes sent for dry cleaning-liability in case of loss: 20 times laundering charges or half of the value of unreturned articles-expensive clothes destroyed in fire-Questions: a. whether terms & conditions on the reverse of a receipt form part of the contract ? b. whether non return of the article entrusted is prima facie proof of negligence? – bailee is merely a trustee for the insurance amount obtained in respect of goods belonging to bailor.

Duty of reasonable care

- N R Srinivas Iyer V New India Insurance Company (1983)
 - Questions: Whether garage was repairing car on behalf of Iyer & Insurance company was reimbursing on behalf of Iyer? If not, was the garage sub bailee? As a bailee for reward, garage owners duty of reasonable care.

Duty of reasonable care

- Non Contractual Cases:
 - State of Gujarat v Memon Mahomed Haji Hasan 1965:
 - Seizing of trucks by customs-trucks left in open space-parts of truck,tyres & wheels pilfered-customs raise contention that as seizure was lawful there could be no liabilities on law enforcement agency-bailment only under contract-Whether owner had the right to demand the property siezed or its value?

Duty of reasonable care

- Non Contractual Cases:
 - Trustee of the Port of Bombay v Premier Automobiles Ltd 1981:
 - Imported machinery-port trust employees negligent while landing & transferring to warehouse-machine falls off trolley & is damaged-Port Trust Act had given immunity to the Board & its employees from liability in torts-Board contented that it had no contract with PAL; Board was performing a function vested in it by law-can bailment arise out of possession?

Duties of Bailee

- Duty not to make unauthorised use:
 - If the bailee makes any use of the goods bailed which is not according to the conditions of bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them
 - A contract of bailment is avoidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the condition of the bailment.

Duties of Bailee

- Duty not to mix:
 - Bailee should maintain the separate identity of the bailor's goods.
- Duty to return:
 - Return or deliver the goods according to the bailor's direction, without demand, as soon as the term for which they were bailed has expired, or the purpose for which they are bailed has been accomplished.

Duties of Bailee

- Duty not to set up the defence of *jus tertii*:
 - *That is to say, that the goods belong to a third person.*
 - (Even if there is a person who has a better title than that of the bailor)
 - The third person may apply to the court to prevent the bailee from returning the goods to the bailor & to have the question of title decided.

Duties of Bailee

- Duty not to set up the defence of *jus tertii*:
 - Exception:
 - Juggilal Kamalapat Oil Mills V Union of India (1976)
 - Oil consigned with Railways Kanpur to Calcutta-Reaches Calcutta intact-Sender instructs railways to bring it back to Kanpur-Before formalities are completed oil seized by Food Inspector-found adulterated-destroyed under orders of High Court-Bailee not liable where subject matter is taken away from him by authority of law.

Duties of Bailee

- Duty to return increase:
 - Bailee is bound to return to the bailor the natural increases or profits accruing to the goods during the period of bailment.

Finder of Goods:

- Finder may sue for specific reward offered.
 - *Finder may retain the goods until he receives the reward*
- Finder has no right to sue the owner for compensation of trouble and expense voluntarily incurred by him to preserve the goods & to find the owner.
 - *But he may retain the goods against the owner until he receives such compensation*

Finder of Goods:

- Finder of thing commonly on sale may sell it:
 - If the owner cannot with reasonable diligence be found,
 - Or if he refuses, upon demand, to pay the lawful charges of the finder:
 - *When the thing is in danger of perishing or of losing a greater part of its value*
 - *When the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value*

Rights of Bailee:

- Right to compensation:
 - If the bailor has no right to bail the goods, or to receive them back or to give directions respecting them and the bailee is exposed to some loss
- Right to necessary expenses or remuneration
- Right of lien:
 - Particular Lien
 - General Lien (exercised by Bankers, Factors, Wharfingers, Attorneys of High Court, Policy Brokers)
- Right to sue
 - If a third person wrongfully deprives the bailee of the use or possession of the

PLEDGE

The bailment of goods as security for payment of debt or performance of a promise.

Pledge is a special kind of bailment

- The chief basis of distinction is the object of the contract
 - Bailment is to provide a security for a loan or for the fulfillment of an obligation
- Bailor is called the pawnor
- Bailee is called the pawnee

Delivery of Possession

- Delivery of possession is a necessary element in the making of a pawn
- Delivery may be actual or constructive
 - Delivery of documents of title is equally effective to create a pledge
 - Morvi Mercantile Bank V Union of India (1965)
 - Goods consigned with railways-consignor endorsed railway receipts to bank against advance of 20000-goods lost in transit-bank sues railways for actual worth 35500-trial court rejects-High Court allows 20000-Supreme court held that endorsing railway receipt is a pledge-Pledgee will have the same remedies as the owner of goods

Delivery of Possession

- Pledge by hypothecation
 - Bank of Chittor V Narasimbulu (1966)
 - Cinema projector & accessories pledged with bank-bank allowed property to remain with pledgers since they formed the equipment of a running cinema-pledgers sold the machinery-held there was constructive delivery.

