INDIAN CONTRACT ACT 1872

AGREEMENT AND CONTRACT

Agreement: - An agreement is set of reciprocal promise of two or more persons who agree to do something or not to do something for each other in return (consideration)

Sec-2(e) of THE INDIAN CONTRACT ACT defines every promise and every set of promises forming the consideration for each other as an agreement.

The first step of an agreement is ***proposal or offer. Sec-2 (a)*** of ICA defines the proposal as under "when one person signifies to another his willingness to do or abstain from doing anything with a view to obtain the assent of the other, such act or abstinence. He is said to make a proposal".

Sec 2(b) defines acceptance as under "when the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted." A proposal when accepted becomes promise.

The person who makes the offer is called offeror or promisor & the person to whom the offer is made is known as offeree or promisee.

Definition of contract: - according to sec-2(h) of Indian Contract Act " an agreement enforceable by law is a contract.

Mathematically we can say, Agreement = Offer + Its Acceptance

Contract = Agreement + Its enforceability at law

If we analyze the definition under 2(h) we find two essentials in the definition

1) An agreement between two or more person to do or not to do something.
2) Enforceability of such an agreement at law, in other words, in order to enter into an agreement there must be a proposal or offer by one party & its acceptance by the other party therefore it can be said an agreement is nothing but an accepted proposal, which shall be enforceable in the eye of law.

under sec-10 INDIAN CONCTRACT ACT: "all agreements are contracts if they are made by free consent of the parties competent to contract for a lawful consideration & object & the agreement must not be expressly declared to be void".

ESSENTIAL OF A, VALID AGREEMENT: - All contracts are agreements, but all agreements are not contract, in order to become a contract an agreement must satisfy the following essential ingredients or elements or requirements.

1. LAWFUL OFFER (PROPOSAL & ACCEPTANCE): - For a valid agreement or contract there must be a lawful proposal by one party which is accepted by the other party. & lawfully means offer & acceptance must be followed in a strict sense within the rules of INDIAN CONTRACT ACT.

2. LEGAL RELATIONSHIP: - The parties entering into an agreement must have an intention to create a legal relationship between them, if there is no such intention the agreement will not results in a contract. (e.g. social contract)

3. FREE CONSENT OF THE PARTIES TO THE CONTRACT: - In order to create a contract the agreement must have been entered into with a free consent of the parties. Consent is said to be free when they agree upon the same thing in the same sense at the same time. If the consent of the parties is affected by coercion, fraud, undue influence, misrepresentation & mistake, the consent of parties are called not to be free consent & the agreement is termed as voidable agreement.

4. LAWFUL CONSIDERATION: - Consideration means "quid pro quo" means something in return. An agreement is enforceable at law only when it is supported by a lawful consideration it means something in return when both the parties to the agreement give something & get something in return. The agreement is enforceable at law the agreement to do or not to do something for which the consideration may be in cash or in kind, consideration may be past, present or future but it must be real & lawful as required by the INDIAN CONTRACT ACT.

5. LAWFUL OBJECT: - The agreement must be for lawful object .The object or consideration of an agreement is lawful unless.

A) It is forbidden by law.
B) If permitted it will defeat the provision of law.
C) It is fraudulent.
D) It is immoral.
E) It is opposed to public policy.
F) It involves an injury to person or the property of another person.

6. CAPACITY OF THE PARTIES OR COMPETENT PARTIES: - The parties to the agreement must have the capacity at law to enter into a valid contract otherwise it cannot be enforced by the court of law.Sec-11 says that every person is competent at law to enter into a valid agreement if

A) He has attained age of majority.
B) He is of sound mind.
C) He is not disqualified from entering into a contract by any law.

7. AGREEMENT NOT EXPRESSILY DECLARED TO BE VOID (NULL):- Indian Contract Act 1872 lays down the following agreement are void.

A) agreement in restraint of marriage
B) agreement in restraint of trade
C) agreement in restraints of judicial proceeding
D) agreement the term of which are not certain
E) agreement without consideration
F) agreement were parties are not competent
G) agreement of the object of which is unlawful
H) agreement of wager
I) Agreement to do an impossible thing.

8. LEGAL FORMALITIES:- An agreement may be oral or written. Where the agreement is in written form, as required by the law it must comply the necessary legal formalities such as writing, registration. For example agreement creating to lease, sale of immovable property (mortgage) negotiable instrument, article & memorandum of association of a company etc, writing & registration is compulsory or necessary.

9. FREEDOM FROM VAGUENESS & AMBIGUITY:- The terms of contract should not be erroneous, they should be clearly ascertainable ,if there is ambiguity in the terms of the contract if can be avoided.

10. POSIBILITY OF PERFORMANCE: - Finally the contract should not be to do an impossible things such agreements are not valid for e.g. - A promises to share with b 75% of gold if A creates gold by magic.

Conclusion : under sec 2(h) agreement enforceable by law is a contract sec-10 of Indian contract act consist of different essentials & an agreement become a contract when the essentials of sec-10 are present in the agreement. Hence it can be rightly concluded by saying that all contracts are agreement but all agreements are not contract.

OFFER

PROPOSAL (OFFER):- *A proposal means an offer. The term proposal is defined in sec-2 (o)* as under "when one person signifies to another person his willingness to do or abstain (not to do) from doing anything with a view to obtaining the assent of that other person to such act or abstinence he is said to make a proposal". It is also known as an offer. The person who makes the proposal or offer is known as the promisor, the proposer or the offeror and the person to whom the proposal is made is called the promisee, acceptor or offeree.

MODES OR RULES OF OFFER

1 An offer creates a legal relationship between subject matter and person. A social proposal can never be said as offer, subject matter mean goods in law.

2 The offer must be definite & certain; it means the terms of on offer should be free from looseness & ambiguity & vagueness.

3 an offer may be expressed or implied.

EXPRESSELY OR BY IMPLICATION

An offer made orally or by spoken words or in writing, is known as expressed offer. An offer which is made by impliedly or where the conduct of the person becomes a conclusive proof that the person is making offer, it is called as implied offer.

illustration :

1)' A' proposes by letter or orally to sell out his house to 'B' for the worth of Rs. 50000/- this is an expressed offer.

2 A taxi for hire is standing on road, this is an implied offer made by taxi driver that to carry passenger for fixed fare to be paid by fare chart.