Pledge is a conveyance pursuant to a contract

- Delivery and advance need not be simultaneous
- Pledge may be perfected by delivery after the advance is made
- Delivery may be made before or in contemplation of an advance

Rights of the Pawnee

- Right of retainer:
 - Until dues are paid (interest & expenses)
- Right to extraordinary expenses:
 - Expenses incurred for the preservation of the goods
 - No right of retainer, he can only sue to recover
- Right of sale when pawnor defaults:
 - After giving pawnor reasonable notice of sale
 - If proceeds are less than the amount due, pawnor is still liable to pay the balance & if proceeds are greater than the amount due, the pawnee shall pay over the surplus to the pawnor

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Topic:--Breach Of Contract

BREACH OF CONTRACT

1. Breach Of Contract Occurs When

- Any party to the contract fails to perform his part of the contract
- Any party to the contract makes it impossible for performing is obligation under the contract

2. Breach of contract may occur in two ways

- Anticipatory Breach of Contract
 - A party declares his intention of not performing the contract before the performance is due
- Actual Beach of Contract
 - On Due Date of Performance
 - During the Course f Performance

BREACH OF CONTRACT

- Protection of contractual expectations is the primary purpose of law of contract.
- These expectations are met where parties perform their respective promises, but if any one party fails to perform his obligations and breach the contract, the law provides certain remedies to the promise.

REMEDY

- A legal remedy is a court order that seeks to uphold a person's rights or to redress a breach of the law.
- When one party breaches a contract, the other party may ask a court to provide a remedy for the breach. The court may order the breaching party to pay money to the non-breaching party.

TYPES OF REMEDIES

- SUIT FOR RESCISSION
- SUIT FOR DAMAGES
- SUIT FOR QUANTUM MERUIT
- SUIT FOR SPECIFIC PERFORMANCE
- SUIT FOR AN INJUNCTION

SUIT FOR RESCISSION

- The term Rescission refers to the cancellation of contract.
- In such cases, if one party has broken his contractual relations, the other party may treat the breach as discharge and refuse to perform his part of performance.
- Thus in case of rescission of contract, the aggrieved or injured party is discharged from all his obligations of the contract.

UNDER FOLLOWING CASES THE COURT MAY REFUSE TO GRANT RESCISSION

- The parties cannot be restored to their original positions due to changed circumstances
- The party(s) has acquired rights in good faith and value during subsistence of contract.
- Only a part of the contract is rescinded and this part can't be separated from rest of the contract.
- But if a person rightfully rescinded, he is entitled to compensation for any damage which he has sustained through non fulfilment of the contract by the other party.

EXAMPLES

- **'A'** contracts to supply 10kg of tea leaves for Rs. 8,000 to **'B'** on 15 June. If **'A'** does not supply the tea leaves on the appointed day, **'B'** need not pay the price. **'B'** may treat the contract as rescinded and may sit quietly at home. **'B'** may also file a 'suit for rescission' and claim damages
- A promises B to supply 10 Bags of cement on a certain day. B agrees to pay the price after the receipt of the goods. A does not supply the goods. B is discharged from liability to pay the price

SUIT FOR DAMAGES

- Damages are a monetary compensation allowed to the injured party for the loss or injury suffered by aggrieved party as a result of the breach of contract
- The fundamental principle underlying damages is not punishment but to compensate the aggrieved party for the loss suffered by him in the original position as he would have been.

TYPES OF DAMAGES

- ORDINARY
- SPECIAL
- EXEMPLARY
- NOMINAL DAMAGES.

RULES REGARDING DAMAGES

- The damages must naturally arise in the usual course of things from such breach i.e. the damages must be the proximate or direct consequence of the breach of contract.
- The aggrieved party must have suffered damages by breach of contract.
- Damages are awarded to compensate the loss caused by a party but not to punish the party at default for the breach of contract.
- Amount of damages can be decided at the time of agreement by the mutual consent of both the parties.

EXAMPLES

- Mr. Robin contracts to pay 3 lakh to Mr. Peter on 1st April. Mr. Robin does not pay the money on that day. Mr. Peter unable to pay her debts and suffer a loss. Mr. Robin liable to pay Mr Peter principal amount and also interest on it.
- If the machinery of any factory arrives late and due to this reason one party suffers a loss .

SUIT FOR QUANTUM MERUIT

- It means "AS MUCH AS EARNED" or "in proportion to the work done."
- The phrase 'Quantum Meruit literally means
- When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract so far party.

EXAMPLES

- P agreed to write a volume on ancient armour to be published in a magazine owned by C. For this, P was to receive 100 pounds on completion. When P had completed part of the work, but not the whole, C abandoned the magazine. P was held entitled to get damages for breach of contract and payment quantum meruit for the part already completed.
- A, engages B, a contractor, to build a three storied house. After a part of the house is constructed, A prevents B from working any more. B, the contractor, is entitled to get reasonable compensation for work done under the doctrine of quantum meruit in addition to the damages for breach contract.

SUIT FOR SPECIFIC PERFORMANCE

- Specific performance means the actual carrying out of the contract as agreed.
- Under certain circumstances an aggrieved party may file a suit for specific performance, i.e., for a decree by the court directing the defendant to actually perform the promise that he has made.
- Such a suit may be filed either instead of or in addition to a suit for damages.