OFFER TO PERSON OR A CLASS OF PERSON: A offer may be made a definite person or to some definite class of person or world of at large (in general). When the offer is made a definite person or to definite class of person it is known as special offer & it may be accepted by the person or persons to whom it is made. Where an offer is made to world at large where anybody can become the offeree by accepting the offer. It is known as general offer for e.g. - a advertise in Times of India that he would pay a reward of Rs. 1000/-, anyone who could find & a reward to world at large & general offer. If there is an advertisement is Asian age by a person that who so ever will bring my last son will be rewarded a worth of Rs 5,00,000/- Mr. X caught a weeping boy on a road and brought the boy to the father & did not claim the reward, latter he tried to claim the reward father refused to pay him held, it was general offer & it should come to the offeree from offer while doing any act the offeree should known the very terms of an offer. In this case the offeree was not aware of the very terms of the offer. Therefore he cannot claim the reward henceforth the offer must be duly communicated & must come into knowledge of offeree. (Lalman Shukla v/s Gauri Dutt)

AN OFFER MUST BE DUELY COMMUNICATED: - In order to bring an offer to the knowledge of offeree, the offer must be communicated to the person for whom it is made otherwise no binding contract can come into being (force existence)

ACCEPTANCE

ACCEPTANCE : Sec-2 (b) of ICA 1872 say's when the person to whom the proposal is made signifies his assent thereto the proposal is said to be acceptance a proposal when accepted becomes a promise.

MODES/RULES OF ACCEPTANCE

A proposal is always made with a view to be accepted. This leads to the rules regarding the valid acceptance.

A) WHO CAN ACCEPT AN OFFER: - An offer can be accepted only by the person to whom it is made .when an offer is made to a class of person it can be accepted by any member of that class. If the proposal is made to the world at large it can be accepted by any person or persons in the world.
B) Acceptance of an offer must be absolute and unconditional.
C) Acceptance must be made within a reasonable time.
D) Acceptance must be made in usual and reasonable manner .i) it may be made by the expressed written words. ii) By expressed spoken words.iii) by conduct (implied). iv) by post. v) By telegram/telephone/fax. vi)By prescribed manner.
E) Mental acceptance is no acceptance.
F) Acceptance must be communicated to offeror, as we have seen that the communication of proposal is necessary for the creation of contract .If anyone mentally accepts an offer but does not communicate it to the offeror by any mode

or if offeree remained silent does not demonstrate its acceptance by his conduct, no contract is created.

In order to create a legally binding contract acceptance of all terms of the offer must be communicated to the offeror. for e.g. – Mr. A makes a proposal to sell his house to Mr. B for a worth of Rs 20000/-.b acceptance the proposal of Mr. A now it the duty of Mr. B to send or to communicate the acceptance to Mr. A if Mr. B write a letter of his acceptance . to Mr. A & the same letter is not reach to Mr. A if it is posted, it will be deemed that the acceptance was kept in the course of transaction that amount acceptance and duly communication of acceptance by the offeree to the offeror.

CONSIDERATION

Definition Sec. 2 (d) " when at the desire of promisor, the promisee or any other person.

a) Has done or abstained from doing something

b) Does or abstains from doing

c) Promises to do, or abstained from doing something.

Such act or abstinence or promise is called a consideration for the promise". It is a general rule of ICA that the contract without consideration is void there is a rule expressed in latin ex-nudo facto not aritio actio means out of bare promise no cause of action arise or in other words when a person has given consideration in a contract he can enforce it. The word consideration is used in technical sense of *'quid pro quo' means something in return* or, the price of the promise. When party to an agreement promises to do something or abstains from doing something he must get something in return subject to certain restrictions if he does not get something in return the agreement in law is considered to be invalid. This something in return is called consideration it is a price or return for the promise to do something or not to do something hence it can be concluded by saying that " no consideration no contract".

ESSENTIALS OF CONSIDERATION

A) The consideration must be at the desire of the promisee:- The first and the foremost cardinal principle is involved in consideration is that an act for becoming or constituting consideration must have been done only & only at the desire or request of the promisor, an act done without the desire of the promisor it is a voluntary act which does not come under the definition of consideration. Any act done at the request or desire of a third person i. e other than promisor may not be a good consideration in the eye of law.

illustration :- A voluntarily saves 'B's goods from fire, A cannot demand payment for his services rendered it is a voluntary act not at the request or desire of Mr. A, a promisor to the contract.

B) The act or abstinence may be done by the promise or any other person. As it is a settled rule that a contract is enforceable if there is a consideration. It is immaterial whether the consideration is moved from the promise or any other person. A promisee who is a stranger to a consideration can enforce the contract, but stranger to a contract cannot enforce unless he is a beneficiary to a contract.

*CASE LAW (CHINNAYA V/S RAMMAYA) :-*FACTS :- Mr. A by a deed of gift, gifted away certain estate to her daughter with a direction that the daughter should pay on annuity to her brother (maternal uncle) had been done by a herself before she gifted the estate. In the same way the daughter entered into an agreement with the maternal uncle agreed to pay the annuity. The daughter however declined to fulfill her promise & the maternal uncle said the daughter under the agreement. The daughter contended that since no consideration had proceeded from the uncle she is not liable to pay an annuity.

THE COURT HELD THAT U/s 2 (d) OF ICA, 1872. The consideration may move from the promisee or any other person. Therefore the brother of Mr. A though a stranger to a consideration was entitled to maintain the suit.

C) <u>A stranger to contract cannot sue upon it</u> :- Under English law neither a stranger to the consideration can suit to enforce the contract nor a stranger to the contract can sue upon it even though the contract is for his benefit. In other words unless & until there is a privity of contract a party cannot sue upon it. Privity of contract means the relationship that subsist between the parties entered into contractual relationship hence if there is a contract between Mr. A & Mr. B. Mr. C cannot enforce it even though the contract is for a benefit of Mr. C. The Indian law is almost same as the English law on the point but the Indian law provides certain exception and even a stranger can sue upon a contract <u>FOLLOWING ARE THE EXCEPTIONS</u>.
   A) a beneficiary under a trust
   B) an assignee
   C) marriage settlement, family partition or agreement
   D) an acknowledgement or estoppel
   E) Contract made through an agent.
   F) Insurance contract.

D) A consideration may be past, present & future past consideration finds no place in English law but it is valid under Indian law e.g. - reward for last article as a gratitude when both the parties give their respective consent to the subject matter & the consideration in an agreement simultaneously for e.g. - give & take principle is followed the consideration is said to be present consideration. When a consideration is supposed to be given in future course of time under agreement (conditions) entered upon the consideration is called as future consideration.

E) Consideration must be real.

F) Consideration need not to be adequate.

G) Consideration must not be illegal immoral or opposed to public policy. If must not be forbidden by law. If must not cause any injury to person or property of anybody & it should not be fraudulent.

EXCEPTION TO THE RULE OF "NO CONSIDERATION, NO CONTRACT".

As we know that the consideration is essential for the validity of an agreement the rule is an agreement made without consideration is void at the same time sec-25 of the ICA provides certain exceptions to the general rule "no consideration no contract" under the following circumstance if an agreement is made without consideration finds a good relation in the eye of law.

EXCEPTION u/sec - 25

1) an agreement made an account of natural love & affection [sec-25 (1) when an agreement is made in writing & registered under the law & based on natural love & affection between close relatives, it is enforceable in law for e.g. - (an agreement between a father & son or husband & wife)
2) A compensation for past voluntary service. a promises compensate a person who has voluntary done something for the promise or something which the promisor was legally compellable to do is enforceable at law even though without consideration for e.g. - a finds B's purse & gives to him . B' promises to give Rs 50/- this is a contract.
3) A promise to pay a time barred debt:- agreement to pay time barred debts when there is an agreement to pay a debts with in a stipulated or fixed time & the time fixed for payment comes to an end & the debts is still un paid. If the parties making an agreement for the payment of a time barred debts means the time fixed for the payment of debts has been elapsed. In the second agreement there is no sign of consideration but it is good in the eye of law & comes under the exception no consideration no contract.
4) creation of an agency:- This the general principal of the institution of agency that the agents will not get the remuneration for their services rendered to the agency in the form of payment but they get their remuneration in the form of commission not form the agency but from the persons who enters into an agreement with the agency although the agreement to do something is with the agency henceforth there is a agreement between the agent and the agency without consideration but the agreement is good in the eye of law.

Conclusion: - as we know that an agreement without consideration is void or in other words as illustrated by saying that no consideration no contract.sec 25 lays down the above mentioned exceptions under which we have seen that if an agreement is not supported by the consideration it is also enforceable in the eye of law therefore it is concluded that if there is no consideration agreement will come into existence.

COMPETANCY OR CAPACITY OF PARTIES (MINORS AGREEMENT)

According to sec -10 an agreement becomes a contract when it is entered into between the parties competent to contract.

"*Who are competent to contract*" sec-11 says every person is competent to contract who is of the age of majority according to law to which he is subject and who is of sound mind and is not disqualified by law for time being in force to which he is a subject.

Incompetent persons

A) Minor – who has not attained the age of 18 years.
B) Persons of unsound mind e.g. idiot, lunatic, drunkards etc.
C) Persons disqualified by law enter into an agreement e.g. insolvent, bankrupt, convict.

Definition of minor:- under the majority act of India 1875 , a minor is a person who has not completed the age of 18 years .there are exceptions .

A) If a guardian of minor is appointed under the act of guardian and wards act 1890. The majority will be determined after he has completed 21 years of age.
B) If the superintendence of minor's property is assumed by court of wards the minor attains the majority act the completion of his 21 years.

Rules regarding minors contracts:- (void ab initio)

1) Minor's contract is absolutely void, "void-ab inito". The very principle laid down in Mohribibee v/s Dharmodas Ghosh is that (the minors contract is void ab initio, not voidable) The principle is that the minor is incapable of judging what is good and what is bad for him. He can neither sue and not be sued upon it.

Facts of the case:-

A minor executed a mortgage for Rs. 20,000/- out of which he received Rs. 8,000/- from the mortgagee subsequently the minor sued for setting aside the mortgage. Mortgagee claimed the refund of a sum of Rs 8000/- paid to minor. The Privy Council held that minors agreement was absolutely void & not merely voidable henceforth the question of refunding the money did not arise at all.

Minor can be a promisee or beneficiary: - in the light of mohribibi decision, a minor contract is completely void. It is a said principle that a minor cannot be sued by the other party on his agreement. but the same question arises as to whether a minor can have as against other party the benefit of his agreement in other words can a minor be a promisee the Madras high court held that a promissory note executed in favour of a minor can be enforced therefore, where a benefit is a accrued to the to a minor agreement with the minor is possible provided the minor is beneficiary thereof.

2) *Specific performance of a minor's contract* - minor's contract being void cannot be specifically enforced. A guardian has no power to bind the minor by contract for the purchase of immovable property. But where the contract is for benefit of minor contract can be specifically enforced.
3) *No ratification* - a minor has to enter into an agreement during his minority cannot subsequently ratify approved & give effect to if on attaining majority. The reason is that minors contracts is void ab initio hence forth it cannot be valid by subsequent actions.

4) *misrepresentation of age (rule of estoppels*) :- Rule of estoppels is not applicable to minors contract a minor who falsely misrepresents himself to be a major & thereby induces other person to enter into an agreement with him or allowed to plead minority as defense or in other words it can be said that there can be no rule of estoppels against a miner. Estoppel is the rule evidence were by a person is stopped to deny from his act omission which he has once entered upon regarding a contract.
5) *Liability of a third person (such as guardian & surety)* :- an agreement entered into by the guardian of the minor on his behalf stands on different footing from an agreement entered into by the minor himself as we know that an agreement by the minor is void. But an agreement by his guardians is valid provided that the obligations & undertaking or winning the power of the law & it is for benefits of minors & miners & minors only or for his legal necessity.
6) *No insolvency against a minor:* - a minor cannot be declared insolvent as he is incapable of contract.
7) minors marriage
8) relinquishment by a minors (to give up his share in the property)
9) service contract
10) Contract of apprentice

Exception:-

What are the conditions under which a minor contract cannot be held as void?

1) *a minor can be a promisee or transferee* :- as we know that the minors contract is void ob-initio on the other hand law does not regard the minor as incapable of accepting benefits e.g. - a promissory note executed in favour of a minor can be enforced the said law doesn't apply in this case.
2) Minor can be a agent: - it is one of the accepted principle of law of agency that a minor can become a agent. He can bind his principal by his act, but unlike other agents he is not personally, liable for his act.
3) Partnership by a minor or minor a partner in the partnership: - a minor cannot enter into a contract of partnership but he can be admitted into the benefits of a partnership with the consent of all partners (see the position of a minor in the partnership.)
4) Minor liability for the necessaries of the life: - as we know that minor contract is void ab initio, a rule laid down in Mohri bibee case a minors property is liable for the payment of reasonable price for the necessities supplied to the minor or to anyone to whom the minor is bound to support. Where an agreement is made between a minor & a trader who under take to supply the necessities of life to the minor on reasonable price, in this contract minor is not personally liable but only the minor's property is held liable. Necessaries of the of life means marriage of the minor, marriage of his sister, cost of defending civil & criminal proceeding before a court of law. Funeral ceremonies of wife & sisters, brothers etc.

Conclusion:- in the light of the above discussion we come to the conclusion that minor has right in the law to enter into a agreement. he is not personally held liable in case of

breach of contract but the liability is imposed only upon the rule minors contracts void ab intio is not applicable in the above discussed exceptions.

VOID AGREEMENTS

Void agreement: - sec-2 (g) says an agreement not enforceable by law is said to be void. A void agreement had no sanctity. It is ineffective & inoperative it does not confirm any right obligation on any person various section is spread over in India contract act which deal with diff types of void agreement which are as under.