Cases Which Fall Under Specific Performance

- When the act agreed to be done is such that compensation in money for its non-performance is not an adequate relief.
- When there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done.
- When it is probable that the compensation in money cannot be got for the non-performance of the act agreed be done.

Specific Performance Will Not Be Granted Where

- Damages are an adequate remedy
- The contract is not certain, or is inequitable to either party
- The contract is in its nature revocable
- The contract is made by trustees in breach of their trust
- The contract is of a personal nature E.g: contract to marry

EXAMPLES

- A agrees to buy and B agrees to Sell a picture and two China Vases . A may Compel B specifically to perform the Contract for there is no standard for ascertaining the actual damage which would be caused by its non performance.
- Mr. Tipu agrees to sell his house to Mr. Amir, who agrees to purchase. But due to some reasons Mr. Tipu commits breach. At the suit of Mr. Amir court may ask Mr. Tipu to carry out the contract.

SUIT FOR AN INJUNCTION

- 'Injunction' is an order of a court restraining a person from doing a particular act.
- It is a mode of securing the specific performance of the negative terms of the contract.
- To put it differently, where a party is in breach of negative term of the contract (i.e., where he is doing something which he promised not to do) the court may, by issuing an injunction, restrain him from doing, what he promised not to do.

EXAMPLES

- A, a singer contracts with B the Manager of a theatre to Sing at his theatre for one year and to abstain from Singing at other theatres during the theatre. She absents herself, B cannot compel A to sing at his theatre, but he may sue her for an injunction restraining her from Singing at other theatres
- G agreed to take the whole of his supply of electricity from a certain company. The agreement was held to import a negative promise that he would take none from elsewhere. He was, therefore, restrained by an injunction from buying electricity from any other company.

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Topic:--Consideration

CONSIDERATION

The life blood of every contract.



Introduction

- Section 2(d) of the Indian contract act 1872 defines consideration as follows: “when at the desire of the promises or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise to called a consideration for the promise”.
- Consideration is the price for which the promise of the other is bought, and the promise thus given for value is enforceable.

- An act- means doing of something.
- An abstinence- promising not to do something.
- A promise- the promise of each party is the consideration for each other

- It is 'quid pro quo' i.e. something in return.
- It is the price of promise.

X agrees to sell his TV set to Y for RS. 8000. TV set is the consideration of Y and RS. 8000 is the consideration of X.

Consideration in English law

- Consideration is an English common law concept within the law of contract, and is a necessity for simple contracts (but not for special contracts by deed). The concept of consideration has been adopted by other common law jurisdictions, including the US.
- Consideration can be anything of value (such as an goods, money, services, or promises of any of these), which each party gives as a quid pro quo to support their side of the bargain. Mutual promises constitute consideration for each other. If only one party offers consideration, the agreement is a "bare promise" and is unenforceable.

Essentials of valid consideration

- Consideration must move at the desire of the promisor.
- Consideration may move at the desire of the promisor.
- Consideration must be lawful.
- A contract must be supported by consideration.
- Stranger to the contract can not sue.
- Consideration may be past, present, future.
- There must be mutuality.
- Consideration must be competent and real.
- Consideration need not be adequate.

Types of consideration

- Present consideration
- Past consideration
- Future consideration

No consideration, no contract

- Agreement made on account of Natural love & affection [sec 25(1)]
- Agreement made to Compensation for past voluntary services [sec25(2)]
- Agreement to pay Time- barred debt [sec25(3)]
- Completed gifts [sec 25]
- In case of contract of Agency [sec 185]
- Contribution to charity

Thank
you



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Topic:--Consent

CONSENT

- According to Section 13 two or more persons are said to consent when they agree upon the same thing in the same sense.
- This means that there should be perfect identity of mind (*consensus ad idem*) regarding the subject matter of the contract.

FREE CONSENT

- To make a contract valid not only consent is necessary but the consent should also be free. [?] Section 13 says the consent is said to be free when it is not caused by any of the following :
 - (a) Coercion - sec 15
 - (b) Undue influence - sec 16
 - (c) Fraud
 - (d) Misrepresentation - sec 17,18
 - (e) Mistake –sec 20,21

COERCION – SEC 15

- Coercion is committing or threatening to commit any act forbidden by the Indian Penal Code, or the unlawful detaining or threatening to detain any property to the prejudice of any person, whatsoever with the intention of causing any person to enter into an agreement .

UNDUE INFLUENCE – SEC 16

- Undue influence is the improper use of any power possessed over the mind of the contracting party. According to section 16 a contract is said to be affected by undue influence when:
- The relations subsisting between the parties are such that one of the parties is in a position to dominate the will of other.
- Uses that position to obtain an unfair advantage over the other.