A) an agreement made by an incompetent person (sec-11-minors,unsoundmind & disqualified persons)
B) agreement made under mutual mistake (sec-20)
C) agreement made under mistake as to a law not enforce in India (sec-21)
D) agreement that consideration or object of which is unlawful (sec-23)
E) agreement the consideration or object of which is unlawful in part (sec-24)
F) agreement made without consideration (sec-25)
G) agreement in restraint of marriage (sec-26)
H) agreement in restraint of trade (sec-27)
I) agreement in restraint of legal proceeding (sec-28)
J) agreement the meaning of which is uncertain (sec-29)
K) agreement by way of wager (bet) (sec-30)
L) agreement contingent on a certain future events if the event becomes impossible (sec-32)
M) agreement contingent on impossible events (sec-36)
N) agreement to do & impossible act (sec-56)
O) agreement to do on act which subsequently becomes impossible (sec-56)

Voidable agreement - sec 2(i) says an agreement which is enforceable by law at the option of the one or more parties thereto but not of the option of other or others is a voidable agreement. For voidable contract the option of parties or deciding factor for every contract there are 2 parties & when one party become voidable if the party who has option to treat agreement as void does not do so but treat it as valid. In such circumstance the door to enforce valid agreements are open for the party who had not enforce the some as void. where the agreement between two parties are effected by coercion , undue influence, fraud, misrepresentation & mistake the agreement is called voidable agreement & the consent of the parties to the contract are called not free of the time of making the contract.

FREE CONSENT

Sec-13 says that parties to the contract are said to give their consent when they agree upon the same thing in the same sense.

Sec-10 says that for a valid contract the parties consent should be of free will at the time of making a agreement & sec-14 says consent of the parties is said to be free when it is

not caused by coercion under sec-15, undue influence under sec-16, fraud under sec-17, misrepresentation under sec-18 & mistake subject to sec (20, 21, 22)

1) Coercion: - coercion is the committing or threatening to commit the act forbidden by Indian penal code i.e. committing of an offence. By threat one party will be compelled to enter into an agreement. Threat to commit suicide also amounts to act of coercion for e.g.:- Mr. A has unlawfully detained some important document of Mr. B & refuses to give unless he give his consent to an agreement Mr. B fears that document may be destroyed therefore gives his consent, coercion is said to be committed.
2) Undue influence: - when one of the two parties to the contract commands the will of other party & thus gets unfair advantage over the other. The contract is said to be induced by undue influence. The parties to the contract should be closely related & the relation is only determining factor where one party is in dominance over the other party the offence of undue influence is likely to be committed for e.g.:- it the agreement is in between doctor & patient, trustee& beneficiary, teacher & taught (student) the relationship between husband & wife, land-lord & tenants, creditor & debtor does not create the act of undue influence.
3) Fraud: - When a party commits any of the following acts with intent to deceive the other party to induce him to enter into a contract.
    a) Makes a suggestion as a fact which is not true, when he does not believe the same.
    b) Actively conceal a fact.
    c) Makes a promise without any intention of performing it.
    d) Any other act fitted to deceive.
    e) Any act or omission declared by law as fraudulent
4) Misrepresentation:- It means a false statement made by a person who honestly believes it to be true & does not know it to be false it also includes non-disclosure of a material fact.
5) Mistake: - It means an erroneous belief concerning something. A mistake may be mistake of law or mistake of fact.

CONTINGENT CONTRACT

According to sec-31 “a contingent contract is a contract to do or not to do something if some event collateral or incidental to such contract does or does not arise.” Contingent contract means conditional contract in other words it can be said a contract which depends upon some uncertain event & happening. The essence of the contingent contract is that contract is already existing independently but performed later on , on the happening of some or uncertain events this uncertain events are called as collateral events. A contingent contract is therefore not binding on the parties until the specified event does or does not happen all contract of insurance except the life insurance is the example of contingent contract for e.g.:- Mr. A agrees to sell his land to Mr. B if succeed in the case concerning that land, success is the condition & therefore it is contingent contract.

Characteristics of contingent contract

1) The performance of contingent contracts depends on a future event on the happening or non happening of those events.
2) Uncertainty of the event is the second element of a contingent contract. If the happening or non happening of the event is certain or sure then It is not a contingent contract.
3) The event on which the contingent contract depends must be collateral or incidental to the contract.

Rules of contingent contract

1) Enforcement of contract contingent on happening of a future uncertain event. e.g.:- Mr. A promises to buy Mr. B's house. if Mr. B will get after the decision of court of law. Contract is conditional it is enforced only when B get the house in the litigation.
2) Enforcement of contract on non-happening of a future uncertain event. Mr. X promises to pay Mr. Y a certain sum of money if being no-307 does return from its journey from Singapore this contract can be enforced if the being destroyed or meet with an accident.
3) Contract contingent on future contract of a living person(future conditional) when a contingent contract is based on conduct of living person & he does anything which renders the contract impossible

Illustration: - Mr. A agrees to pay Rs. 10.000 to Mr. B . If Mr. B marries miss. C. A's daughter but B marries miss. D. Mr. B's marriage to miss. C becomes impossible unless 'D' dies or divorced this is also a contingent contract.

4) Contracts contingent on a specified event happening with in the a fixed tine for e.g.- Mr. A promises to Mr. B to pay a certain sum of money if the ship Vikrant returns from its journey of Hong Kong with one year the contract can be enforce if the ship returns with in time i.e. one year
5) Enforcement of contract contingent on specified event not happening with in a fixed time for e.g.:- Mr. A promises to pay a certain sum of money to Mr. B if certain ship does not return within a fixed time meaning them by that ship may be destroyed burnt etc. within the fixed time. It is also an example of contingent contract.
6) Agreement contingent an impossible event:- Mr. A. agrees to pay Mr. B Rs. 1 lakh . If Mr. B marries his daughter Miss. C. goes mad or if either of party goes mad at a time marriage contract become impossible or void.

QUASI CONTRACT

"Certain relation resembling to those created by contract" (sec 68 to 72)

Quasi contract is not contract as a matter of fact. But it becomes a contract latter on. It has no affinity (blood –relation) with the contract. The usual elements like offer & acceptance are missing in totality. The doctrine of quasi contract depends upon the

principle of unjust enrichment i.e. law require that anyone who has received any benefit without any contract must pay for it though there is no contract. These contracts are also called as implied contract. Quasi contract is a foreign word there is nothing like a quasi contract in I.C.A for sec 68 to 72 provides five different circumstances under the head of certain relations resembling those created by contract. In English law it is known as quasi contract.

1) *Supply of necessaries or necessities to person incapable of contracting on his behalf (sec-68)* - If a person incapable of entering into a contract or any one whom he is legally bound to support is supplied by another person with necessaries suited to his condition in life the person who has furnished such supply is entitled to be reimbursed from the property of such incapable person (sec-68).
   illustration:- Mr. A supplies to Mr. B necessaries suitable to his condition in life A is entitle to be reimbursed from B's property.

2) *Payment by some interested person*:- A person who is interested in payment of money which another person is bound to pay by law & therefore pays it later on he is entitle to be reimburse by the other party.
   Illustration:- Mr. B holds land in Bengal granted by Mr. A Zamindar on lease. The revenue payable by Mr. A to the govt. being in arrears therefore the land was held for auction sale by the govt. to prevent the sale Mr. R pays the arrears of revenue to the govt. form his own pocket under sec-69. Mr. A is bound to pay Mr. B under quasi contract.
3) *Obligation of person enjoys benefit of non-gratuitous act (sec-70)* :- where person lawfully does anything for other person or delivers anything to him not the benefit there of the latter is bound to make compensation to the former in respect of or restore the things.
   illustration :- Mr. A. a businessman lease goods o Mr. B's house by mistake Mr. B treats the good as his own. He is liable to be reimbursed.
4) *Responsibility of finder of goods* (sec-71) :- a person who finds goods belonging to another person & takes them into his custody has the position of the bailee of bailment. Where a person finds the goods belonging to another person, it is the duty of the finder to take the reasonable care of goods & to locate the real owner.
   e.g.:- Mr. A lost his purse & Mr. B a panwalla finds the purse. In this case, it is Mr. B's duty to take care & locate the owner Mr. A has to compensate Mr. B is just like a bailee.
5) *liability of person to whom money is paid or things delivered by mistake or coercion* must return it (sec-70) where something is delivered under mistake of fact of mistake of law, or under coercion the party who gets the benefits of such transaction is duty bound to give the compensation to the person from whom is getting the benefit & the goods could also be return to the original owner.

INDIAN CONTRANT ACT 1872 (SPECIAL CONTRACT)

INDEMNITY

Sec-124 of I.C.A 1872 says indemnity is a contract by which one party promises to save the other form loss caused to him by the conduct of the promisor himself or by the conduct of any other person. The person who promises to save other person from any loss is called as indemnifier (promiser) & the person who suffers the loss is known as indemnified or indemnity holder or promisee.

Illustration:- Mr. A contracts to indemnity Mr. B against the consequence of any proceeding which may take against B. this is an express contract of indemnity in between A & B. Contract of indemnity like any other contract must have satisfied all the essential of contract under sec-10.

***Features*:**

1) Loss to promisee.

2) The object must be lawful.

3) Lawful consideration

4) Express or implied contract.

Sec-125 of I.C.A lays down that the indemnity holder i.e. the promisee is entitle to recover from the indemnity in the following way

i) All the damages. ii) All cost which he may be compelled to pay in such suit of the proceeding provided he acted prudently. iii) All sums which he may have pay under the terms of any contract.

It is observed on indemnity holder can sue for specific performance of contract to the indemnifier under an agreement hence there is an absolute liability to the indemnifier.

GUARANTEE

Sec-126 says that a contract of guarantee means a contract to perform the promise or discharge the liability of a third person in case of his (3rd person) default.

The person who give the guarantee is called surety or the guarantor the person in who's default the guarantee is given is called principal debtor & the person to whom the guarantee is given called creditor.

Illustration: - Mr. A, lends Rs. 1000/- to Mr. B , & Mr. C promises to Mr. A that if Mr. B, does not repay the money Mr. C, will do so. In this case Mr. A is the creditor Mr. B is principal debtor & Mr. C is the surety.

Features:

It is tri-partite agreement (3 parties)

There must be lawful consideration.

Liability of principal debtor is primary held liable for the promise or liability, while surety liability is secondary.

There must be some default committed by the principal debtor.

All the essentials of valid contract must be present.

Discharge of surety from his liability:

1. By variance in the terms of the contract any change in the contract between the principal debtor & creditor without the consent of surety, surety will be discharged from his liability in the contract.
2. Release or discharge of principal debtor - surety is discharged by any contract between principal debtor & creditor by which the principal debtor is released. In this case the surety is also discharged from his liability.
3. By creditors compounding with the principal debtor - a contract between the creditor & principal debtor the creditors gives or promises to give certain time or not to sue the principle debtor. In this case the surety from his liability in the original agreement.
4. By creditor act or omission impairing surety‘s eventual remedies - if the creditor does any act which is against the rights of surety commits to do any act which is the duty of the creditor do & the creditor impairs with the sureties rights against the principal debtor & uses the eventual remedy of the surety himself. In such a case the surety is discharged from his liability for e.g. such as in case pre-payment or failure of execution of decree.
5. By creditor losing security against the principal debtor :- if the creditor loses the security without the consent of surety or a part thereof which he has against principal debtor the surety is discharge from his liability.
6. By misrepresentation: - where a creditor misrepresents the surety regarding material fact the surety is discharged from his liability.
7. By concealment of material fact :- where the creditor become successful in entering into an agreement with the principal debtor by concealing some material fact after disclosing the truth the surety is discharged from his liability.
8. By failure on the part of some party person join the surety: - sec-144, says does that where a person given guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as a co-surety the guarantee is not valid if the other person does not join & the surety is discharged from his liability.

BAILMENT & PLEDGE

Definition of bailment: - under sec-148 of I.C.A “bailment is the delivery of goods by one person to another person for some purpose upon a contract that they shall, when the

purpose is accomplished be return or otherwise disposed of according to the direction of person delivering the goods".

In other words we can define the bailment that it is simply transfer of physical possession of goods from one person to other person for some specific purpose under a contract when the goods were transferred the goods shall be return to the person who transferred it or according to his direction to anybody. The person transfers the goods is called the bailor & to whom the goods are delivered is called as bailee.

Explanation: - if a person is already in the possession of goods of another contract to hold them as a bailee he thereby becomes the bailee & the owner becomes the bailor although they may not have delivered the goods according to the rules of bailment. For e.g. tailors & cleaners. (2). Mr. A, lends a book to Mr. B, to be return after the examniation this is an agreement of bailment between A & B.

Characteristic or essential of bailment or its requites:

Agreement or contract: - when bailment is created there is an agreement between the bailor & bailee which may be expressed or implied. But sometimes it happens that there is bailment without a contract as in case of finder of goods.

Delivery of the goods or change or transfer of possession of goods: - there must be a transfer of possession of goods from bailor to bailee on temporary basis mere custody doesn't constitute the bailment (servant is not supposed as a bailee)

Specific purpose: - there must be some fixed purpose for which the good were delivered come to an end the goods will be returned back to the bailor , where as the goods were delivered by mistake are not bailment.

Moveable property: - bailment is concerned to moveable goods only. Money & actionable claim are not included in this institution of bailment.

Accomplishment of purpose & return of goods: - as soon as the purpose is accomplished the bailed goods are to be returned to the bailor or disposed off according to bailor's direction . A bailor can direct the bailee to deliver the goods to a third person.

Services rendered and consideration: - the purpose for which the goods were transfer the bailee is duty bound to do some act thereto & after doing the work he is duty bound to return the goods to the bailor. It is the duty of the bailee to claim the return in the form of consideration from the bailor i e the remuneration.

Parties:- in the bailment there are two parties namely bailor & bailee & both must be competent to contract.

RIGHTS OF A BAILOR.

Termination of bailment: - where in a bailment bailee does some act which is in consistent to the bailment, the bailment becomes voidable on the option of the bailor. The bailor has right to terminate the agreement.

Return of goods :- bailor has right to take back goods bailed to bailee or direct the bailee to deliver the goods to 3rd party as soon as the time for which the goods bailed come to

an end or the purpose is accomplished the goods must be returned to bailor, other bailor can claim compensation.