Following are the parties that can be affected by undue influence

- Doctor and patient
- Lawyer and client
- Guardian and ward
- Trustee and beneficiary
- Teacher and student

DIFFERENCE BETWEEN COERCION & UNDUE INFLUENCE

| Coercion | Undue Influence |
|--|--|
| The consent of the party is taken by committing an act forbidden by Indian penal code. | The consent of the party is obtained by dominating the party by taking unfair advantage. |
| Physical force is exercised. | Moral force is used. |
| Relationship between the promisor & the promisee is not necessary. | Some sort of relationship must exist between two parties to the contract. |

FRAUD – SEC 17

- Misrepresentation of facts may be intentional or innocent. Intentional misrepresentation has been termed as Fraud and innocent misrepresentation has been termed simply as 'misrepresentation' in the contract act.

MISREPRESENTATION – SEC 17-18

- Misrepresentation is a false representation made innocently without any intention of deceiving the other party .It may include two things:
 - (a) wrong statement of a material fact not known to be false
 - (b) Non-disclosure of facts where there is a legal duty to disclose without intention to deceive

Difference between Fraud and Misrepresentation

| Misrepresentation | Fraud |
|--|---|
| There is no intention to deceive or to gain any undue influence. | False statement is made deliberately with a clear intention of deceiving the other party. |
| It makes other contract only voidable at the option of the party whose consent been so caused. | The injured party besides avoiding the contract may also claim the damages. |

MISTAKE – SEC 20,21

Mistake are of two type :-

- Mistake of law
- Mistake of fact

Mistake of law is further divided into three categories:-

- (a) mistake of Indian law
- (b) mistake of foreign law
- (c) mistake as to private rights of the parties – treated as mistake of fact .

Mistake of fact is divided into categories:-

- Bilateral mistake
- Unilateral mistake

*Thank
you!*

Commerce
B.Com Hons. (Part 2)
Paper-Business Law

Prof. (Dr.) Reyazuddin

Topic:--Negotiable instruments & its various types

WHAT ARE NEGOTIABLE INSTRUMENTS ?

According to Section 13 (a) of the Act,
“Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer, whether the word “order” or “bearer” appear on the instrument or not.”

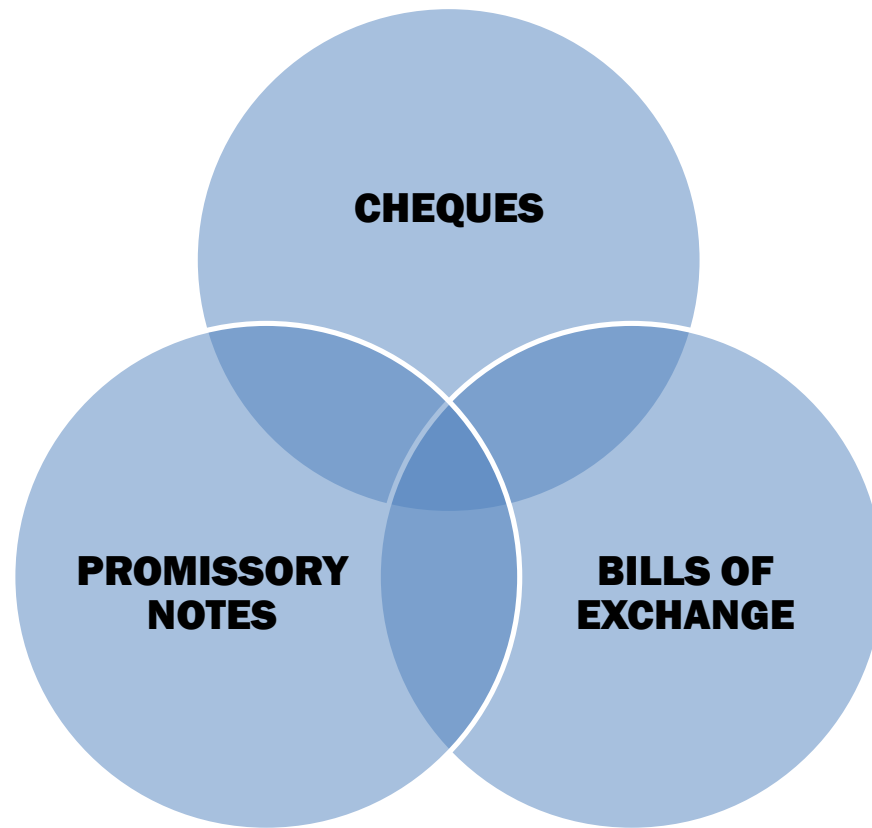
HISTORY OF NEGOTIABLE INSTRUMENTS ACT , 1881

- 1. Dating from the British Colonial Rule, till in force largely unchanged.
- 2. Originally drafted in 1866 by the third India Law Commission.
- 3. Introduced in Dec, 1867 in the council and it was referred to a Select Committee.
- 4. Objections were raised by the mercantile community and the bill had to be redrafted in 1877.
- 5. Bill was revised by a Select Committee but it could not reach the final stage.
- 6. By the order of the Seceretary of State, the bill had to be referred to a New Law Commission.
- 7. On the recommendation of the New Law Commission the bill was re-drafted and again it was sent to a Select Committee.
- 8. Select committee adopted most of the additions recommended by the New Law Commission.
- 9. The draft was prepared for the fourth time and was introduced in the council and was passed into Law in 1881 , being the Negotiable Instruments Act, 1881 (Act No. 26 of 1881)[1].

CHARACTERISTICS OF NEGOTIABLE INSTRUMENT

- i) *A negotiable instrument must be in writing*
- ii) *A negotiable instrument must be signed by its maker*
- iii) *A negotiable instrument must contain an unconditional promise or order to pay some money.*
- iv) *A negotiable instrument must contain certain amount of money only .*
- v) *A negotiable instrument must be freely transferable from one person to another.*

TYPES OF NEGOTIABLE INSTRUMENTS



WHAT IS A CHEQUE ?

According to Section 6 of the Negotiable Instruments Act, 1881 ,



“A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.”

PARTIES INVOLVED :

- 1. DRAWER :** He is the maker of the cheque . He is the account holder who draws the cheque for drawing money from his bank account. He is the person who issues cheque directing the bank to pay a certain sum of money to a certain person or to the bearer.
- 2. DRAWEE :** Drawee is the party upon whom the cheque is drawn . Drawee is the bank. It is the party to whom the drawer gives order to pay the amount to the person named on the cheque or his order to the bearer.
- 3. PAYEE :** Payee is the party who presents the cheque for payment. He is the person who receives money from bank. He is the party in favor of whom cheque is issued. The payee is the person whose name is mentioned on the cheque. If the cheque is made payable to self , the drawer himself becomes the payee.

SPECIMEN OF A CHEQUE :

Specimen of Cheque

| | | |
|---|--------------|--|
| <i>A/c Payee</i> | | DATE <u>17/6/2010</u> |
| Pay <u>Anil Sharma</u> | | OR BEARER |
| RUPEES <u>Twenty-three thousand five hundred and forty and</u> <u>paise seventy-eight only</u> | | Rs. <u>23,540.78</u> |
| SBGEN A/c No. | 000012345678 | |
|  ABC Bank ABC Bank Limited Bank Complex, Madhuban - 900 051. | |  Rakesh Sharma |
| ⑈0000000⑈ 0000000000⑈ 000000⑈ 00 | | |

DIFFERENT KINDS OF CHEQUES

- I. BEARER CHEQUE
- II. ORDER CHEQUE
- III. UNCROSSED / OPEN CHEQUE
- IV. CROSSED CHEQUE
- V. ANTI-DATED CHEQUE
- VI. POST-DATED CHEQUE
- VII. STALE CHEQUE

WHAT IS A PROMISSORY NOTE ?

- **According to Section 4 of the Negotiable Instruments Act, 1881,**
- “A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument.”

PARTIES INVOLVED :

- 1. MAKER OR DRAWER :** The maker is the person who makes and signs the note. He agrees to pay a certain amount on the date of maturity.
- 2. PAYEE OR DRAWEE :** The person in whose favour the promissory note is drawn is called payee. He is also known as drawee or promisee. Usually , the drawee is also the payee.

SPECIMEN OF A PROMISSORY NOTE :

| FORMAT OF A PROMISSORY NOTE | |
|---|----------------------------------|
| Hari Das | 113, Janak Puri, Ambala Cantt |
| ₹ 1,00,000 | 1 st April, 2011 |
| Stamp | |
| <i>Five months after date I promise to pay Sh. Vinay Pujari or order a sum of rupees one lakhs only for value received.</i> | |
| To Shri Vinay Pujari 236, Mall Road New Delhi. | (Signed) Hari Das |

TYPES OF PROMISSORY NOTES

1. PERSONAL PROMISSORY NOTES
2. COMMERCIAL PROMISSORY NOTES
3. REAL ESTATE PROMISSORY NOTES
4. INVESTMENT PROMISSORY NOTES

WHAT IS A BILL OF EXCHANGE ?

According to section 5 of the Negotiable Instruments Act, 1881,

“A bill of exchange is an instrument in writing containing an unconditional order signed by the maker directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.”

PARTIES INVOLVED :

- 1. DRAWER :** The person who draws the bill is called the drawer. In other words, he is the person who grants credit.
- 2. DRAWEE :** The person on whom the bill is drawn for its acceptance by him is called the drawee. In other words, he is the person to whom the credit is granted.
- 3. PAYEE :** The person in whose favour the bill is drawn is called the payee. The payee may be a third party or the drawer himself.

SPECIMEN OF A BILL OF EXCHANGE :

Specimen of Bill of Exchange

| | |
|---------------------|---|
| Rs 20,000/- | Place: |
| | Date: March 03, 2012 |
| STAMP | One month after date pay to me (Mr. A, Drawer) or my order, the sum of Twenty thousand, value received (Signed) |
| Accepted | Mr.A |
| (Signed) | Adress: |
| Mr.B | |
| Date: March 03,2012 | To |
| Adress: | Mr B (Drawee) |
| | Adress: |

CLASSIFICATION OF BILLS OF EXCHANGE :

1. INLAND AND FOREIGN BILLS

2. TIME AND DEMAND BILLS

3. TRADE AND ACCOMODATION BILLS

😊😊😊 THANK YOU 😊😊😊

COMMERCE
B.COM HONS. (PART 2)
PAPER-BUSINESS LAW

PROF. (DR.) REYAZUDDIN

TOPIC:--THE PARTNERSHIP ACT

MEANING OF PARTNERSHIP

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

CHARECTERISTICS

It is the result of an *agreement*.