Mixture of goods by bailee :- a) if the goods mixed with the consent of matter bailor can claim the proportional share. b) If the goods are mixed without the consent of bailor & the goods can be separated easily the expense of separation damages will be claimed by the bailor. c) If the goods are received without the consent of bailor & goods cannot be seperated easily the bailor will be entitled to the loss of goods bailed to the bailor. d) To receive any increase of the bailed goods in the absence of any contract of contrary bailer is entitled to any increase of profit which may have accrued from the goods bailed. For e.g. Mr. A bailor bailed his cow to Mr. B, bailee for 16 months during this period she give a calf this is the increase to the bailed goods. The question arises who shall won the increase, there is a rule that increase or profits belongs to bailor & not to the bailee.

DUTIES OF BAILOR

- To put the bailee into possession
- To disclose the material defect in the goods the bailer is bound to disclose the defect in the goods. If he fails in disclosing the defeat known or unknown to him or where the goods were bailed on hire basis the bailor is held responsible for the damage to the bailee. for e.g.:- Mr. A, lends a horse to Mr. B, knowing that the horse is picious the horse throws away Mr. A & Mr. B, was injured, Mr. A the bailer is liable for damages.
- To bear extraordinary expense (in case of any increase to the bailed goods).
- To indemnity the bailee
- To receive back the goods after the accomplishment of the purpose, the bailor has to take back the goods if he refuses to take back the goods the bailee has right to receive compensation from the bailor for the necessary expense incurred for the custody of such goods.

RIGHTS OF BAILEE

All the duties of bailor can be considered as a right of bailee inspite of that he has following rights.

- Delivery of good one of the several owners (bailors) of the goods
- delivery of goods to the bailor without of title
- Right of lien - Retention of goods, or suspension lien means right to retain the possession of goods or property until the claim is paid or satisfy, possession is essential to create a right of lien. It must be right full & continuous, if does not include any right of sale. If a bailee looses the possession he loses the right of lien.

DUTIES OF BAILEE

To take reasonable care of the goods bailed

Not make unauthorized use of bailed goods.

Not to mix the goods with his own goods.

To deliver any increase or profit accrued on bailed goods to the bailor.

Not to set up any adverse title with regard & bailed goods.

To return the goods bailed.

PLEDGE

Bailment of goods as security for payment of a debt or performance of a promise is called “pledge” or “pawn”. The bailor in this case is called as pawnor or pledger and the bailee as pawnee or pledgee.

Essentials:

1. It is a special kind of bailment of goods as and by way of security for repayment of a debt or for performance of a promise
2. Only moveable property can be pledged
3. There may be actual or constructive delivery of the goods in a pledge.
4. The person who is in juridical or de jure possession of goods or property can make a pledge.

LIEN

Lien means right to retain the goods of other person which are already in possession until the claim is satisfied. Lien is of two types.

General lien: - right to retain all good in possession until all the claims are satisfied if is not only the demand but for a general balance of a/c in favor of the holder according to sec -171. This lien is available to banker, attorneys, etc.

Particular lien : - in particular lien the bailee can retain only those goods in respect of which he has rendered services & his skill for a particular lien he has to complete the word within the agreed or reasonable time, If not he cannot exercise his rights.

AGENCY

a person who has capacity to contract can enter into a contract with another, either by himself or through by some other person when such a person adopts the latter course he is said to be acting through an agent.

Definition of an agent

sec-182 lays down that “ an agent is a person employed to do any act for another or to represent another in dealing with third person for whom for such act is done or who is represented is called principal. An agency therefore is an engagement in order to establish a privity of contract that is contractual relation between one person (principal) who appoints an agent & another third person with whom the agent contracts for and on behalf of the principal.

CREATION OF AGENCY

a) Agency by agreement
b) Agency by necessity
c) Agency by estoppel or holding out.
d) Agency by operation of law.
e) agency by ratification:- if a person acts a behalf of other person (principal) without his knowledge the other person may accept or reject his act which was done without the consent of the principal (other person) if the other person accept it he is said to have ratified that act. Ratification means adopting the act which has already been done by another person without that person authority for whose benefit the work is going to be done. If such act is accepted the relations between them become of principal & agent and the type of agency is called ratification.

TERMINATION OF AGENCY

There are two ways of termination of an agency:

A} by the act of the parties:

i) By agreement ii) By revocation iii) by renunciation

B} by operation of law:

I) By performance of contract.

ii) By death of either of the parties

iii) By insanity

iv) By insolvency of either of the parties

v) By expiry of period or by lapse of time.

vi) By destruction of the subject matter.

vii) By principal becoming alien enemy

SALE OF GOODS ACT 1930

SALE & AGREEMENT TO SELL

SALE Sec. 4 :- "Whereby seller transfer or agrees to transfer the property in the goods to the buyer for the price.the person who transfers the goods is called seller. To whom the goods are transferred is called buyer. There are two parties when under a contract of sale the property of the goods is transferred from seller to the buyer, the contract is

called sale. However where the transfer of property in the goods is to take place at a future time or subject to certain conditions then the contract is an agreement to sale. An agreement to sale becomes sale when the time elapses or conditions are fulfilled.

Essentials:-

1) It is an agreement. All essentials of a valid contract must be present in sale.
2) Parties: - there are 2 parties seller & buyer & both must be competent to contract.
3) Delivery of goods: - sale of goods act deals with movable goods only immovable goods are not regulated by sale of goods act the goods must be transferred by the seller to the buyer. This is called delivery of possession of goods. In sale we see that ownership as well as possession in the goods is transferred to the buyer.
4) Price or consideration: - all contract of sale must supported by consideration where the goods are exchanged for the goods but it is not sold but barter.
5) Form and procedure:-a contract of sale has no prescribed from laid down. All essentials of a valid contract are also essential for sale. A contract of sale may be in the form of spoken words of mouth i.e. oral. it may be expressed or implied.

Agreement of sell:- where the transfer of property i.e. ownership in the goods it is to take place and a future date or subject to sale conditions that is to be fulfilled the contract is called agreement to sell.

Difference between agreement to sell & sale.

SALE	AGREEMENT TO SELL
1) The property in the goods passed from seller to the buyer	The property in the goods is to take place in future course of time or after the fulfillment of condition
2) It is an executed contract	It is an executory contract
3)It creates right in rem (against whole world)	It creates right in personam. (against specific person)
4) If the goods are destroyed, Buyer has to bear the loss it doesn't matter in whose Possession the goods are.	If the goods are destroyed loss falls on the seller even though the goods were in the possession of buyer.
5) On insolvency of the seller the bank can recover the goods because ownership is already transfered.	the buyer shall establish that the money has been paid.

CONDITION AND WARRANTIES

CONDITION AND WARRANTIES

As we know that a sale is a contract an agreement of sale consist of numerous terms, these terms of the agreement or nothing but stipulation. These stipulations are determining factor regarding the conditions and warranty.