It is organised to carry on *business.**

That the persons concerned *agree to share the profits of the business*.

That the business will be *carried on by all or any one of them acting for all.**

REAL TEST OF PARTNERSHIP

The real test of partnership is not merely sharing of profits or carrying on of business but of Mutual Agency.

- **Cox V Hickman (1860)**

Law of partnership is an extension of the law of agency.

ACT OF A PARTNER TO BIND THE FIRM

- **Partnership agreement, whereby one partner is given the power to manage the affairs of the firm, and it is stated that whatever he does shall be binding on the partners – does not give the said partner the power to transfer immovable property.**
- **In order to bind the firm an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name or in any other manner expressing or implying an intention to bind the firm.**

- **Partners who have entered into partnership with one another are called individually partners & collectively a firm.**
- **The name under which their business is carried out is called the firm name.**

- **In the case of a partnership, no separate legal entity is created. A partnership is only a putting together of the partners.**
- **The *Income Tax Act* had provided to treat a firm as separate assessable units. (A firm is a separate entity for the purpose of Income Tax)**

KINDS OF PARTNERS

The various kinds of Partners are :

- **Actual,**
- **Sleeping,**
- **Nominal,**
- **Partners for profits only &**
- **Partner by holding out i.e. partner by Estoppel***

MINOR AS A PARTNER

Partnership is a contract. As such all the essential elements of a valid contract must be present. But a minor may be admitted to the *benefits of a partnership* without any consideration but with the approval of all partners.

DURATION OF A FIRM

A partnership may be for a fixed period of time. But where no provision is made by the partners for the duration of the partnership, it is a partnership at will.

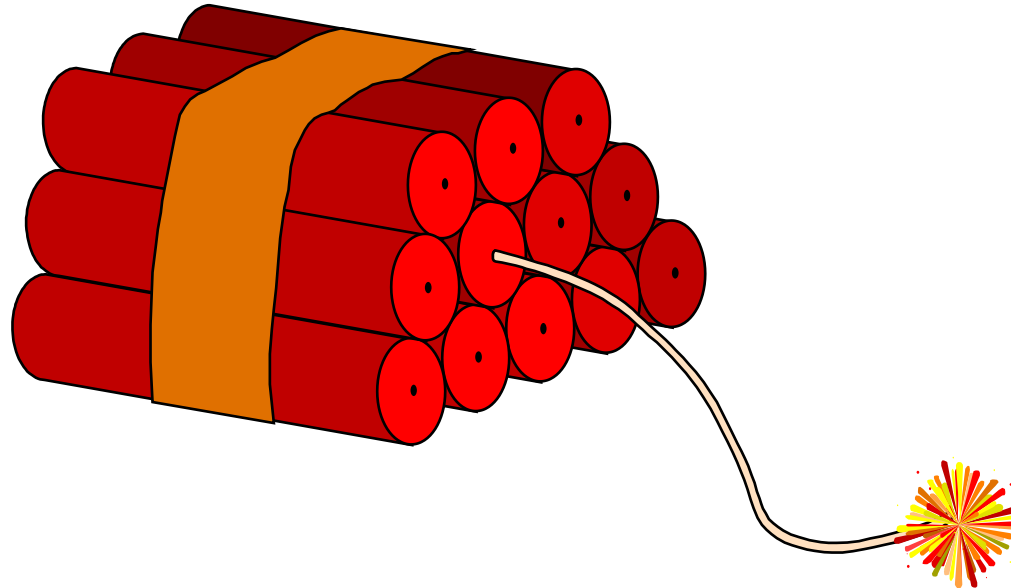
REGISTRATION OF PARTNERSHIP

Partnership Act does not provide for compulsory registration; but:

- 1. A partner of an unregistered partnership firm cannot file a suit against the firm or any partner thereof for the purpose of enforcing a right arising from a contract conferred by the Act.**
- 2. No suit can be filed on behalf of an unregistered firm against any third party for the purpose of enforcing a contract.**

LIABILITY OF A PARTNER

**The liability of partners
is unlimited.**



RIGHTS OF A PARTNER

Right to take part in the conduct of the business

Majority rights

- **Ordinary Matter**

- Right to be consulted & express opinion (can have a contract to the contrary for petty & routine matters)

- **Fundamental Matter**

- No change can be made in the nature of the business without the consent of all the partners

- **Blisset V Daniel (1853)**

- **Majority powers to be exercised in case of need, in good faith for the benefit of the firm.**

RIGHTS OF A PARTNER

Right of access to books; and to inspect & copy any of the books of the firm

Right to indemnity in respect of payments made and liabilities:

- **Incurred by a partner in the ordinary and proper conduct of the business.**
- **Thomas V Atherton (1877)**
 - **Trespass by a colliery**
- **In doing such an act, in an emergency, for the purpose of protecting the firm from loss, as would have been done by a person of ordinary prudence, in his own case, under similar circumstances.**

RIGHTS OF A PARTNER

Right to profits

- **Unless otherwise agreed, partners are entitled to share equally in the profits earned by the firm.**

Right to interest

- **Interest on advance at the rate of 6% p.a.**
- **Interest on capital shall be payable only out of profits**

Right to remuneration

- **Unless otherwise agreed, partners are not entitled to receive any salary or remuneration for taking part in the conduct of the business**

RIGHTS OF A PARTNER

Right to use of partnership property

- **Property originally brought in**
 - **B N Murthy & Sons V V V Sugana (1978) – Land- theatre - firm to exhibit films**
- **Property subsequently acquired**
- **Partner's property in firm's use**
 - **Robinson V Ashton (1875) – Cotton mill case**

RIGHTS OF A PARTNER

Right to be consulted for admission of new partner

No liability before joining (there may be a contract to the contrary)

Right to retire*

Right not to be expelled*

RIGHTS OF A PARTNER

Right of outgoing partner to share in the subsequent profits if his final settlement is not carried out by the other partners

Right of outgoing partner to carry on competing business (there may be a contract to the contrary)

DUTIES OF A PARTNER

Duty of Good Faith (fiduciary relation - every partner should be just, faithful and observe utmost good faith towards every other partner of the firm)

- To carry on the business to the greatest common advantage (He must use his knowledge & skill for the common benefit of the firm)
- **Bentley V Craven (1853) – Sugar refiners case**

DUTIES OF A PARTNER

Due diligence: to attend diligently to the business and use his knowledge & skill to the common advantage of all the partners.

- A partner shall indemnify the firm for any loss caused to it by his **wilful neglect** in the conduct of the business of the firm
- **Sasthi Kenkar V Man Gobinda (1919) – dissolution of firm - managing partners failed to sue firms for amounts due – one claim became time barred & other lost due to insolvency of debtor**

DUTIES OF A PARTNER

Duty to indemnify for fraud in the conduct of the business of the firm.

- **The liability for fraud cannot be excluded by any contract to the contrary.**

Duty to render true accounts

Duty to use the property for the firms purposes

Duty to share in the losses

DUTIES OF A PARTNER

Duty to account for personal profits from partnership transactions

- Any transaction of the firm
- Use of the property of the firm
- Use of the business connection of the firm
- Use of the firm name

Duty to account for profits in competing business (opportunity to make it comes his way while he was partner of the firm)

INTRODUCTION OF A PARTNER

A person may be admitted as a partner with the consent of all the existing partners. An incoming partner does not become liable for any act done prior to his admission as a partner.

- A minor can be admitted only to share the profits of the firm.

RETIREMENT OF A PARTNER

A partner can retire from a firm:

- a) with the consent of all the partners,**
- b) in accordance with an express agreement by the partners, or**
- c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.**

LIABILITY OF A RETIRED PARTNER

A retired partner continues to be liable for all acts of the firm done before his retirement. He continues to be liable as a partner to third parties for any act done by the firm after his retirement until a *public notice is given of the retirement.**

- *except in the case of a sleeping partner

PUBLIC NOTICE

A public notice has to be given:

- On the **retirement** or **expulsion** of a partner
- On the **dissolution** of a registered firm
- On the election to become or not to become a partner in a registered firm by a **minor on attaining majority**

NOTICE TO BE GIVEN TO:

The registrar of firms

The official gazette

Publication in at least one vernacular newspaper circulating in the district where the firm has its place or principal place of business.

EXPULSION OF A PARTNER

A partner may be expelled from the partnership provided the power of expulsion is conferred by the contract between the partners and the power is exercised by a majority of the partners.

The power should be exercised in *good faith*.

- The test of good faith is that the expulsion must be in the ***interest of the partnership***, the expelled partner is served with a notice and that he is given an ***opportunity of being heard***.

INSOLVENCY OF A PARTNER

Where a partner is adjudicated insolvent, he ceases to be partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

The firm is not liable for any act of the insolvent partner after the date of the order of adjudication.

DEATH OF A PARTNER

Subject to contract between the partners, a firm is dissolved by the death of a partner.

No public notice is required of the death of the partner.

Whether or not the firm is dissolved, the estate of the deceased partner is not liable for the acts of the firm done after his death.

TRANSFER OF PARTNER'S INTEREST

A partner may transfer his interest in the firm by sale, mortgage or charge. The transfer may be absolute or partial. It does not entitle the transferee, during the continuance of the firm:

- to interfere in the conduct of business of the firm,
- to require accounts of the firm or
- to inspect the books of the firm.

On transfer of interest by a partner, the transferee only becomes entitled to receive the share of profit of the transferring partner.