CONDITION Sec.-72 (2)

The stipulation which are essential to the main purpose of contract of sale. the performance or non performance of such stipulation or breach of stipulation will bring the contract as repudiated (frustrated).these stipulation are called as condition.

WARRANTY Sec.12 (3)

Stipulation which is collateral or incidental to the main purpose of the contract and a breach or non performance does not have any effect to the body of the contract. the contract is still substantially performed even if the breach of such stipulation. The only remedy available to the aggrieved party is to claim damages for the breach of warranty.

Illustration:- there is an agreement between A and B sell and supply 20 liters of pure milk in 20 bottles of 1 liter each in the said agreement there are two stipulation.

1. Quality of milk i.e. pure.
2. Quantity of milk i.e. 20 liters in 20 bottles of 1 liter each.

If A supplies B 20 liters of water in 20 bottles of 1 liter each to Mr. B. this is the breach of (contract) very important term of contract.

If Mr. A supplies 20 liters of pure milk in 10 bottles of two liters each to Mr. B in this case the very purpose of the contract is going to be served. The breach is incidental or in other words we can say the stipulation or term is less important.

In the light of above discussion it can be concluded that in any contract. The non performance of any term brings the contract repudiated as the whole the term is called condition on other hand the performance and non performance of terms has no effect to the body of the contract. The term is called warranty.

CAVEAT EMPTOR (let the buyer be careful)

Caveat emptor means let the buyer be careful or let the buyer to purchase on its own risk. While buying, the buyer should apply his own (risk) skill and judgement and examine the goods thoroughly instead on relying on the skill and judgement of the seller. If the goods turns out to be defective or of inferior quality or unfit for buyer's use he has not to buy the goods. There was no implied duty of seller to warn the buyer to not to buy the goods.

the doctrine of caveat emptor implies that the person who buys the goods must keep his eyes open, his mind active and cautious while buying the goods. in other words the buyer while buying the goods must examine them, if the goods turns out to be defective one and not serve his purpose and if we depends upon his skill and judgement and make a bad choice, he cannot blame anybody but must held himself for his own folly act. This is called the doctrine of 'caveat emptor'.

But there are certain cases under which the buyer will not be held responsible for any act the seller will held responsible. These circumstances are termed as on exceptions to the role of 'caveat emptor'

RIGHTS OF UNPAID SELLER

1. **Right of lien**: - right of lien means to retain the goods until the claim is satisfied or paid off. The unpaid seller who is in the possession of goods is untitled to

retain the possession of the goods until the payment is made in the following cases.

1. Where the goods have been sold without any stipulation as to credit.
2. Where the terms of the credit has been expired.
3. Where the buyer becomes insolvent and the seller is in possession of goods..

The right of lien is lost when he delivers the goods to the buyer or when the buyer lawfully obtains the possession or when the seller waves his right of a lien (relinquish)

2. **Right of stoppage in transit**: - transit means that the goods shall be in motion when the buyer of the goods becomes insolvent the unpaid seller who has parted with the possession of the goods has the right of stopping there in transit.

   The following essentials must be present.

   1. The seller should be paid partly.
   2. The buyer must have become insolvent.
   3. The goods must be in transit.
   4. The right of stoppage in transit may be exercised by unpaid seller in the following ways.

   a) By taking actual possession of the goods.
   b) By giving notice of his claim to the carriers or bailee in whose possession the goods are.

   Right of lien is lost in the following circumstances:-

   1. Where the buyer or his agent obtain the delivery of goods.
   2. Where the carrier or bailee acknowledges that he holds goods on his behalf.
   3. where the part delivery has been made to the buyer

3) **Right of resale**: - when the unpaid seller has exercised his right of lien or resumes possession of goods by exercising his right of stoppage in transit upon insolvency of the buyer. The unpaid seller can resale the goods under the following circumstances.

1. Where the goods are of perishable in nature.
2. Seller can resale the goods when he sends a notice of resale to the buyer and buyer does not pay the price within the reasonable time.
3. If the seller has reserved his right of resale the goods in case of buyers default, he can resale the goods.

NEGOTIABLE INSTRUMENTS ACT 1881

The negotiable instrument may be defined as a piece of paper which entitles a person to sum of money and which is transferable from person to person by mere delivery or by endorsement and delivery.

The transferee i.e. the person to whom it is transferred becomes entitle to the money and also to the right. further the Latin maxim ”nemo that quid not habet” which you

don’t have, you can’t give - forms and exceptions to negotiable instrument accordingly if a person makes a negotiable instrument in good faith and for value given from a thief and from a finder he becomes the true owner in other words he acquires a good title irrespective of the transfers and the title being effective.

NEGOTIABLE INSTRUMENT

sec-13 **negotiable instrument** means a promissory note, bill of exchange ,cheque payable either to or bearer.

ESSENTIAL/CHARACTERISCTICS/FEATURE:-

1. Writing and signature: - negotiable instrument must be written and signed by the parties according to the rules relating to promissory note, bill of exchange and cheque.
2. money:- negotiable instrument are payable by legal tender money of India, liabilities of parties of negotiable instrument are fixed in terms of legal tender money only.
3. Property ownership:- whomsoever is in the possession of negotiable instrument is the holder and owner thereof and is entitled to the mention some as holder. If you take negotiable instrument bonafide and for that you acquire property by your own conducted and nobody in the world can deprive you .thus the title of the holder of negotiable instrument is free from all defects.
4. free transferable or negotiability:-
   a. Where the negotiable instrument is payable to bearer the property in it passes from one person to another person by delivery.
   b. However if the negotiable instrument is payable to order the property within is transferred by endorsement that is signature and its back of the holder and its actual delivery.
5. Good title: - holder in due course gets a good title to the instrument even if the title of the transfer is defective.
6. No need of notice: - it is not necessary to give notice of transfer of negotiable instrument in its own name for the recovery of amount mentioned there.
7. Remedy: - the holder can give upon negotiable instrument in his own name all over parties are liable to it a holder in due course can recover the full amt on instrument.
8. Rights:-the holder in due course remains unaffected by certain defense.
9. Presumptions:- unless the contrary is proved certain presumption are made in case of all negotiable instrument.

promissory note

Sec-4, defines a promissory note as “an instrument in writing (not been a bank note or 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.”

ESSENTAILS:-

1) It must be in writing: - all the negotiable instrument should compulsory be in written form. Hence all oral promises are completely excluded.
2) a promise to pay :- the instrument must contain or express promise to pay it is not essential that the word promise should be used but the language used must clearly indicates & an unconditional undertaking however a mere acknowledgement or receipt of money cannot be treated as a promissory note. In other words a mere implied under faking is not sufficient for e.g.:- promise to pay x' Rs 5000. on demand
   e.g. no-2:- promise to pay x' on order Rs 5000 this are the example of the promissory note.

   The following are not promissory note:-
   1) owe you Rs 5000/- or
   2) acknowledge a receipt of Rs 5000/-
   3) a definite an unconditional promise :- the under taking to pay must be definite & unconditional if the promise is uncertain & conditional instrument is not valid. For e.g.:- 1) promise to pay b' Rs.5000 when able or when convenient. 2) A promised B to pay Rs. 5000/- on the death of C, as death is an event so certain & necessary that it is bound to become payable at one time or other. The promissory note is not valid because it is not & unconditional promise.
   4) signed by maker or drawer :- the promissory note must be signed by maker otherwise it is incomplete& of no use even if it is written by the maker himself & his name is very much there on the face of record. It must be signed by him the drawer must sign with free consent.
   5) The maker & the drawer & the payee must be certain: - there are always two parties the drawer & the payee & both must be different person. The person who makes the instrument is known as the drawer & the person who receives the money is known as payee. The payee even may be mis name or designate only by description. The promissory note payable to the manager of bank is perfectly a valid instrument.
   6) Certain sum of money: - a sum payable must be certain & must not be capable of contingent of or future subtractions & additional (uncertain future subtractions & addition excluded). The following examples are not promissory note because the sum payable there in is not certain. Illustration: - 1) promise to pay Mr. A Rs.5000/- & all other sums due to him. 2) Promise to pay to Mr. A Rs 5000/- together with the fine according to the rule. In the above illustration there are future additions & that are uncertain thus it is not a promise note.
   7) Promise to pay money &money only: - promissory note contains a promise to pay money & money only if the instruments contain a promise to pay something other than money or something addition to money it is not promissory note.

Illustration: - 1) promise to pay Mr. B.Rs 500/- & to deliver him my red house on the 1st Jan 1997. 2) Mr. A. promises to pay Mr. Rs 100/- & cosmetics for worth of Rs.100.

8) Formalities: - there are certain formalities such as date, place, consideration which are found in promissory note but which are not essential in the eye of law. Thus where the words for value receive or not mentioned in the promissory note the instrument in not in valid. Because it is presumed that the promissory note is valid unless the contrary is proved. Finally it may have been noted that a bank note, a currency note is not a promissory note.
9) Stamping: - the instrument however bear the required stamp according to the Indian must stamp act otherwise it cannot be admitted in the evidence before the court of law.

BILLS OF EXCHANGE

"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 or to the order of certain person or to the bearer of the instrument.

ESSENTIALS:-

1. It must be in the form of writing as promissory note, bill of exchange must also in the form of writing.

2 parties:-there are generally 3 parties to a bill of exchange known as drawer, drawee and payee. The owner is a person who makes a bill of exchange or gives the order to the drawee to pay a certain sum of money to the payee. The drawee is a person who is directed by the drawer to pay a certain sum of money to the payee. The payee is the person to whom or to whose order payment is to be made.

3 acceptor:- the drawer or the payee who is in possession of the bill is called the holder. The holder in due course must present the bill to the drawee for his acceptance where the drawee accepts the bill he becomes acceptor.

4 an unconditional order to pay:- in a bill of exchange the order to pay must be unconditional i.e. payable at all events and under all circumstances .the provisions of contingent contract under Indian contract act in cases of negotiable instrument.

5 signed by drawer:-a bill of exchange must be signed by drawer if a drawer had himself written in his own hand writing the very instrument of bills of exchange but had not signed it is of no value.

6 a certain sum of money and money only:- in a bill of exchange the sum of money ordered to be paid must be certain and definite. if the instrument contains on order to pay something other than money or something in addition to money it is not a bill of exchange for e.g.:- i order to pay b, Rs 500 in cash & deliver black hero Honda motor cycle is not a bill of exchange because the order is no t in the form of money & money only.

CHEQUE

sec-6 " a cheque is a bill of exchange drawn on a specified bank & not expressed to be payable otherwise than on demand. A cheque is a bill of exchange hence forth it must possess all the essential of bills of exchange, but in addition. It also passes certain distinctive characteristics where are as under.

1) the drawee of the cheque must be a banker in other words a cheque must be drawn upon specified bank who is a banker according to the words of Mr. Hart a banking expert a banker is one who is in ordinary course of business order cheque draws upon him by a person from & from whom he receives money from current a/c.
2) A cheque must be payable on demand.
3) A cheque does not require acceptance in any case.
4) A cheque is not required to be stamped at all.
5) A cheque must be signed by the drawer in the identical manner of the specimen signature kept in bank.
6) Finally a cheque must be dated, it may be antedated.

Presumptions

Sec-118-119 of the Indian evidence act lays down number of presumption in favour of negotiable instrument to facilitate the proof of claim arising upon until the contrary is proved.

1. Presumption as to consideration: -every negotiable instrument is presumed to have been made on drawn for consideration and that every such instrument when it has been accepted endorsed negotiated or transfer for consideration. however if the party is able shows that the instrument was taken from him without consideration then it is for the holder to prove that he gave value for it therefore it is very important presumption because it helps the holder to get consideration without any difficulty.
2. presumption as to date:- every negotiable instrument bearing date was made or drawn on such date in other words if an instrument is dated the instrument is presumed to have been drawn or made on the date that appears an if the date is an impossible one the law will adopt the nearest possible date unless the contrary is proved.
3. Presumption as to time of acceptance when a bill of exchange is accepted it is presumed it was accepted within a reasonable time offer its date and before its maturity.
4. Presumption as to time of transfer: - evenly transfer of negotiable instrument is presumed to have been made before its maturity.
5. Presumption as to order of endorsement: - endorsements of negotiable instrument are presumed to have been made in the order in which they appear an instrument.

6. Presumption as to stamp: - if a promissory note, bill of exchange or cheque is lost it is presumed that instrument was duty stamped unless the contrary is proved.
7. Presumption as to time of acceptance when a bill of exchange is accepted within a reasonable time after its date & before its maturity.
8. Presumption as to time of transfer: - every transfer of negotiable instrument is presumed to have been made before its maturity.
9. presumption as to order of endorsement :- the endorsement on a negotiable instrument are presumed to have been made in the order in which they appear on instrument
10. Presumption as to stamp: - if a promissory note bill of exchange or cheque is lost it is presumed that instrument was duty stomped unless the contrary is proved.
11. The holder of negotiable instrument is the holder in due course, thus a person who is in possession of instrument is presumed to have obtained it for value & in good faith. The burden its upon the opposite party to prove that he is not the holder in due course.
12. Presumption of proof of profits: - sec-119 lays down in a suit upon an instrument which has been dishonored the court shall on the proof dishonor presume the fact of dishonor unless on until such fact is disproved.

NEGOTIATION

When a promissory note, bill of exchange or cheque is transferred to any person, the instrument is said to be negotiated. There are two methods of negotiation

i) Negotiation by delivery of bearer instruments
ii) Negotiation by endorsement and delivery of order instrument.

When the instrument has been transferred by negotiation, the holder gets a good title to it notwithstanding any defect in the title of the transferor except forgery.