DISSOLUTION OF A FIRM

A firm can be dissolved *without the order of court.*

A firm can be dissolved by the *court at the suit of a partner.*

DISSOLUTION WITHOUT COURT ORDER

- **By agreement by the partners**
- **By compulsory dissolution –**
 - When all the partners or all but one partners is insolvent or
 - By the happening of any event which makes it unlawful for the business of the firm to be carried on by the partners
- **When the term of the partnership expires**
- **When the particular adventure for which the firm was constituted is accomplished**
- **On the death of the partner or when a partner becomes insolvent***
- **Dissolution by notice of partnership at will**

DISSOLUTION BY COURT ORDER (ON A SUIT BY A PARTNER)

Insanity of partner

When a partner is permanently incapable of performing duties of a partner

Misconduct of a partner*

- Snow V Milfred (1868) – Case of the adulterous banker

Persistent breach of agreement & destruction of mutual confidence

Transfer of interest in the firm

Business cannot be carried on except at a loss

Any other ground which the court finds as just & equitable

THANK YOU

Commerce
B.Com Hons. (Part 2)
Paper-Business Law

Prof. (Dr.) Reyazuddin

Topic:--THE SALE OF GOODS ACT

The sale of goods is the most common of all commercial contracts.

CONTRACT OF SALE

- **Essentials of a Contract of Sale:**
 - 1. It is a contract.**
 - 2. Between two parties.**
 - 3. To transfer or agree to transfer.**
 - 4. The property in goods.**
 - 5. For a price, that is, money consideration.**

MEANING OF GOODS

- GOODS form the subject of a contract of sale. They mean every kind of **movable property** other than actionable claims & money, and include stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

KINDS OF GOODS

- Goods may be:
- **Existing:** owned & possessed by the seller at the time of sale. They may be classified as specific or ascertained & unascertained.
- **Future:** which the seller does not possess at the time of the contract and which will be acquired, manufactured or produced by him at some future date.
- **Contingent:** the acquisition of which by the seller depends upon a contingency which may or may not happen.

CONDITION

- It is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

WARRANTY

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

CONDITION

- BALDRY V MARSHALL (1925)
 - Plaintiff consults defendants, motor car dealers, for a car ‘suitable for touring purposes’-defendants suggested ‘Bugati’ car-plaintiff accordingly bought the car-which turns out to be unfit for touring purpose-plaintiff sought to reject car-defendants relied on a term in contract that guaranteed the car for twelve months against mechanical defects & excluded every other guarantee and warranty-held plaintiff entitled to reject car and have refund of price as suitability of the car was not a guarantee or warranty, but a condition of the contract.

WARRANTY

- HARRISON V KNOWLES & FOSTER (1917)
 - Plaintiff bought two small ships from defendants relying upon particulars furnished by the defendants that the dead weight capacity of each ship was 460 tons. The capacity in fact was 360 tons. Plaintiff sought to reject the ships. It was held that the representation of capacity was not a condition but a warranty, for which the plaintiff could have sued in damages.

IMPLIED CONDITIONS

- Condition as to title
- Condition in a sale by description.....
- Condition in a sale by sample... (the bulk must correspond with the sample)
- Conditions as to fitness & quality (in the following cases only; in other cases **caveat emptor** applies)
 - Buyer makes known to the seller the **particular purpose** for which he requires the goods.
 - Buyer relies on the **skill & judgment** of the seller (The seller's business is to supply such goods whether he is the manufacturer or producer or not)

IMPLIED CONDITIONS

- Condition as to merchantability
(**exception to the rule of caveat emptor**)
 - Where goods are bought by description from a seller who deals in goods of that description (whether he is manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.
 - Merchantability means essentially that the goods must be fit for the ordinary purpose for which such goods are used.

IMPLIED CONDITIONS

- Condition as to merchantability
 - When applied to food products, the condition of fitness of merchantability requires that the goods should be wholesome, i.e. fit for the purpose of consumption.

IMPLIED WARRANTIES

- Warranty as to quiet possession.
- Warranty as to non-existence of encumbrances.
- Warranty as to disclosure of dangerous nature of the goods to the innocent buyer.

CHANGE OF CONDITION TO WARRANTY.....

- Option of the buyer.....
 - The toaster case...
- When a condition is reduced to the status of a warranty, the effect is not the condition becomes a warranty, but that the condition remains a condition, it is only the remedy which changes.

CHANGE OF CONDITION TO WARRANTY.....

- Circumstances are such that goods cannot be returned
 - When the buyer has accepted the goods & intimates to the seller.
 - When goods have been delivered to the buyer & he does any act in relation to them which is inconsistent with the ownership of the seller.

CHANGE OF CONDITION TO WARRANTY.....

- When, after the lapse of reasonable time, the buyer retains them for unreasonably long time without intimating, the seller that he has rejected them.

EXCLUSION OF IMPLIED CONDITIONS & WARRANTIES

- By express agreement.
- By course of dealings.
- By customs & trade usage.

CAVEAT EMPTOR....

EXCEPTIONS

- When the seller makes a representation of fact, whether innocent or fraudulent, regarding the product....
- When the seller actively conceals a defect in the goods which could not be revealed by ordinary examination.....

CAVEAT EMPTOR....

EXCEPTIONS

- Where goods are supplied by description and they do not correspond with the description.
- When goods are sold by sample & the goods do not correspond with the sample.

Thank you